GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764-1765) to the Debates in Congress at the Close of the Taft Administration (1912-1913)

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edited by
Marion Mills Miller

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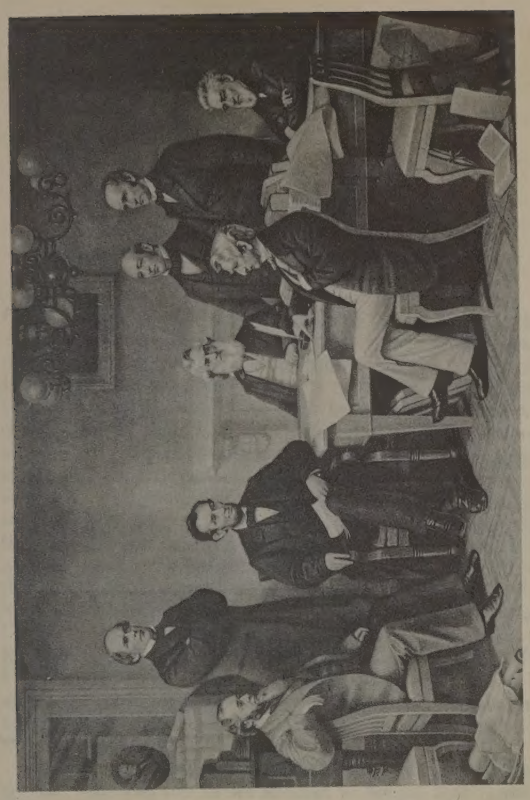

THE PROCLAMATION OF EMANCIPATION

GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764–1765) to the Debates in Congress at the Close of the Taft Administration (1912–1913)

EDITED BY

MARION MILLS MILLER, LITT.D. (PRINCETON)

Editor of "The Life and Works of Abraham Lincoln," etc

IN FOURTEEN VOLUMES

EACH DEALING WITH A SPECIFIC SUBJECT, AND CONTAINING A SPECIAL INTRODUCTION BY A DISTINGUISHED AMERICAN STATESMAN OR PUBLICIST

VOLUME SIX

THE CIVIL WAR

With an Introduction by HENRY WATTERSON, LL.D.

Editor of the Louisville (Ky.) *Courier Journal*

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INTRODUCTION

Lincoln, the Incarnation of the Union [1]

THE war of sections, inevitable to the conflict of systems but long delayed by the compromises of patriotism, did two things which surpass in importance and value all other things: it confirmed the Federal Union as a nation, and it brought the American people to the fruition of their manhood. Before that war we were a huddle of petty sovereignties held together by a rope of sand; we were as a community of children playing at government. Hamilton felt it, Marshall feared it, Clay ignored it, Webster evaded it. Their passionate clinging to the Constitution and the flag, bond and symbol of an imperfect if not tentative compact, confessed it. They were the intellectual progenitors of Abraham Lincoln. He became the incarnation of the brain and soul of the Union. "My paramount object," said he, "is to save the Union, and not either to save or destroy slavery. If I could save the Union without freeing any slave, I would do it; if I could save it by freeing all the slaves, I would do it; and if I could do it by freeing some and leaving others alone, I would do that."

In the sense of security which his travail and martyrdom achieved for us we are apt to forget that it was not a localized labor system but institutional freedom which was at stake; that African slavery was the merest

[1] Adapted from an article in the *Cosmopolitan*, March, 1909.

relic of a semi-barbarism shared in the beginning by all the people, but at length driven by certain laws of nature and trade into a corner, where it was making a stubborn but futile stand; that the real issue was free government, made possible by the Declaration of Independence and the Constitution of the United States, and inseparable from the maintenance of the Union. If the Union failed, freedom failed.

The trend of modern thought was definitely set against human slavery; but outside the American Union the idea of human freedom had gone no further than limited monarchy. Though he came to awaken the wildest passions of the time, the negro was but an incident —never a principal—to the final death-grapple between the North and the South.

No man of his time understood this so perfectly, embodied it so adequately, as Abraham Lincoln. The primitive Abolitionists saw only one side of the shield, the original secessionists only the other side. Lincoln saw both sides. His political philosophy was expounded in four elaborate speeches: one delivered at Peoria, Illinois, the 16th of October, 1854; one at Springfield, Illinois, the 16th of June, 1858; one at Columbus, Ohio, the 16th of September, 1859; and one at Cooper Institute, in New York City, the 27th of February, 1860. Of course he made many speeches and very good speeches, but these four, progressive in character, contain the sum and substance of his creed touching the organic character of the Government, and at the same time express his personal and party view of contemporary affairs. They show him to have been an old-line Whig of the school of Henry Clay, with strong emancipation leanings; a thorough anti-slavery man, but never an extremist or an Abolitionist. To the last he hewed to the line thus laid down.

It is essential to a complete understanding of Mr. Lincoln's relation to the time and of his place in the history of the country that the student peruse closely those four speeches: they underlie all that passed in the famous debate with Douglas, all that their author said and did after he succeeded to the presidency. They

will always stand as masterpieces of popular oratory. The debate with Douglas, however—assuredly the most extraordinary intellectual spectacle in the annals of our party warfare—best tells the story and crystalizes it. Lincoln entered the canvass unknown outside the State of Illinois. He ended it renowned from one end of the land to the other.

Judge Douglas was himself unsurpassed as a ready debater, but in that campaign, from first to last, he was at a serious disadvantage. His bark rode an ebbing tide, Lincoln's a flowing tide. African slavery had become the single issue now; and, as I have said, the trend of modern thought was against slavery. The Democrats seemed hopelessly divided. The Little Giant had to face a triangular opposition embracing the Republicans, the Administration, or Buchanan, Democrats, and a remnant of the old Whigs, who fancied that their party was still alive and might hold some kind of a balance of power. Judge Douglas called the combination the "allied army," and declared that he would deal with it "just as the Russians dealt with the allies at Sebastopol; that is, the Russians did not stop to inquire, when they fired a broadside, whether it hit an Englishman, a Frenchman, or a Turk." It was something more than a witticism when Mr. Lincoln rejoined, "In that case I beg he will indulge us while we suggest to him that those allies took Sebastopol."

He followed this center-shot with volley after volley, of exposition so clear, of reasoning so close, of illustration so homely and sharp, and, at times, of humor so incisive, that, though he lost his election—though the allies did not then take Sebastopol—his defeat counted for more than Douglas's victory, for it made him the logical and successful candidate for President of the United States two years later.

What could be more captivating to an outdoor audience than Lincoln's description "of the two persons who stand before the people as candidates for the Senate," to quote his prefatory words? "Judge Douglas," he said, "is of world-wide renown. All the anxious politicians of his party . . . have been looking upon

him as certainly . . . to be President of the United States. They have seen in his round, jolly, fruitful face post-offices, land-offices, marshalships, and cabinet appointments, chargeships, and foreign missions bursting and spreading out in wonderful exuberance, ready to be laid hold of by their greedy hands. And as they have been gazing upon this attractive picture so long they cannot, in the little distraction that has taken place in the party, bring themselves to give up the charming hope; but with greedier anxiety they rush about him, sustain him, and give him marches, triumphal entries and receptions, beyond what in the days of his highest prosperity they could have brought about in his favor. On the contrary, nobody has ever expected me to be President. In my poor, lean, lank face nobody has ever seen that any cabbages were sprouting."

As the debates advanced these cheery tones deepened into harsher notes; crimination and recrimination followed; the gladiators were strung to their utmost tension. They became dreadfully in earnest. Personal collision was narrowly avoided. I have recently gone over the entire debate, and with a feeling I can only describe as most contemplative, most melancholy.

I knew Judge Douglas well; I admired, respected, loved him. I shall never forget the day he quitted Washington to go to his home in Illinois to return no more. We sat down together in a doorway. "What are you going to do?" said he. "Judge Douglas," I answered, "we have both fought to save the Union; you in your great way and I in my small way; and we have lost. I am going to my home in the mountains of Tennessee, where I have a few books, and there I mean to stay." Tears were in his eyes, and his voice trembled like a woman's. He was then a dying man. He had burned the candle at both ends; an eager, ardent, hard-working, pleasure-loving man; and although not yet fifty the candle was burned out. His infirmities were no greater than those of Mr. Clay; not to be mentioned with those of Mr. Webster. But he lived in more exacting times. The old-style party organ, with its mock heroics and its dull respectability, its beggarly array of empty news columns

and cheap advertising, had been succeeded by that unsparing, telltale scandal-monger, Modern Journalism, with its myriad of hands and eyes, its vast retinue of detectives, and its quick transit over flashing wires, annihilating time and space. Too fierce a light beat upon the private life of public men, and Douglas suffered from this, as Clay and Webster, Silas Wright, and Franklin Pierce had not suffered.

The presidential bee was in his bonnet, certainly; but its buzzing there was not noisier than in the bonnets of many other great Americans who have been dazzled by the presidential mirage. His plans and schemes came to naught. He died at the moment when the death of those plans and schemes was made more palpable and impressive by the roar of cannon proclaiming the reality of the "irrepressible conflict" he had refused to foresee and had struggled to avert. His lifelong rival was at the head of affairs. No one has found occasion to come to the rescue of his fame. No party interest has been identified with his memory. But when the truth of history is written it will be told that, no less than Webster and Clay, he, too, was a patriotic man, who loved his country and tried to save the Union. He tried to save the Union, even as Webster and Clay had tried to save it, by compromises and expedients. It was too late. That string was played out. Where they had succeeded he failed; but, for the nobility of his intention, the amplitude of his resources, the splendor of his combat, he merits all that any leader of a losing cause ever gained in the regard of posterity; and posterity will not deny him the title of statesman.

In those famous debates it was Titan against Titan; and, perusing them after the lapse of forty years, the philosophic critic will conclude which got the better of it, Lincoln or Douglas, much according to his sympathy with the one or the other. If Douglas had lived he would have become as Lincoln's right hand. Already, when he died, Lincoln was beginning to look to him and to lean upon him. Four years later they were joined together again on fame's eternal camping ground, each followed to the grave by a mourning people.

As I have said, Abraham Lincoln was an old-line Whig of the school of Henry Clay, with strong free-soil opinions, never an extremist or an Abolitionist. He was what they used to call in those old days "a Conscience Whig." He stood in awe of the Constitution and his oath of office. Hating slavery, he recognized its legal existence and its rights under the compact of the organic law. He wanted gradually to extinguish it, not to despoil those who held it as a property interest. He was so faithful to these principles that he approached emancipation not only with anxious deliberation, but with many misgivings. He issued his final proclamation as a military necessity; and, even then, so fair was his nature, he was meditating some kind of restitution.

Thus it came about that he was the one man in public life who could have taken the helm of affairs in 1861 handicapped by none of the resentments growing out of the anti-slavery battle. While Seward, Chase, Sumner, and the rest had been engaged in hand-to-hand combat with the Southern leaders at Washington, Lincoln, a philosopher and a statesman, had been observing the course of events from afar, and, like a philosopher and a statesman, his mind was irradiated and sweetened by the sense of humor. Throughout the contention that preceded the war, amid the passions inevitable to the war itself, not one bitter, proscriptive word escaped his lips or fell from his pen, while there was hardly a day that he was not projecting his great personality between some Southern man or woman and danger.

Had Lincoln lived! In that event it is quite certain that there would have been no era of reconstruction, with its repressive agencies and oppressive legislation. If Lincoln had lived there would have been wanting to the extremism of the time the bloody cue of his taking off to mount the steeds and spur the flanks of vengeance. For Lincoln entertained, with respect to the rehabilitation of the Union, the single wish that the Southern States—to use his familiar phraseology—"should come back home and behave themselves," and if he had lived he would have made this wish effectual as he made everything effectual to which he seriously addressed himself.

His was the genius of common sense. Of admirable intellectual aplomb, he sprang from a Virginia pedigree and was born in Kentucky. He knew all about the South, its institutions, its traditions, and its peculiarities. "If slavery be not wrong," he said, "nothing is wrong," but he also said, and reiterated it time and again: "I have no prejudice against the Southern people. They are just what we would be in their situation. If slavery did not now exist among them they would not introduce it. If it did now exist among us we would not instantly give it up."

The idea of paying the South for the slaves had been all along in his mind. He believed the North equally guilty with the South for the existence of slavery. He clearly understood that the irrepressible conflict was a conflict of systems, not merely a sectional and partisan quarrel. He was a considerate man, abhorring proscription. He wanted to leave the South no right to claim that the North, finding slave labor unremunerative, had sold its negroes to the South and then turned about and by force of arms confiscated what it had unloaded at a profit. He recognized slavery as property. In his message to Congress, of December, 1862, he proposed payment for the slaves, elaborating a scheme in detail and urging it with copious and cogent argument. "The people of the South," said he, addressing a war Congress at that moment in the throes of bloody strife with the South, "are not more responsible for the original introduction of this property than are the people of the North, and, when it is remembered how unhesitatingly we all use cotton and sugar and share the profits of dealing in them, it may not be quite safe to say that the South has been more responsible than the North for its continuance."

This is the language not only of justice, but of far-reaching statesmanship.

Something more than two hundred and sixty years ago there arrived at the front of affairs in England one Cromwell. In the midst of monarchy he made a republic. It had no progenitor. It left no heirs at law. Why such cost of blood and treasure for an interval of free-

dom so equivocal and brief puzzled the wisest men and remained for centuries a mystery, though it is plain enough now and was long ago conceded, so that at last—dire rebel though he was—the name of Cromwell, held in execration through two hundred years, has a place in the history of the English-speaking races along with the names of William the Conqueror and Richard of the Lion Heart.

That which it took England two centuries to realize we in America have demonstrated within a single generation. Northerner or Southerner, none of us need fear that the future will fail to vindicate our integrity. When those are gone that fought the good fight, and philosophy comes to strike the balance sheet, it will be shown that the makers of the Constitution left the relation of the States to the Federal Government and of the Federal Government to the States open to a double construction. It will be told how the mistaken notion that slave labor was requisite to the profitable cultivation of sugar, rice, and cotton raised a paramount property interest in the Southern section of the Union, while in the Northern, responding to the impulse of modern thought and the outer movements of mankind, there arose a great moral sentiment against slavery. The conflict thus established, gradually but surely sectionalizing party lines, was wrought to bitter and bloody conclusion at Appomattox.

The battle was long though unequal. Let us believe that it was needful to make us a nation. Let us look upon it as into a mirror, seeing not the desolation of the past but the radiance of the present; and in the heroes of the new North and the new South who contested in generous rivalry up the fire-swept steep of El Caney and side by side reëmblazoned the national character in the waters about Corregidor Island and under the walls of Cavite, let us behold hostages for the old North and the old South blent together in a Union that recks not of the four points of the compass, having long ago flung its geography into the sea.

Henry Watterson

CHAPTER I

"The Union Is Perpetual"

[LINCOLN'S FIRST INAUGURAL AND THE DEBATE THEREON]

Speaking Tour of the President-elect on His Way to Washington—Remarks at Springfield, Ill., on "Divine Guidance"; at Indianapolis on "Preservation of the Union the People's Business, Not the President's"; to the Indiana Legislature on "The Union: Is It a Marriage Bond or a Free Love Arrangement?"; at Cincinnati on "Good Will to the South"; to the Ohio Legislature on "Nothing Is Going Wrong"; at Steubenville on "The Majority Should Rule"; at Pittsburgh on "Protection"; at Cleveland on "The Crisis Is Artificial"; at Buffalo on "Waiting for Developments"; at Albany on "President, Not Party Leader"; to the New York Legislature on "Reliance on the People"; at Poughkeepsie on "Standing by the Pilot"; at New York on "A Time for Silence" and "Save the Ship and Cargo—if Not Both, Then the Ship"; to the Senate of New Jersey on "The Liberty Inherited from the Fathers"; to the House of Representatives of New Jersey on "Putting the Foot Down Firmly"; at Philadelphia on "The Teachings of Independence Hall"; "The Principles of the Declaration," and "The Flag of the Union"; at Harrisburg on "The Men of Peace"; at Washington on "Misunderstanding Between the Sections"—His First Inaugural Address: "The Chorus of the Union"—Debate in the Senate upon the Address: Thomas L. Clingman [N. C.], Stephen A. Douglas [Ill.], Louis T. Wigfall [Tex.], James M. Mason [Va.]; Lafayette S. Foster [Conn.] Moves in the House to Expel Senator Wigfall; Motion Is Not Brought to Vote—The Senate Declares That the Seats of Senators from Seceded States Are Vacant.

ON February 11, 1861, the President-elect left his home at Springfield, Ill., to travel by a circuitous route to the national capital, there to be inaugurated on March 4. In a parting speech to his neighbors he expressed a solemn sense of his responsibility and a reliance upon "that Divine Being who ever attended Washington," the first President, upon whom rested a similar responsibility.

tance, he spoke on the tariff, since, even in the stress which was threatening to tear the Union asunder, the citizens of Pennsylvania seemed to be primarily interested in that subject.

On the same day, at Cleveland, he returned to the theme that the crisis was an artificial one.

What they do who seek to destroy the Union is altogether artificial. What is happening to hurt them? Have they not all their rights now as they ever have had? Do not they have their fugitive slaves returned now as ever? Have they not the same Constitution that they have lived under for seventy-odd years? Have they not a position as citizens of this common country, and have we any power to change that position? [*Cries of "No!"*] What, then, is the matter with them? Why all this excitement? Why all these complaints? As I said before, this crisis is altogether artificial. It has no foundation in fact. It can't be argued up, and it can't be argued down. Let it alone, and it will go down of itself.

At Buffalo on February 16 he excused himself from telling his specific plans to save the Union.

When it is considered that these difficulties are without precedent, and have never been acted upon by any individual situated as I am, it is most proper I should wait and see the developments, and get all the light possible, so that when I do speak authoritatively I may be as near right as possible. When I shall speak authoritatively I hope to say nothing inconsistent with the Constitution, the Union, the rights of all the States, of each State, and of each section of the country, and not to disappoint the reasonable expectations of those who have confided to me their votes.

On February 18 he spoke to the citizens of Albany, saying that he intended to be the President, not of a party, but of the nation. On the same day he addressed the New York legislature, which had tendered him unanimous support, saying that he was the "humblest of all individuals that had been elevated to the Presidency"; and yet, with a more difficult task before him than had confronted any, Mr. Lincoln expressed con-

At Indianapolis, upon the same day, he addressed the citizens, saying: "To the salvation of the Union there needs but a single thing—the hearts of a people like yours." The preservation of the Union, he repeated, "is your business, not mine; not with Presidents, not with politicians, but with you is the question."

To the Indiana legislature he spoke on "The Union: Is it a Marriage Bond or a Free Love Arrangement?" claiming that the South regarded it as the latter. "Coercion," he said, could not properly be applied to the enforcement of Federal laws in South Carolina, but it could be so applied to the attempt of that State, being not one fiftieth part of the nation in soil and population, to break up the nation and force a proportionally larger subdivision of itself (the Union men in the State) into compliance with the act.

To the citizens of Cincinnati, on February 12, being on the border of the slave States, he expressed good will to the South, repeating a former speech which he had made in the city in 1859, in which he said: "We mean to treat you, as near as we possibly can, as Washington, Jefferson, and Madison treated you. We mean to leave you alone, and in no way to interfere with your institutions, to abide by all and every compromise of the Constitution."

On February 13 he addressed the Ohio legislature at Columbus, assuring them that he had not hitherto preserved silence on the state of the country from any want of real anxiety, as had been charged. Anxiety he felt, but not alarm, for "there is nothing going wrong." "Time, patience, and a reliance on that God who has never forsaken this people" would save the Union.

On February 14 he addressed the citizens of Steubenville, O., on the subject: "The Majority Should Rule." Where is there a judge to be found between the majority and the minority? Since one of the two, therefore, must rule, shall we submit to the minority? Would that be right? Would it be just or generous?

At Pittsburgh on February 15 he declared that the crisis was artificial, and, as if to minimize its impor-

fidence in the Almighty that, with the help of the people, these difficulties would be overcome.

On February 19 at Poughkeepsie, N. Y., he expressed the sentiment that, though he had not been the choice of all the people to "pilot the ship of State," he was confident that the defeated party were desirous of "running it through the tempest in safety," and would loyally support him in his endeavor to do so.

On the same day he spoke to the citizens of New York City on the theme, "There Is a Time for Silence." He would wait until the proper moment to announce details of his policy. For the present it sufficed to say that he would propose nothing in conflict with the Constitution, or the Union, or the perpetuation of the liberties of the people.

Replying to the reception accorded him by the mayor of the city, he returned to his former simile of the ship of state, saying that he would save, if possible, both ship and cargo, but, if necessary, the ship without the cargo.

He addressed the Senate and House of the New Jersey legislature at Trenton on February 21. Speaking to the Senate on the revolutionary memories aroused by the name of the State capital, he implored them to save the liberty inherited from the Fathers of the country. To the House he said, adverting to the fact that most of them were his political opponents, he would perform his duties in no partisan spirit.

I shall do all that may be in my power to promote a peaceful settlement of all our difficulties. The man does not live who is more devoted to peace than I am, none who would do more to preserve it, but it may be necessary to put the foot down firmly. [Here the audience broke out in cheers so loud and long that for some moments it was impossible to hear Mr. Lincoln's voice.] And if I do my duty and do right, you will sustain me, will you not? [Loud cheers and cries of "Yes, yes; we will."]

At Philadelphia on February 21 Mr. Lincoln addressed the citizens on "The Teachings of Independence

Hall," pledging himself never to do anything inconsistent with these. On the following day (Washington's birthday) he spoke in Independence Hall. Amplifying his remarks of the former day he said:

I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. I have often pondered over the dangers which were incurred by the men who assembled here and framed and adopted that Declaration. I have pondered over the toils that were endured by the officers and soldiers of the army who achieved that independence. I have often inquired of myself what great principle or idea it was that kept this confederacy so long together. It was not the mere matter of separation of the colonies from the motherland, but that sentiment in the Declaration of Independence which gave liberty not alone to the people of this country, but hope to all the world, for all future time. It was that which gave promise that in due time the weights would be lifted from the shoulders of all men, and that all should have an equal chance. Now, my friends, can this country be saved on that basis? If it can, I will consider myself one of the happiest men in the world if I can help to save it. If it cannot be saved upon that principle, it will be truly awful. But if this country cannot be saved without giving up that principle I was about to say I would rather be assassinated on this spot than surrender it.[1] Now, in my view of the present aspect of affairs, there is no need of bloodshed and war. There is no necessity for it. I am not in favor of such a course; and I may say in advance that there will be no bloodshed unless it is forced upon the Government. The Government will not use force unless force is used against it.

My friends, this is wholly an unprepared speech. I did not expect to be called on to say a word when I came here. I supposed I was merely to do something toward raising a flag. I may, therefore, have said something indiscreet. [Cries of "No, no."] But I have said nothing but what I am willing to live by, and, if it be the pleasure of Almighty God, to die by.

When the flag to which Mr. Lincoln referred was raised, he called attention to the new star which had been placed upon it for Kansas, admitted into the Union on January 29:

[1] Threats had been made that the President-elect would never take his seat.

I think we may promise ourselves that not only the new star placed upon that flag shall be permitted to remain there to our permanent prosperity for years to come, but additional ones shall from time to time be placed there until we shall number, as it was anticipated by the great historian, five hundred millions of happy and prosperous people.

On the same day, at Harrisburg, Pa., he replied to the welcome of Governor Andrew G. Curtin, saying:

Allusion has been made to the peaceful principles upon which this great commonwealth was originally settled. Allow me to add my meed of praise to those peaceful principles. I hope no one of the Friends who originally settled here, or who lived here since that time, or who lives here now, has been or is a more devoted lover of peace, harmony, and concord than my humble self.

While I have been proud to see to-day the finest military array, I think, that I have ever seen, allow me to say, in regard to those men, that they give hope of what may be done when war is inevitable. But, at the same time, allow me to express the hope that, in the shedding of blood, their services may never be needed, especially in the shedding of fraternal blood. It shall be my endeavor to preserve the peace of this country so far as it can possibly be done consistently with the maintenance of the institutions of the country. With my consent or without my great displeasure, this country shall never witness the shedding of one drop of blood in fraternal strife.

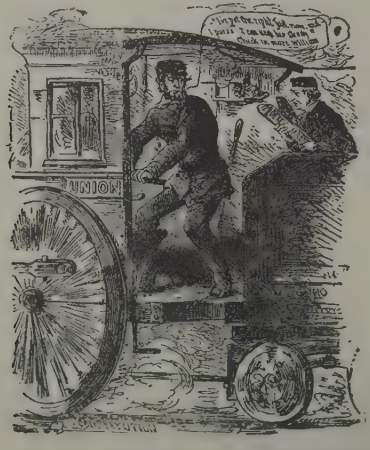
Later he addressed the State legislature in the same vein.

From Harrisburg Mr. Lincoln went secretly to Washington, since those who were managing his tour wished to guard against his assassination on the way, which had been threatened. On his arrival at the national capital he was welcomed by the mayor. Mr. Lincoln assured those present that he had as kindly feeling toward the slaveholding section as toward his own, and was confident that the enmity between the two was only the result of a misunderstanding. Replying to a serenade the next evening (February 28) he repeated his assurances of fair dealing toward the whole country.

On March 4 he delivered his inaugural address be-

fore a vast crowd of people assembled from all parts of the country.

A tentative draft of this, the most important of his utterances, Lincoln wrote and had privately printed while at his home in Springfield, Ill. On his way to Washington he gave a copy to his friend, O. H. Browning, at Indianapolis, who suggested that the statement



LINCOLN AND SEWARD RUNNING THE UNION ENGINE

therein that Lincoln would "reclaim" the Federal property in the hands of the secessionists should be omitted, as subject to construction as a threat, and as such unnecessarily aggravating to the South. This suggestion the President adopted. On arriving at Washington Mr. Lincoln gave a copy of the draft to William H. Seward, his appointee as Secretary of State. Mr. Seward suggested two important changes, one that was virtually Mr. Browning's emendation, and the other the omission of a statement that the President would follow the principles of the Republican platform. Referring to the

latter, he reminded Lincoln that Jefferson, at a similar crisis when the opposing party sought to dismember the Government, "sank the partisan in the patriot in his inaugural address, and propitiated his adversaries by declaring: 'We are all Federalists, all Republicans.'" Most of Seward's other suggestions related to improvements in rhetoric. His "general remarks" were as follows:

The argument is strong and conclusive, and ought not to be in any way abridged or modified.

But something besides or in addition to argument is needful to meet and remove prejudice and passion in the South and despondency in the East.

Some words of affection—some of calm and cheerful confidence.

Mr. Seward submitted two paragraphs of his own as suggestions for closing the speech in a conciliatory and cheerful manner. The second was in that poetic vein which occasionally cropped out in Seward's speeches and writings, and over which Lincoln, on better acquaintance, was wont good-naturedly to rally him. Seward wrote:

I close. We are not, we must not be, aliens or enemies, but fellow countrymen and brethren. Although passion has strained our bonds of affection too hardly, they must not, I am sure they will not, be broken. The mystic chords which, proceeding from so many battlefields and so many patriot graves, pass through all the hearts and all hearths in this broad continent of ours, will yet again harmonize in their ancient music when breathed upon by the guardian angel of the nation.

Lincoln took this paragraph, and by deft touches which reveal a literary taste beyond that of any statesman of his time, transformed it into his peroration. More than anything else in the address, it was the tender spirit and chaste beauty of these closing words that convinced the people that Lincoln measured up to the high mental stature demanded of one who was to be their leader during the most critical period of the life of the nation.

THE CHORUS OF THE UNION

PRESIDENT LINCOLN'S FIRST INAUGURAL ADDRESS

The President began by assuring the people of the South that their peace would not be endangered, as they apprehended, by the accession of a Republican Administration. He quoted from one of his former speeches a declaration that he had neither the right nor the intention to interfere with slavery where it existed, and referred to a plank in the Republican platform showing that the same was true of his party.

I add, too, that all the protection which, consistently with the Constitution and the laws, can be given will be cheerfully given to all the States when lawfully demanded, for whatever cause—as cheerfully to one section as to another.

The return of fugitive slaves he regarded as a constitutional obligation which he and the national legislators were, by their unanimous oaths, bound to see executed. If Congressmen "would make the effort in good temper," he said, "could they not, with nearly equal unanimity, frame and pass a law by means of which to keep good that unanimous oath?"

It mattered little whether the surrender of fugitive slaves was by national or State authority.

If the slave is to be surrendered, it can be of but little consequence to him or to others by which authority it is done. And should anyone in any case be content that his oath shall go unkept on a merely unsubstantial controversy as to how it shall be kept?

However, abuses of the Fugitive Slave act should be remedied so that no free man should be delivered to slavery.

And might it not be well at the same time to provide by law for the enforcement of that clause in the Constitution which guarantees that "the citizen of each State shall be entitled to all privileges and immunities of citizens in the several States?"

He continued:

I take the official oath to-day with no mental reservations, and with no purpose to construe the Constitution or laws by any hypercritical rules. And, while I do not choose now to specify particular acts of Congress as proper to be enforced, I do suggest that it will be much safer for all, both in official and private stations, to conform to and abide by all those acts which stand unrepealed, than to violate any of them, trusting to find impunity in having them held to be unconstitutional.

He then turned to the question of secession.

I hold that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever—it being impossible to destroy it except by some action not provided for in the instrument itself.

Again, if the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak; but does it not require all lawfully to rescind it?

He argued from history that the Union is perpetual. It is older than the Constitution, having been formed by the Articles of Association in 1774, confirmed by the Declaration of Independence, and specifically plighted as perpetual in the Confederation.

But the Constitution was formed to secure "a more perfect union." Therefore,

If the destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity.

It follows, from these views, that no State, upon its own mere motion, can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of

violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances.

I therefore consider that, in view of the Constitution and the laws, the Union is unbroken; and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it so far as prac-

COLUMBIA DEMANDS HER CHILDREN

From the collection of the New York Historical Society

ticable, unless my rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself.

In doing this there needs to be no bloodshed or violence; and there shall be none, unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but, beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere.

Where hostility to the United States in any interior locality shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the Government to enforce the exercise of these offices, the attempt to do so would be so irritating, and so nearly impracticable withal, that I deem it better to forego for the time the uses of such offices.

The mails, unless repelled, will continue to be furnished in all parts of the Union. So far as possible, the people everywhere shall have that sense of perfect security which is most favorable to calm thought and reflection. The course here indicated will be followed unless current events and experience shall show a modification or change to be proper, and in every case and exigency my best discretion will be exercised according to circumstances actually existing, and with a view and a hope of a peaceful solution of the national troubles and the restoration of fraternal sympathies and affections.

That there are persons in one section or another who seek to destroy the Union at all events, and are glad of any pretext to do it, I will neither affirm nor deny; but, if there be such, I need address no word to them. To those, however, who really love the Union may I not speak?

Before entering upon so grave a matter as the destruction of our national fabric, with all its benefits, its memories, and its hopes, would it not be wise to ascertain precisely why we do it? Will you hazard so desperate a step while there is any possibility that any portion of the ills you fly from have no real existence? Will you, while the certain ills you fly to are greater than all the real ones you fly from—will you ask the commission of so fearful a mistake?

All profess to be content in the Union if all constitutional rights can be maintained. Is it true, then, that any right, plainly written in the Constitution, has been denied? I think not. Happily, the human mind is so constituted that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. If, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would if such a right were a vital one. But such is not our case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guaranties and prohibitions, in the Consti-

tution, that controversies never arise concerning them. But no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain, express provisions for all possible questions. Shall fugitives from labor be surrendered by national or by State authority? The Constitution does not expressly say, *May* Congress prohibit slavery in the Territories? The Constitution does not expressly say: *Must* Congress protect slavery in the Territories? The Constitution does not expressly say.

From questions of this class spring all our constitutional controversies, and we divide upon them into majorities and minorities. If the minority will not acquiesce, the majority must, or the Government must cease. There is no other alternative; for continuing the Government is acquiescence on one side or the other.

If a minority in such case will secede rather than acquiesce, they make a precedent which in turn will divide and ruin them; for a minority of their own will secede from them whenever a majority refuses to be controlled by such minority. For instance, why may not any portion of a new confederacy a year or two hence arbitrarily secede again, precisely as portions of the present Union now claim to secede from it? All who cherish disunion sentiments are now being educated to the exact temper of doing this.

Is there such perfect identity of interests among the States to compose a new Union as to produce harmony only and prevent renewed secession?

Plainly, the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.

I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the Government.

And, while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

One section of our country believes slavery is right and ought to be extended, while the other believes it is wrong and ought not to be extended. This is the only substantial dispute. The fugitive slave clause of the Constitution and the law for the suppression of the foreign slave trade are each as well enforced, perhaps, as any law can ever be in a community where the moral sense of the people imperfectly supports the law itself. The great body of the people abide by the dry legal obligation in both cases, and a few break over in each. This, I think, cannot be perfectly cured; and it would be worse in both cases after the separation of the sections than before. The foreign slave trade, now imperfectly suppressed, would be ultimately revived, without restriction, in one section, while fugitive slaves, now only partially surrendered, would not be surrendered at all by the other.

Physically speaking, we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced, and go out of the presence and beyond the reach of each other; but the different parts of our country cannot do this. They cannot but remain face to face, and intercourse, either amicable or hostile, must continue between them. Is it possible, then, to make that intercourse more advantageous or more satisfactory after separation than before? Can aliens make treaties easier than friends can make laws? Can treaties be more faithfully enforced between aliens than laws can among friends? Suppose you go to war, you cannot fight always; and

when, after much loss on both sides and no gain on either, you cease fighting, the identical old questions as to terms of intercourse are again upon you.

This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it. I cannot be ignorant of the fact that many worthy and patriotic citizens are desirous of having the National Con-

"DOMESTIC TROUBLES"

From the collection of the New York Historical Society

stitution amended. While I make no recommendation of amendments, I fully recognize the rightful authority of the people over the whole subject, to be exercised in either of the modes prescribed in the instrument itself; and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take or reject propositions originated by others not especially chosen for the purpose, and which might not be precisely such as they would wish to either accept or refuse. I understand a proposed amendment to the Constitution—which amendment, however, I have not seen—has passed

Congress, to the effect that the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconstruction of what I have said, I depart from my purpose not to speak of particular amendments so far as to say that, holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.

The Chief Magistrate derives all his authority from the people, and they have conferred none upon him to fix terms for the separation of the States. The people themselves can do this also if they choose; but the Executive, as such, has nothing to do with it. His duty is to administer the present Government, as it came to his hands, and to transmit it, unimpaired by him, to his successor.

Why should there not be a patient confidence in the ultimate justice of the people? Is there any better or equal hope in the world? In our present differences is either party without faith of being in the right? If the Almighty Ruler of Nations, with his eternal truth and justice, be on your side of the North, or on yours of the South, that truth and that justice will surely prevail by the judgment of this great tribunal of the American people.

By the frame of the Government under which we live, this same people have wisely given their public servants but little power for mischief; and have, with equal wisdom, provided for the return of that little to their own hands at very short intervals. While the people retain their virtue and vigilance, no Administration, by any extreme of wickedness or folly, can very seriously injure the Government in the short space of four years. My countrymen, one and all, think calmly and well upon this whole subject. Nothing valuable can be lost by taking time. If there be an object to hurry any of you in hot haste to a step which you would never take deliberately, that object will be frustrated by taking time; but no good object can be frustrated by it. Such of you as are now dissatisfied still have the old Constitution unimpaired, and, on the sensitive point, the laws of your own framing under it; while the new Administration will have no immediate power, if it would, to change either. If it were admitted that you who are dissatisfied hold the right side in the dispute, there still is no single good reason for precipitate action. Intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land are still competent to adjust in the best way all our present difficulty.

In your hands, my dissatisfied fellow countrymen, and not in mine is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to "preserve, protect, and defend it."

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union when again touched, as surely they will be, by the better angels of our nature.

Debate Upon the President's Inaugural

Senate, March 4, 1861

President Buchanan had convened the Senate in special session on March 4 to receive and act upon such communications as might be made by his successor. It so met and was in session until March 28.

Upon motion made to print copies of the inaugural address of President Lincoln, Thomas L. Clingman [N. C.] took occasion to dissent from its views as leading to war with the seceded States.

The President declares expressly that he intends to treat those States as though they were still members of the Union; as though the acts of secession were mere nullities; and, as they claim to be independent, there can be no result except a collision. In plain, unmistakable language he declares that it is his purpose to hold, occupy, and possess the forts and arsenals in those States. We all know that he can hold them only by dispossessing the State authorities. He says, further, that it is his purpose to collect the revenue from those States. Surely I need not argue to any Senator that this must lead to a collision of arms. After we declared independence from Great Britain nobody supposed that the colonies were willing still to pay taxes or duties to the British Government. In point of fact, they refused to pay them even before the Declaration of Independence.

Stephen A. Douglas [Ill.] replied:

Mr. President, I cannot assent to the construction which the Senator from North Carolina [Mr. Clingman] has placed upon the President's inaugural. I have read it carefully, with a view of ascertaining distinctly what the policy of the Administration is to be. The inaugural is characterized by ability and by directness on certain points; but with such reservations and qualifications as require a critical analysis to arrive at its true construction on other points. I have made such an analysis, and come to the conclusion that it is a peace-offering rather than a war message. I think I can demonstrate that there is no foundation for the apprehension which has been spread through the country that this message is equivalent to a declaration of war; that it commits the President of the United States to recapture the forts in the seceded States, and to hold them at all hazards; to collect the revenue under all circumstances; and to execute the laws in all the States, no matter what may be the circumstances that surround him. I do not understand that to be the character of the message. On the contrary, I understand it to contain a distinct pledge that the policy of the Administration shall be conducted with exclusive reference to a peaceful solution of our national difficulties. True, the President indicates a certain line of policy which he intends to pursue, so far as it may be consistent with the peace of the country; but he assures us that this policy will be modified and changed whenever necessary to a peaceful solution of these difficulties.

The President declares that, in view of the Constitution and laws, the Union remains unbroken. I do not suppose any man can deny the proposition that, in contemplation of law, the Union remains intact, no matter what the fact may be. There may be a separation *de facto*, temporary or permanent, as the sequel may prove; but, in contemplation of the Constitution and the laws, the Union does remain unbroken. Let us see what there is in the address that is supposed to pledge the President to a coercive policy. He says:

"I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States."

This declaration is relied upon as conclusive evidence that coercion is to be used in the seceding States; but take the next sentence:

"Doing this I deem to be only a simple duty on my part. I shall perform it, so far as is practicable, unless my rightful masters, the American

people, shall withhold the requisite means, or in some other authoritative manner direct the contrary."

This condition, on which he will not enforce the laws in the seceding States, is not as explicit as I could desire. When he alludes to his "rightful masters, the American people," I suppose he means the action of Congress withholding the requisite means. Query: does he wish to be understood as saying that the existing laws confer upon him "the requisite means"? or does he mean to say that, inasmuch as the existing laws do not confer the requisite means, he cannot execute the laws in the seceding States unless those means shall be conferred by Congress? The language employed would seem to imply that the President was referring to the future action of Congress as necessary to give him the requisite means to enforce obedience to the laws in the seceding States.

In a subsequent paragraph he says:

"The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts."

What power? Does he mean that which has been confided or that which may be confided? Does he mean that he will exercise the power unless Congress directs the contrary or that he will exercise it when Congress confers it? I regret that this clause is understood by some persons as meaning that the President will use the whole military force of the country to recapture the forts and other places which have been seized without the assent of Congress. If such was his meaning, he was unfortunate in the selection of words to express the idea.

He says further:

"But, beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere."

He will use the power confided to him to hold, occupy, and possess the forts and other property, and to collect the revenue; but beyond these objects he will not use that power. I am unable to understand the propriety of the distinction between enforcing the revenue laws and all other laws. If it is his duty to enforce the revenue laws, why is it not his duty to enforce the other laws of the land? What right has he to say that he will enforce those laws that enable him to raise revenue, to levy and collect taxes from the people, and that he will not enforce the laws which protect the rights of persons and prop-

erty to the extent that the Constitution confers the power in those States? I reject the distinction; it cannot be justified in law or in morals.

The next paragraph is also objectionable. I will read it:

"Where hostility of the United States in any *interior* locality shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object."

I rejoice to know that he will not attempt to force obnoxious strangers to hold office in the interior places where public sentiment is hostile; but why draw the distinction between "interior localities" and exterior places? Why the distinction between the States in the interior and those upon the seaboard? If he has the power in the one case, he has it in the other; if it be his duty in the one case, it is his duty in the other. There is no provision of the Constitution or the laws which authorizes a distinction between the places upon the seaboard and the places in the interior.

This brings me to the consideration of another clause in the message which I deem the most important of all and the key to his entire policy.

After indicating the line of policy which he would pursue, if consistent with the peace of the country, he tells us emphatically that that course will be followed, unless modifications and changes should be necessary to a peaceful solution of the national troubles; and if in any case or exigency a change of policy should be necessary, it will be made "with a view and hope of a peaceful solution." In other words, if the collection of the revenue leads to a peaceful solution, it is to be collected; if the abandonment of that policy is necessary to a peaceful solution, the revenue is not to be collected; if the recapture of Fort Moultrie would tend to a peaceful solution, he stands pledged to recapture it; if the recapture would tend to violence and war, he is pledged not to recapture it; if the enforcement of the laws in the seceding States would tend to facilitate a peaceful solution, he is pledged to their enforcement; if the omission to enforce those laws would best facilitate peace, he is pledged to omit to enforce them; if maintaining possession of Fort Sumter would facilitate peace, he stands pledged to retain its possession; if, on the contrary, the abandonment of Fort Sumter and the withdrawal of the troops would facilitate a peaceful solution, he is pledged to abandon the fort and withdraw the troops.

Sir, this is the only construction that I can put upon this clause. If this be not the true interpretation, for what purpose was it inserted? The line of policy that he had indicated was stated vaguely; but there is not a pledge to use coercion.

I submit, then, to the Senate whether the friends of peace have not much to rejoice at in the inaugural address of the President. It is a much more conservative document than I had anticipated. It is a much more pacific and conciliatory paper than I had expected. I am clearly of the opinion that the Administration stands pledged by the inaugural to a peaceful solution of all our difficulties, to do no act that leads to war, and to change its policy just so often and whenever a change is necessary to preserve the peace.

Now, sir, far be it from me to intimate that the President, in these recommendations, has not been faithful to the principles of his party, as well as to the honor and safety of his country. Whatever departure from party platforms he has made in these recommendations should be regarded as an evidence of patriotism, and not an act of infidelity. In my opinion, if I have understood the inaugural right, he has sunk the partisan in the patriot, and he is entitled to the thanks of all conservative men to that extent. I do not wish it to be inferred, from anything I have said or have omitted to say, that I have any political sympathy with his Administration, or that I expect that any contingency can happen in which I may be identified with it. I expect to oppose his Administration with all my energy on those great principles which have separated parties in former times; but on this one question—that of preserving the Union by a peaceful solution of our present difficulties; that of preventing any future difficulties by such an amendment of the Constitution as will settle the question by an express provision—if I understand his true intent and meaning, I am with him.

Mr. President, if the result shall prove that I have put a wrong construction on the inaugural, I shall deplore the consequences which a belligerent and aggressive policy may inflict upon our beloved country, without being responsible in any degree for the disasters and calamities which may follow. I believe I have placed upon it its true interpretation. I know I have put the patriotic construction on it. I believe the action of the President will justify that construction. I will never relinquish that belief and hope until he shall have done such acts as render it impossible to preserve the peace of the country and the unity of the States. Sir, this Union cannot be preserved by war. It cannot be cemented by blood. It can be

preserved only by peaceful means. And, when our present troubles shall have been settled, future difficulties can be prevented only by constitutional amendments which will put an end to all controversy by express provision. These remedies and preventives have been clearly marked out by the President in his inaugural. All I ask is that his Administration shall adhere to them and carry them out in good faith. Let this be done, and all who join in the good work will deserve, and they will receive, the applause and approbation of a grateful country. No partisan advantage can be taken, no political capital should be made out of a generous act of noble patriotism. While I expect to oppose the Administration upon all the political issues of the day, I trust I shall never hesitate to do justice to those who, by their devotion to the Constitution and the Union, show that they love their country more than their party.

Louis T. Wigfall [Tex.].—It is impossible for the Senator from Illinois, or for any other Senator to rise here, and, by giving a commentary—a construction—of the inaugural to restore peace to the country. It is impossible for the Administration, by dealing in generalities, whether glittering or not, to give peace to the country. It is a fact that seven States have withdrawn from this Union; that they have entered into a new compact with each other; that they have established a government; and I suppose, though it may not have yet been officially announced, as it is a fact that is well known, I may allude to it, they have their representatives now here, prepared to reside near this court, and, waiving all questions of irregularity as to the existence of this Government, to enter into a treaty with it in reference to matters which must be settled, either by treaty or by the sword.

It is easy to indulge in general phraseology; it is easy to write so as to be misunderstood. It is very easy to talk of enforcing the laws; it is very easy to speak of holding, occupying, and possessing forts; but, when you come to holding, occupying, and possessing forts, bayonets and not words settle the question. This Administration will, by action, be forced to construe its inaugural. How will that inaugural be construed? Were it not for these facts which are pressing for solution, it might be that a Union party, both North and South, might be organized; and, were it not for these troublesome things called bayonets, platforms might be adopted to be construed differently on different sides of particular degrees of latitude; but, unfortunately for the Union-savers, these matters are practical, pressing for present solution; and this Government may leave Fort

Moultrie, Castle Pinckney, and Fort Johnson in the possession of the Confederate States, but the Confederate States will not leave Fort Sumter in the possession of this Government.

I am one of those who deny that this Union, as it formerly was, now exists legally, constitutionally. The Union has been disrupted. Seven of the high contracting powers have withdrawn from this Government (that now *de facto* exists at Washington) the powers heretofore exercised by them through this Government, and invested all those powers in their separate State governments first, and then entered into a new compact with each other.

These are facts. How are you going to deal with them? What is a remedy in one stage of a disease is no remedy in another. A blue-mass pill and a cup of coffee next morning will relieve the liver and prevent one from having a fever very frequently; but when the disease is on you, blistering and blood-letting may sometimes be necessary; and when the patient is dead, then it is necessary to have a coffin, a grave-digger, funeral services, and things of that sort; the only question is whether we shall have a decent, peaceable, quiet funeral or whether we shall have an Irish wake.

"Cannot preserve this Union by war!" Why, sir, there is no Union left. You may have reconstruction. The States that are now in the old Union may secede from it to the other, and come into the new Union, and, in the course of time, the thirty-four States may all be living under the same form of government again; but the seven States that have withdrawn from this Union are surely never coming back. If you were to give them a sheet of blank paper, and tell them to write their constitution on it, they would not come in again and live under this Administration. They are out; they have formed a union; they have a constitution, and it is satisfactory to them; and they will not secede again. Our doctrine of secession has been so belittled and so belied that we are beginning to have a downright contemptuous opinion of it ourselves; and we never intend to exercise it again. Other States that have not made the experiment may secede and come to us; Mohammed may come to the mountain, but the mountain will never come to Mohammed.

You have, therefore, to deal with all these things practically. What will you do? Getting up here and making constructions of Mr. Lincoln's message is not the remedy. To have persuaded the people of the seven seceded States at one time that the Republican party was a very conservative, Constitution-loving party might have prevented the act of secession; but it will do

no good now. The act of secession has been committed; a new government has been formed, and new remedies must be offered. *Tempora mutantur, et nos mutamur in illis.*[1] The question now is not of saving the Union, but of saving the peace of the country. Withdraw your troops; acknowledge the right of self-government; make no futile attempt to collect tribute from people who are no longer citizens of the United States; do these things and you will have peace. Send your flag into that country with thirty-four stars upon it, and it will be fired at and war will ensue.

The seceded States—having paid much of the money into the Federal Treasury, with which your army was organized and your navy built, with which your lighthouses and your buoys were placed, your harbors cleaned out, and the public domain acquired—send commissioners here to their former associates, and ask them to enter into a fair arrangement for the division of the public property and the assessment of the public debt. Will you do that? Or will you sit stupidly and idly gazing on until there shall be a conflict of arms, because you cannot "compromise with traitors"—because you cannot recognize the independence of States that were States before this Government had existence?

Senators, what is the meaning of this declaration? It is that, if we acknowledge ourselves to be slaves; if we will abandon the right of self-government; if we will agree to be governed by you, you promise us to govern us well. We say first acknowledge our right of self-government; withdraw your troops; yield to us the right of collecting our own revenues; divide fairly the public property; give us our *pro rata* share of men-of-war that are now afloat; send us our *pro rata* share of the army—we want two, three, or four of the regiments; turn them over to us; give us our share of the public domain—do these things, and we will, *pro tempore*, enter into with you a treaty of commerce, of peace, and amity; and if you will reorganize your own Government, and form such a one as suits us, we may again confederate with you and enter into a compact of common defence and general welfare. Refuse it and we will settle this question by the sword.

There is no dodging these issues. If you want war, you will have it; if you want peace, we are anxious for it; but the time has passed for party platforms; the time has passed for demagogism to adopt compromises which mean nothing. These are plain, palpable issues, and they have to be met.

[1] "Times change, and we change with them."

The President of the United States and the Senator from Illinois both misapprehend, utterly and wholly, the issues that are before the country. They seem to think that the whole difficulty is as to the question of the Wilmot proviso or squatter sovereignty in the Territories. These are dead issues; they are past; they were discussed; they have been decided upon; they are *res adjudicata*.

Seven States have withdrawn from the Union. What are the remaining States going to do? Preserve the Union you cannot, for it is dissolved. Conquer those States and hold them as conquered provinces, you may. Is the play worth the candle? Treat with them as a separate confederacy, and you have peace. Treat with them as States of this Union, and you have war. One or the other you must do. Which will you do? There is a very strong desire on the part of many to avoid the issue, to hold what are called the tobacco States still in the Union, and build up what is to be called a great Union party, composed of Free Soilism and Whiggery, and avoid a war with the cotton States; hold things as they are at home, get through the next succeeding three years, and elect somebody as President of the old Union upon the ground that he has been a great Union-saver. But, unfortunately, you cannot control facts, and making speeches will not do this thing. Mr. Abraham Lincoln has to remove those troops from Fort Pickens and from Fort Sumter or they will be removed for him. He has to collect the revenues in Charleston, Savannah, Mobile, New Orleans, or the Confederate States will collect their own revenues. He has no judiciary department, he has no custom house collectors, he has none of the machinery of government there. He has to appoint his custom house officers; he has to collect the revenues; and, when he attempts it, you know, and I know, that resistance will be made, and that a conflict of arms will ensue, and that war will be the result.

As to the States that remain, you can so amend the Constitution as to give them security for the future, if not indemnity for the past; but in doing that it will not be by dividing Territories. I say to you, though I do not represent those States, that it is useless to blind your eyes to these facts: that no compromise, no amendment of the Constitution, no arrangement that you enter into will be satisfactory to those States, Senators, unless you recognize the doctrine that slaves are property, and that you will protect that species of property as you do every other.

I have said so much in reply to the Senator from Illinois

because I did not wish his speech to go out as an explanation of the meaning of the President of the United States. His speech was calculated to produce the impression that Mr. Lincoln meant to do nothing. Masterly inactivity is a policy that cannot now prevail. Action! action! action! as the great Athenian orator [Demosthenes] said, is now necessary. You cannot longer serve God and Mammon; you must declare "under which king, Bezonian?"

Senator Douglas.—The Senator from Texas is quite right in saying that the issue cannot be long postponed; words will not answer the purpose much longer; action must soon begin; and that action must be in the direction of peace or war. Which shall it be? I think the President means peace. His policy must be peace, or it is time that Congress was in session and two hundred thousand men ordered into the field and preparations made for war.

The Senator is unwilling to believe that Mr. Lincoln means peace. I rejoice in the belief that he does mean peace. The Senator and myself look at this question from different points of view. He has told us several times that he is here merely because you continue to call his name at the desk; but that to all intents and purposes he regards himself a foreigner. His affections are with his own country; mine are with my country.

Senator Wigfall.—Mr. President, I have tried to explain, several times, the position which I occupy. I am not officially informed that the State which I represent here has abolished the office of United States Senator. When I am so advised, officially I shall file at your desk that information; and then, if after being so informed, you shall continue to call my name, I will answer, probably, if it suits my convenience; and, if I am called on to vote, I shall probably give my reasons for voting; and, regarding this as a very respectable public meeting, continue my connection with it in that way. But, while I am up, I will ask the Senator, as he is speaking for the Administration—though not a part of it, nor a large part of it [laughter]—to say explicitly whether he would advise the withdrawal of the troops from Fort Sumter and Fort Pickens, the removal of the flag of the United States from the borders of the Confederate States, and that no effort should be made to levy tribute upon a foreign people?

Senator Douglas.—Mr. President, as I am no part of the Administration, as I do not speak for them—although I hope that I speak the same sentiments which will animate them—as I am not in their counsels nor their confidence, I shall not

tender them my advice until they ask it. I do not choose, either, to proclaim what my policy would be, in view of the fact that the Senator does not regard himself as the guardian of the honor and interests of my country, but he is looking to the interests of another, which he thinks is in hostility to this country. It would hardly be good policy or wisdom for me to reveal what I think ought to be our policy to one who may so soon be in the counsels of the enemy and the command of its armies.

There was much laughter and applause in the galleries at this hit at Senator Wigfall's reputed ambition to become a military leader of the Confederacy. Upon the Vice-President making the usual threat (which was never enforced) to clear the galleries if the applause were repeated, Senator Wigfall hoped that the applause would be permitted, as, the Union being dissolved, he considered the present occasion only a public meeting.

James M. Mason [Va.] denied that the President's message could be construed as a pronouncement of peace.

It is a declaration of the possession of political power, and a duty to exercise it, and a purpose to discharge that duty. Now, there are seven States out of the Union. You say they are not out; that the Constitution and laws are still extended over them. They say the contrary. You say you will execute the laws in all the States, including those that have abandoned the Union; and common sense tells us, if you attempt it, it will be resisted by force. Unless there be some men laboring under the hallucination to believe that secession is a mere stage trick to deceive and delude the Government from which these States have detached themselves, there can be no man who can tell me that the President does not intend war.

I am not quarreling with the President because of the interpretation that he puts upon his duty. The responsibility is with him; let him exercise it. But what I challenge him for is that he has not more explicitly told us what he means to do; that he has left it to inference, to construction, to interpretation that may possibly mislead these people as to his actual purpose. If the Senator from Illinois thinks that, because the President has a peaceful view of this armed invasion of a foreign territory, or a hope of a peaceful solution, notwithstanding the armed invasion which he declares he will exercise, I can only say to

that Senator he is more credulous than any of those around him.

I say, sir, the message is silent only as to the question of the time when the President will use his powers. It is reported that Fort Sumter has provisions for only thirty days. No one doubts that this fort can never be reinforced by the Federal Government, who claim to be its owners, without a struggle of thousands and tens of thousands of armed men spilling their blood on the sands and on the sea; therefore, within the next thirty days, whatever of peace the Senator saw in this message will be converted into war, real war, stern war.

No, Mr. President, there is a solution of peace, one only—a solution that is not only not held out in this message, but that is carefully avoided, sedulously avoided; there is a solution of peace of this great question between the contending sections, and there is but one; and, so far from that being contained in this inaugural, it is repelled and repudiated by its whole tenor and purpose. That solution is to admit that the Union is broken; to yield to the existing fact; to admit that the Union is at an end by the separation of the seven States which have gone out; and, whether they are acknowledged as an independent power or not, to admit the fact of their separate and independent existence; and then withdraw the troops.

I can see no reason why that should be longer denied, even among those statesmen who look upon this Government, as the inaugural expresses it, as a thing so peculiar, God-given, or otherwise that it is insusceptible of being broken. The President says by the universal law it is presumed to be perpetual. What he means by the universal law I am quite as much at a loss to understand as I was the cabalistic meaning of a phrase used by a Senator from New York of a higher law. What is the universal law? I know what the law of the Constitution is; I know what the laws of the United States are; I know what the international law is; but what this universal law is, unless it be the law of the universe, the law which keeps the spheres in place, and directs their motions, and provides for their rotation upon their axes and in their orbits, I am at a loss to know. But it is by terms like these, not only general but unmeaning and inapplicable, that we are to be deluded into the idea that there is no mode by which this Government, as he calls it, however oppressive it may become, however odious to the people under it, however cruel in its exactions, however perverse in its infractions of constitutional duty, can be got rid of, because of some law of the universe.

I have thought it a matter of moment that the policy of this message should be eviscerated, wherever its meaning was indirect or dark, because my own people, the people in Virginia, who are yet in the Union, are banded together upon the fixed, unchangeable purpose of making themselves a party to that war when the first gun is fired.

On March 8 Lafayette S. Foster [Conn.] moved to expel from the Senate Louis T. Wigfall [Tex.] because of his declaration that he was a foreigner. On the 11th the matter came up for discussion. Thomas L. Clingman [N. C.] moved as a substitute:

Whereas, it is understood that the State of Texas has seceded from the Union and is no longer one of the United States; therefore be it resolved that she is not entitled to be represented in this body.

The motion in regard to Senator Wigfall's expulsion was not brought to vote.

On March 13 William P. Fessenden [Me.] moved that the names of Jefferson Davis [Miss.] and other Senators who had announced that they were no longer members of the Senate and had vacated their seats be stricken from the roll.

Senator Fessenden's motion was finally amended to "Whereas the seats of (the said Senators) have become vacant, resolved that the Secretary be directed to omit their names from the roll," and was passed in this form.

CHAPTER II

The Right of Secession

Speech of Senator James A. Bayard, Jr., on "The Right of Secession and the Propriety of Recognizing the Southern Confederacy"—The Confederate Peace Commission; It Is Not Received—The Fall of Fort Sumter—Secession of Virginia—Military Movements April-July, 1861—President Lincoln's First Message to Congress: "The Sophistry of Secession."

ON March 30, 1861, James A. Bayard, Jr. [Del.], introduced in the Senate a resolution to the effect that, whatever view be taken of the right of secession, seven States having withdrawn from the Union and the enforcement there of Federal laws by the magistracy being impracticable, the only alternative was civil war or recognition of their secession; and that, whereas war would not bring them back into the Union, their independence should be acknowledged and a treaty be made with them.

In support of his resolution Senator Bayard discussed the nature and right of secession and the causes which had led to its adoption by the Southern States in a speech which continued for three days.

The Right of Secession

Senator Bayard

The act of secession has been characterized in this body by some of its members as a constitutional right, as among the reserved rights of the States. By others it has been denounced as treason to the United States on the part of any of the actors. I agree with neither. It is not among the reserved rights of the States, but is a revolution by organized communities, by the authority of the people of the seceding States, in whom the ultimate power of sovereignty is vested. Its effect is the

same, whether revolutionary or legal; it severs the State from the Union, and it suspends the operation of the laws of the Federal Government in the seceding States. It is, in the old Roman sense of the term, rebellion—the revolt of a nation—but not in the modern sense of the term rebellion.

All forms of republican government rest upon one great general principle which is recognized in America, and has been always recognized as the great basis, the only just basis, of all government, "the consent of the governed." Our fathers so declared it in the Declaration of Independence, but the mode of consent depends upon the character of the government. The consent of the governed as applied to the State governments, which are purely national, and to any purely national government, is but a political axiom called commonly the social compact, which assumes that there is an implied contract between each individual citizen by which that government is established. The law of that compact is, in theory and in practice, that the will of the majority of society shall be conclusive evidence of the consent of the whole; and, further, it has been denominated an inherent right in society and in the majority. It is still but an axiom. In practice, sex excludes one-half the governed from giving consent. Age excludes one-fourth. Age is arbitrary; it might be twenty-five; it is twenty-one. Further, in the origin of our Government, though the States were all national governments and all republican, an interest in the soil was essential for the purpose of giving consent. Nay, still, in many of the States, the prepayment of taxes is essential for the dissent or consent on the part of the individual, though he is bound under the axiom by the laws of the government established by his implied consent. Residence of greater or less duration is requisite in all the States; in some three months, in some six, in some a year, and at one time two years. Yet all the individuals who exist as inhabitants of that government or are within its jurisdiction are considered by the force of the axiom as consenting to the government and bound by its laws. In the State of Pennsylvania and in several other of the non-slaveholding States, I believe, race excludes many of the community from giving their actual consent, but their consent is implied and they are bound by the laws. No negro can vote in the State of Pennsylvania, and in others of the non-slaveholding States the same rule applies.

Yet the axiom is true and is a wise one; it is the foundation of government on the basis of the social compact, which is the will of society, evidenced by the determination of the ma-

jority of the great body of the people who are supposed to be competent to form government.

It is very evident, Mr. President, that revolution in a government founded upon such a basis could rarely, if ever, occur; because the majority, having it in their power to bring into accord with their opinions the legislative authority, could always change the form of government at will, without revolutionary action; and I understand revolution to mean a change of government against the will of the existing government. The word revolution is sometimes applied to any radical change of a government, whether with or without the will of the ultimate power of sovereignty; but, in the ordinary acceptation of the term, we mean, by revolution, a change against the consent of the existing government. The power of change, the right of change, exists in all governments, no matter what may be their form, and is vested of necessity where the ultimate power of sovereignty exists; in Russia, in an autocrat. No one doubts that the Emperor of Russia could change the form of government of Russia. In England it is in the King, Lords, and Commons. Being effected by the will of the existing government, the idea of force and resistance is precluded, and the change of government would be legal in all respects.

In the United States this ultimate power of government in each State is vested in the people under the social compact, and the majority in each State, having the ultimate sovereignty, have the right to change the form of government under which they live. This I suppose to be the established and uncontroverted principle derived from all the publicists, as to the theory on which purely national republics are founded, which all the States of this Union are. But it is very evident that the principle of the social compact cannot be applied to the United States as an aggregate nation. Could it be, of course a majority of the people of the United States could change the form of government by their will. The majority of one State would be carried into another State, and the majority of the aggregate nation would be competent to impose the form of government they desired over the people of all the States. Such is not the structure of the Federal Government.

The speaker here quoted in support of his views from the 39th number of "The Federalist," written by James Madison.

I think, if the present President of the United States had read this passage, he would have been able to understand the

distinction between the relations of a county to a State and the relations of a State to the Federal Government. There exists, then, this broad distinction between the Federal and the State governments: the State governments exist by the consent of the governed, under the law of the social compact; but the Federal Government exists, not as the result of the implied compact which arises under that law, but by the *express* compact of the several States which were independent sovereignties at the time they created it. That compact specifies the extent of the powers delegated to the common Government, and without the compact it could have had no existence. Sir, whence came, or on what do we base, the power of the Federal Government to make or administer any laws? Has it any other basis than the consent given by the people of each State severally, by the adoption of the Constitution framed by the representatives of States and submitted to the people of each State for their several acceptance? Did unanimity in the State of Pennsylvania bring the State of Georgia within the operation of the Federal Constitution? Certainly not. The consent of the governed, the consent of the community, expressed under the social compact in the State (which is the basis of its government), forming, by express compact with the people of other States, a common government for all, with special delegated powers, is the only basis of the general Government of this Union.

Then, sir, what is the rule as to compacts of this kind? That they cannot be changed without the consent of all the parties to the compact. It matters not whether the compact is a treaty or creates a government; the law of the compacts of sovereignties is that no change can be made in terms except by the consent of all, unless it is otherwise provided in the instrument.

The Constitution contains no provision which authorizes a State by its own act to separate from the other States and withdraw from the Union. Had there been no provision as to amendments to the Federal Constitution, within the rule which governs the compacts of sovereignties, it would have been unalterable in any one particular; and it can only be altered in the mode which it provides. Neither a majority of the people of the United States can alter the Constitution on the basis on which it rests, nor a majority of the States; nor is the power expressly given to any State to withdraw at will from the confederation and establish herself as a separate nation. I hold, therefore, that the act of secession is a breach of the compact on the part of the seceding States; and that, being a breach of compact and against the will of the Federal Government, it is

of necessity an act of revolution. But, Mr. President, it is a revolution inaugurated by a people in their collective capacity—a revolution and breach of the compact which, if groundless in morals and reason, gives just cause of war, but leaves no other remedy. You may quell insurrection, you may put down domestic violence by the operation of the law, but you cannot meet the collective action of a people in any other mode than by war or by peaceable negotiation; and that statesman will find that he makes a terrible mistake who is unable to distinguish between the collective action of a people and a mere temporary insurrection of factious individuals. Lord North made it, and he lost, under the plea of executing the laws, the brightest jewels of the British Crown. Concession might have led to a very different termination.

Mr. President, I can scarcely realize that it can be seriously urged that the States of this Union were not independent and sovereign States when they formed their original confederacy; that they did not, as independent and sovereign States, adopt, by the several action of their people, the present Federal Constitution; and that they did not reserve to the States and the people thereof all rights which were not ceded to the common Government by the Constitution which they adopted. But, sir, if the States were sovereign originally, what change was made in their relations by the formation of the present Constitution? The first and the most important change was the power to tax for the purpose of its support, which was given to the general Government, and which was the great defect of the old confederation. The next radical change was that the laws should operate upon the individual citizen, instead of operating upon the citizen through the action of the State. To that extent the alteration made the general Government a National Government. This change in the operation of the laws on individuals instead of communities was intended to strengthen and give stability to the Union by substituting for the coercion of arms—which existed in the Confederacy as against the State, but was practically a useless power—the coercion of the magistracy upon the individual. No more was intended, and the power it confers is quite sufficient for any federal government existing over independent communities, and founded upon opinion. But the coercion of a State in its collective capacity, even by the magistracy, which they inserted in the Constitution when it was originally adopted, was stricken out very soon afterward by amendment.

The inference seems irresistible. If the power was abrogated

which, as first inserted in the Constitution, gave the means of coercion by the magistracy as against a State, on what principle can it be contended that the Federal Constitution gives the right of coercion by arms against a State, while the State remains in the Union? If the State, by secession, becomes alien, you have the same right of war or peace with her that you have with any other alien people; but, while you recognize her as a member of the Union, coercion by arms, or by the magistracy, against the State in its collective capacity, was neither given, nor intended to be given, by the Federal Constitution. The attempt to give the power in both shapes was made in the convention, and expressly voted down, both as to coercion by arms and coercion by the magistracy. It was given indirectly by the clause which gave jurisdiction to the Supreme Court in suits by individuals against a State; but that was stricken out, within a few years after its adoption, by amendment. The right of secession *at will*, with or without cause, was not given, because the insertion of such a clause in the Federal Constitution would but have been an invitation to dissolution. It was left unprovided for, as one of those exigencies in human affairs against which no government and no human foresight could provide.

Sir, coercion by the magistracy of the individual citizen gave all the strength and sanction to the laws of the Federal Government which were requisite; but it has no application to the collective action of the people in any State in their political capacity. Where a State, by the action of her people, declares herself out of the Union, or, in ordinary language, secedes, the necessary effect is that the magistracy is gone; there is no Federal officer to carry into execution the laws by means of the civil power, and of course the laws must cease to operate. It is the result of revolutionary action, I admit, because against the will of the existing common Government; but it is the action of an independent community in their collective capacity, and has precisely the same effect upon the relative condition of the people of that State and the rest of the Union that the abrogation of a treaty would have between independent nations. The treaty in such case is at an end; but if abrogated without sufficient cause the annulment gives just cause of war. The Union, however, stands; the Federal Government remains, as to all the other States, in its entirety, and with its laws and its Constittuion, as it stood before; but secession has abrogated the coercion of the magistracy within the States that have withdrawn by the action of the people thereof. Is not this action the consent of the governed? It is revolutionary; but, still, action had by the con-

sent of the governed. Who adopted the Constitution? The people of Georgia, by the vote of their own people alone. If they decide to withdraw from that Union by the act of the same people—not of the legislature—on what principle, consistent with the Declaration of Independence, can it be denied that this same people can change their common as well as their State government, except on the ground that such change is a breach of the compact which they made with the people of other States, by adopting the Federal Constitution? If secession be, then, as I believe, a breach of compact, yet it would be justified by sufficient cause; if resulting from caprice without grave cause of discontent, or sense of insecurity, it gives just right of war; but it does not necessarily ensue, from the right of war, that war should follow. War is a question of morals and power combined, and always must be.

The military power in this country was never intended to be a primary power in the execution of the laws. It may be called in aid, under the mandate of the magistrate, as subsidiary to the civil power. By the express terms of the Constitution, you may, at the request of a State, use the military power in case of domestic violence; you may repress insurrection in the same mode; but this Government never was intended to be carried on by means of the military, as a substitute and primary power in place of the civil power—the action of the magistracy; and yet no other mode remains in which the laws can be enforced in the seceding States than by the military power, if their enforcement is insisted on. All laws require some sanction, or they are futile. There is but the sanction of the magistracy or the sanction of arms. Under the old Confederacy they had to depend entirely upon the sanction of arms, but never attempted its exercise, relying solely on the good faith of the States. The change made in constructing the present Government was by giving the power of coercion by the magistracy upon the individual citizen; but, of necessity, that is dependent upon the action of the people of the State in their collective capacity; and if they subvert and put an end to the magistracy the laws of the Union cannot be enforced, under our present Constitution, without a violation of its intent. The action of the seceding States was beyond human foresight, and one of those calamities against which no government, unless a military despotism, can guard.

When a State secedes by the action of her people, though its effect severs her from the Union and makes her an alien people, it is a breach of the compact which created this Government,

and is, in itself, just cause of war. But the right of war arises only as consequent upon the effect of the action of the people of the State, having made the people thereof an alien to the rest of the Union. If still in the Union, you cannot make war upon a State. Such is the doctrine inculcated by Mr. Madison in "The Federalist," as the law of the compact in all governments founded upon the express compact of sovereignties, and not, as this Federal Government certainly is not, upon the social compact. It is the law, as laid down by all publicists, that the breach of any one article absolves all the others from the engagements of the compact, *"unless they choose rather to compel the delinquent party to repair the breach."* I will not say that the case might not be supposed, where a State, from mere caprice, without any cause whatever, should withdraw from the Federal Union, hostile measure, mingled with conciliation, might have the effect of restoring her to the Union, of repairing the breach. Where the people were divided and the State small in power, I can conceive that the use of hostile or coercive measures, mingled with affectionate consideration for her people, might conduce to such a result without destroying the form of our Government, though, in such a case, hostile measures would be a stretch of constitutional power; but such supposition has no relation to the case of a large section of country, having sufficient population and resources to exist as an independent nation, which chooses to throw off its allegiance to the Federal Government, and, by the action of the people, withdraw from any further connection with it. In such a case, you cannot restore the Union by means of the power of arms. Conciliation and concession alone, and their consent, must bring back those States to this Government, as by their separate consent they were originally incorporated among its members.

It has been said that the action of a State in seceding makes all the actors guilty of treason if they attempt to support that action by force of arms. I am unable to appreciate the force or the humanity of such a doctrine. It may serve to excite; it will never serve to deter. It is not a practical question. When revolution comes, not insurrection, it overrides and cannot be met by the law of treason. The allegiance is due to the State as well as to the Federal Government; and the allegiance to the Federal Government is due through the State. If the State, as a political community, dissolves her connection with the Federal Government, could there be a more revolting proposition than that the individual man, who is domiciled in the State, and residing there, shall be held in the position that he is guilty of

treason against the State if he does not side with her, and of treason against the general Government if he does? The law of domicile must necessarily govern the allegiance of the individual where the political action of the community has severed the State in which he is domiciled from the general Government. Humanity alone requires that such a doctrine should be enforced. But it is really not a practical question. The charge of treason only irritates; for the words "treason" and "traitor" are terms to which no man submits without a sense of indignation and a disposition to resistance. Practically you can never enforce the law of treason against the collective action of a people. It was threatened in the case of the revolution of our own ancestors in 1776. Was it ever enforced? Must it not always lead to retaliation where there is this collective action? Is there a possibility that where revolution occurs—and this is revolution on the part of the people of seven States in their collective capacity—that the law of treason can be enforced? Why, then, is the term applied unless, indeed, those who use it intend so to increase exasperation that neither reconciliation nor reunion, nor even peaceful separation, shall be practicable or possible.

But, sir, though the act of secession, which, for the reasons I have assigned, I believe to be revolutionary, is a revolutionary right, and is a right which the people of a State alone, in whom the ultimate sovereignty is vested, not the legislature, can exercise; and it is from the use of the words "the people," by our ancestors, to distinguish between the mere Government as an agent and the great body of the people in which, as possessing the ultimate sovereignty, the right to change the form of government reposes, that so many have been led into false views of the act of secession. They used the word "people" as representing the ultimate and true source of sovereignty in contradistinction to the mere Government. If the people of a State, acting in the same collective capacity in which they adopted the Constitution of the United States, as a distinct people, afterward choose to abrogate that Constitution, it seems clear, if they had the authority to adopt, they must have the sovereignty to rescind. The act is revolutionary, because it is against the will of the common Government, and a breach of the compact which created that Government. It becomes just cause of war, as in any case in which one nation abrogates a compact with another, and war alone must be the remedy or peaceful arrangement.

The remaining question, which I wish to discuss, is as to the power of the President and Senate, by treaty, to adjust all ques-

tions likely to give rise to difficulty and to collision between the new republic which has been formed and the Federal Government. I cannot entertain a doubt as to the existence of that power. It is not expressly given in those terms, but the treaty-making power is vested in the President and Senate. It is an indefinite power. The war power, contrary to the rule which exists in other nations, is in Congress, the legislative body, alone. The treaty-making power is confined to the President, and two-thirds of the Senate concurring with him in the negotiation of the treaty. One must necessarily, in the exigencies of a nation, be as broad as the other. What is there that prevents the United States from ceding a portion of territory not within a State, if the exigencies of the Government require it? You acquire territory by means of treaty, with no express power given for the purpose, because the external sovereignty of the Union is vested in the Federal Government alone; and for the same reason, if the general interests of the whole, where no particular State has jurisdiction or authority, require that you should cede territory of the United States to a foreign government, can anyone doubt that the cession could be made, not by Congress, but by the President and Senate, only by means of a treaty? You did it for the purpose of closing a boundary in the case of Maine, within a State, with the consent of the State. You were not able to run the line between Great Britain and the United States; and for the purpose of establishing a boundary and preventing collision and war between the nations you did cede a portion of the State of Maine, with the consent of the legislature of that State.

If one purpose will justify you in ceding a portion of the United States to a foreign nation, on what principle is it that, where seven States of this Union, by their consent and by the action of their people, have chosen to withdraw themselves from the Union and declare themselves out of the Union, you cannot accept their declaration and treat with them? You cannot doubt that you have the power of war against them, though not while they are States of the Union. If you once begin war, you treat them as an alien people. It is the necessary result of war. Will war give a power to the President and Senate to make a treaty, which they do not possess antecedent to the war? Is a baptism of blood necessary in order to give authority under the Constitution to the President and Senate of the United States to conclude peace? If such a doctrine be tenable, the result is that, if a collision of arms occurs with this new republic, and you fight for a period of eight or ten years, still you are powerless; the President and Senate cannot treat, peace can never be

concluded, and eternal war must be the rule of your Government. No new power will be acquired by a collision of arms between you and this new republic. The power must exist now, or it exists never.

Mr. President, I do not see how this conclusion can be escaped; and why you should not have the power. The treaty-making power, beyond all question, is an indefinite power. It embraces all relations external to the Union. If any State had never become a party to the present Government, can anyone doubt that, such State remaining an independent state, you could have treated with her, and that every State of this Union had the right to part with any portion of her territory irrespective of the consent of the general Government, if she was not a party to that Government? It was part of their sovereignty and their independence, as it belongs to every other nation, to either acquire territory, which is one of the rights of sovereignty, or to diminish her territory by cession, where the public exigencies require it. Well, then, if a State, by the action of her people, declares herself out of the Union, what clause in the Constitution forbids your acceptance of her declaration, and excludes from the treaty-making power negotiation and treaty with her? If you, with her consent, can cede a portion of her territory to a foreign power, why can you not, with her consent, permit the whole State to withdraw from the Federal jurisdiction?

For the acquisition of territory by the United States, you find no express authority in the Constitution; but it results from the nature of your Government. It is forbidden to the States; it is permitted to the general Government, because the right of acquisition is incident to sovereignty.

The right to acquire territory implies the right to part with it. There is no limit, in fact, to the power of diminishing the territory of the Union, except in the States. As we have seen, the general Government, with the assent of the State concerned, did it for one purpose, in the case of the State of Maine, without even the action of the people.

In the case of the seven seceded States, the people in their original capacity, in whom the ultimate sovereignty rests according to our Declaration of Independence, have declared those States to be out of the Union by their representatives elected for that purpose, and they have dissolved their connection with the Federal Government. Have we not the right, has not this Government the power, to accept that declaration; not to destroy the Union, but to preserve it, and maintain peace with those States? You cannot escape from perpetual and eter-

nal war, unless you come to this conclusion, that the President and the Senate have the power of negotiation with a State which secedes, if they see fit to exercise it. I admit freely that, on the other hand, the act of secession having the effect of severing the State from the Union, though revolutionary, and making her people an alien people, Congress has also the right of war, and just cause of war, if there is no cause for the withdrawal.

If you refuse to treat, if the relations between these two republics are left in their present unsettled condition, the danger of collision must be constantly existent. There is the loss also of prestige on the part of the Federal Government, if you assert your jurisdiction over the seceded States, and do not enforce your laws. In fact, non-action would amount to a virtual acknowledgment of the independence *de facto* of those States. Why not acknowledge it by treaty, by direct action, and thus avoid collision? Foreign governments will so act if you do not, and thus complicate the relations between the two republics.

But, sir, it cannot be doubted that war will be the inevitable result if the army or the navy is employed to execute the laws of the Federal Union within the seceded States. If you do mean war, it is a question of morals and of power. There is but one legitimate object for such a war, and that is the restoration of the seceded States to the Union. But you can never effect that result by a war of subjugation. Is it consistent with your form of government, if you could succeed in conquering those States, to hold them as subject provinces? You must either desolate them, if you succeed, or you must maintain your supremacy by an immense standing army, in order to keep them in subjection. Look at the condition of Venice and Austria. What myriads of troops is Austria obliged to maintain in order to keep an enervate people in a state of subjection against their will! Sir, the admiration of military glory is quite as strong a passion among the American people as with other nations. The permanent maintenance of a large standing army would necessarily foster and encourage that passion, and, in the end, some successful soldier would become the military autocrat of the Republic, and substitute the coercion of arms for the coercion of the magistracy, because the character of the people, under a war of one or two generations, would change, and the love of civil liberty that now exists throughout this nation would be seriously diminished, or, perhaps, entirely pass away.

You cannot conquer the South any more than the South could conquer the North. The first attempt at conquest would, of necessity, from the cause of contest, force other slaveholding

States into the Southern Confederacy, and this new republic, as it stands, has both the wealth and population to maintain a national existence. It would be no short war. The result of war, too, is always doubtful, and far beyond human foresight. Accident will often determine a decisive battle. The individual genius of leaders controls the events of war far beyond any control that can be exercised by human genius during a state of peace. The genius of Andrew Jackson secured the victory of New Orleans. Under another, though an able soldier, it might have been lost. The majority of numbers and resources will not insure success in war. On the plains of Marathon, ten thousand Greeks defeated the countless hosts of Xerxes, and a comparatively small number of deficiently armed Swiss mountaineers met the mailed chivalry of Charles of Burgundy, and defeated, utterly and disastrously, the best armed and organized army of Europe. Bannockburn must not be forgotten, and history is filled with similar illustrations.

Again, sir, a war of invasion—which, if the war commences, must be its character, if you attempt to effect your purpose under the pretext of enforcing the laws—is always in favor of the invaded country. Men will fight for their homes and their firesides as they will not fight for conquest, and will endure the utmost extent of privation and suffering, rather than yield to the invader; and disparity of force never insures the conquest of an invaded country. You have the illustration in our own contest with Great Britain.

Great Britain might possibly, under abler military men, have succeeded for the time; but after the first blood was shed she never could have retained her supremacy over this country. Conciliation might have saved her the colonies in the first instance, before independence was declared, but after its declaration the acknowledgment of their independence became an inevitable result, and was merely a question of time.

I trust the idea that it would be a legitimate act on the part of the Federal Government, for the purpose of effecting their subjugation, to incite servile insurrection in the States of this new republic, is not entertained. The act would be forbidden by common humanity and the indignant voice of the world. But if the spirit of malignity entertain such an idea, it will be disappointed. Servile insurrections may occur, and have occurred in the history of the world, but not at the call of an invader. Your own wars with Great Britain, in the Revolution and in 1812, illustrate this.

Is there, Mr. President, a point of honor? The Union is not

dissolved if we let these States go. The United States remain; the Federal Government remains. We are a great and powerful nation. Part of the dominions over which our laws extended may be curtailed, and our jurisdiction over them lost, but we remain with all the elements of a great nation, if we acknowledge the new republic. But it may be said that, if we sever in consequence of this secession, arising from the anti-slavery sentiment, into two separate governments, the same sentiment will produce collision between the independent governments by the same interference which has led to secession from the common government. The answer is that the anti-slavery sentiment, with the masses at least, is an honest, though, as I think, a mistaken conviction, founded in ignorance of the relations of race. They believe, also, that there is a moral responsibility on their part connected with the operations of the common government, in relation to this institution. That responsibility ceases if this new republic is acknowledged as a separate nationality.

Mr. President, if so many separate and independent communities existing under a common government find that, from dissonance of habits, of manners, of customs, or from antagonism of opinion, or any other cause, they can no longer remain under that common government, and can agree by peaceful action to separate into two republics, each pursuing its own destiny according to its own views and the will of its own people, it will afford the most pregnant and conclusive evidence that has ever been exhibited to the world of the capacity of man for self-government. If, on the contrary, blood must flow, and war, prolonged civil war, be consequent upon separation, then, indeed, will the columns that support this Federal Government be scattered into fragments, and probably many petty and powerless governments arise upon their ruins. Years of conflict may establish separate nationalities, but in that event the last hope of the patriot, the philosopher, and the statesman, for the self-government of man, will perish with the dissolution of the Federal Union.

Negotiations with Confederate Peace Commission

Prior to the inauguration of Mr. Lincoln the Confederate Government had selected three commissioners to adjust the "differences" which existed between the two governments. They were Martin J. Crawford, a

former Democratic member of Congress from Georgia; John Forsyth, editor of a Democratic paper at Mobile, Ala., and Andrew B. Roman, a former Governor of Louisiana, and a Whig who had used all his influence to prevent disunion.

On the 13th of March, 1861, the commissioners sent a diplomatic dispatch to the Federal State Department informing the Federal Government that they had been appointed by the Confederate authorities as commissioners empowered to open negotiations for the settlement of all controverted questions between the two governments, and to conclude treaties of peace between "the two nations."

To this note no reply was returned, but Secretary William H. Seward made out a memorandum and filed it with the document, simply stating that the Government could not recognize the authority under which the alleged commissioners acted, nor reply to them. The memorandum stated that "it could not be admitted that the States referred to had, in law or fact, withdrawn from the Federal Union, or that they could do so in any other manner than with their consent, and the consent of the people of the United States, to be given through a national convention to be assembled in conformity with the provisions of the Constitution of the United States."

This memorandum was withheld until April 8, when it was at once telegraphed both to Montgomery, Ala., the Confederate capital, and Charleston, where it created great excitement.

In the meanwhile Chief-Justice Taney and Associate-Justices Campbell and Nelson had, of their own volition as good citizens, examined the legal question of the right of the President to coerce a State, and had concluded that there was no constitutional right so to do; and they gratuitously advised the several members of the Cabinet of the conclusions to which they had come, and recommended that terms of conciliation be proposed to the Confederate Government through the commissioners.

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Secretary Seward was in favor of evacuating Fort Sumter, and he informed Judge Campbell, who was acting as mediator, that it would be evacuated, and Campbell so informed the Confederate commissioners, who in turn informed their Government. Mr. Lincoln was taking ample time to deliberate what to do, being uncertain as to the best policy. He was hopeful that Virginia would not secede, and that the Virginia convention, which was deliberating upon the question, would adjourn and so cease to be a menace to him.

On the 9th of April the Confederate commissioners sent a letter to the Secretary of State in which they proffered as their ultimatum of negotiation the evacuation of Sumter. Secretary Seward replied that he was not "at liberty to hold official intercourse with them."

Of this action the Confederate authorities were duly apprised, and the commissioners left Washington on April 11, and returned to Montgomery.

The Fall of Fort Sumter

President Lincoln, against the advice of a majority of his Cabinet, had finally resolved to send provisions to Fort Sumter, and an expedition sailed for this purpose on April 6.

Owing to a gale only the *Baltic* of the fleet arrived in time to be of service to Major Anderson, and that only to bear away the surrendered garrison. The Confederate Government heard of the coming of the provisioning expedition and, considering the capture of the fort necessary to the life of the rebellion, ordered General Pierre G. T. Beauregard, who was in charge of the investment, to procure its surrender, or, failing in this, to bombard it. On the 11th Beauregard sent to Major Anderson a summons to surrender, offering to him, in case of compliance, facilities to remove the troops, and to the garrison the privilege of saluting their flag. To this Anderson replied that he would surrender the fort on the 15th if supplies did not reach him by that time, or if he did not before then receive orders to the contrary from his Government.

These conditions did not suit the Confederates, and on Friday, April 12, at 3 a. m., they gave Anderson notice that their batteries would open on the fort in an hour. At 4:30 the bombardment began, and continued throughout that day and into the next.

Anderson then accepted the conditions of surrender offered, and on the following day, Sunday, April 14, the garrison sailed northward in the *Baltic*.

The Virginia Convention

Since February 13 Virginia had been holding a convention to consider its policy in the crisis. The Union delegates were in a majority. An ordinance of secession was voted down on March 17 by a majority of ninety to forty-five, and a similar proposition was defeated on April 4, but still the convention declined to adjourn. Mr. Lincoln therefore caused a letter to be sent to George W. Summers of Charleston, Va., the most talented of the Union men in his State, requesting that he come to Washington for conference. Summers was kept by timidity from accepting the President's invitation, but he sent John B. Baldwin in his place.

The interview was held on the morning of April 4. Baldwin returned to the convention reporting that his conference with the President was inconclusive; that Mr. Lincoln had characterized the convention as a "standing menace which embarrassed him very much," and therefore he desired that it adjourn *sine die*, but that he had given no promise of what return he would make to it for compliance with his wishes. John Minor Botts, another member of the convention, called on the President two days afterward, and held a conversation in which Mr. Lincoln gave an account of the interview with Baldwin which, as remembered by Mr. Botts, differed materially from Baldwin's report. The President, said Botts, spoke of the fleet in New York harbor preparing to sail that afternoon to provision Fort Sumter. "Now," said Mr. Lincoln, "your convention in Richmond has been sitting for nearly two months, and all it has done has been to shake the rod over my head

(threatening to secede if coercion should be used to bring back South Carolina into the Union). If the Union majority in the Virginia convention will adjourn it without its passing an ordinance of secession, this fleet shall be kept from sailing, and, instead, Fort Sumter shall be evacuated. I think it is a good swap to give a fort for a State any time."

As a result of Baldwin's report, the Virginia convention remained in session, and on April 8 appointed another delegation, consisting of William Ballard Preston, Alexander H. H. Stuart, and George W. Randolph, to wait on President Lincoln, and ask him to communicate to the convention "the policy which the Federal Executive intends to pursue in regard to the Federal States."

The committee had an audience with the President at Washington on April 13, the day after Fort Sumter had been fired upon by the South Carolinian secessionists. He referred the convention to the policy expressed in his inaugural address:

> As I then and therein said, I now repeat: "The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but beyond what is necessary for these objects there will be no invasion, no using of force against or among the people anywhere." . . . In case it proves true that Fort Sumter has been assaulted, as is reported, I shall perhaps cause the United States mails to be withdrawn from all the States which claim to have seceded, believing that the commencement of actual war against the Government justifies and possibly demands this. . . .
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> Whatever else I may do for the purpose, I shall not attempt to collect the duties and imposts by any armed invasion of any part of the country; not meaning by this, however, that I may not land a force deemed necessary to relieve a fort upon a border of the country.

The report of this committee, followed as it was by the President's call of April 15 for 75,000 militia to suppress the rebellion and to be raised by the several States of the Union, which included Virginia, caused the convention, on April 17, to pass an ordinance of secession.

This was followed by a similar ordinance in Arkansas on May 6, and a military league with the Confederacy in Tennessee on May 7.

The Confederate Government established its capital at Richmond, Virginia, on the 21st of May, and North Carolina, being surrounded by secession territory, seceded the same day.

The Call for Troops

On April 15, the day after the surrender of Fort Sumter, the President issued a proclamation calling forth the militia of the several States of the Union to the aggregate number of 75,000 to suppress combinations which existed in the seceding States for the purpose of opposing and obstructing the enforcement of Federal laws, and which were "too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law." The concluding paragraph of the proclamation convened Congress to meet on July 4 "to consider and determine such measures as, in their wisdom, the public safety and interest might seem to demand."

The call for troops was really signed on Sunday, April 14, though dated April 15. On the evening of the 14th Senator Stephen A. Douglas called upon President Lincoln and was closeted with him for two hours. He went forth from the conference to publish by telegraph to the country the declaration that he was "prepared to sustain the President in the exercise of all his constitutional functions to preserve the Union, and maintain the Government, and defend the Federal capital." On April 25, before the Illinois legislature, he made, in behalf of the Union, the most eloquent speech of his life. Unfortunately for the cause which had become the paramount passion of his soul, he died a little more than a month thereafter, on June 3, at his home in Chicago. Even measured by his few weeks of service, his place is secure in American history as the first and greatest of "War Democrats."

The governors of all the free States responded to the

call for troops with enthusiasm, offering more men than were required or could be armed. The governors of the border States, however, indignantly refused the call. Governor Jackson of Missouri said, "Not one man will Missouri furnish to carry on such an unholy crusade." Governor Magoffin of Kentucky said, "I say emphatically, Kentucky will furnish no troops for the wicked purpose of subduing her sister Southern States," and Governor Harris of Tennessee said, "Tennessee will not furnish a man for coercion, but 50,000 for the defence of our Southern brothers."

Military Movements of the Confederacy

As an answer to Lincoln's call for troops, Jefferson Davis, President of the Southern Confederacy, issued a proclamation on April 17, offering letters of marque and reprisal to privateers desiring to prey upon the commerce of the United States. Two days later President Lincoln replied by proclaiming a blockade of all the Confederate ports, and giving notice that privateering would be treated as piracy.

General Beauregard was ordered by President Davis into northern Virginia to assume command of the forces gathering there from the Gulf States.

Military Movements of the Union

On May 3 the President issued a proclamation calling for 42,034 more volunteers from the several States, and an increase in the regular army of 22,714 men, and in the navy of 18,000.

The first efforts of the Government were to hold the border States in the Union. Major Robert Anderson, the hero of Fort Sumter, was sent to his native State of Kentucky to recruit volunteers. Captain Nathaniel Lyon, an ardent anti-slavery man, who was in charge of the St. Louis arsenal, was ordered to enlist 10,000 loyal Missourians, and, if necessary, to proclaim martial law in the State. Later, he was put in charge of the military department in which Missouri was situated,

replacing General William H. Harney, a conservative, who had been cajoled into making a compact with the State government, which was attempting to take Missouri into the Confederacy, to refrain from military movements, since these were apt to "create excitements and jealousy." General Lyon at once went into action, and on June 17 defeated the State (really Confederate) troops under General Sterling Price at Booneville. The

THE BATTLE OF BOONEVILLE, OR THE GREAT MISSOURI LYON HUNT

From the collection of the New York Historical Society

governor, Claiborne F. Jackson, was forced to flee from place to place in the State while keeping up the pretence of a government. Missouri, under Jackson, was recognized as a part of the Confederacy by the Davis Government.

General George B. McClellan entered West Virginia from Ohio and occupied it for the Union. A Michigan regiment under Colonel Elmer E. Ellsworth entered Virginia from Washington and occupied Alexandria. Ellsworth, as he was cutting down a rebel flag on a hotel there, was assassinated by the proprietor.

The capture of Alexandria inaugurated open conflict

between the Confederacy and the Union in Virginia. General Pierre G. T. Beauregard, who was looked upon by the South as the hero of Fort Sumter, was sent on May 31 to command the Confederate forces centering about Manassas. General Joseph E. Johnston was in command at Winchester, having fallen back from Harper's Ferry before a superior Union force under General Robert Patterson. On June 19 President Lincoln called his Cabinet and the leading generals to a council of war, at which it was decided that General Irvin McDowell should lead the Union forces against Beauregard, while Patterson should remain confronting Johnston in the Shenandoah Valley, following him in a rear attack if he should attempt to join Beauregard.

This was the situation when Congress met in special session July 4 and listened to the President's message.

The message was in effect an answer to Senator Bayard's speech on the right of secession.

The Sophistry of Secession

First Message of President Lincoln to Congress

In his message President Lincoln described the state of affairs at the time of his inauguration; the suspension of all functions of the Federal Government, save those of the postoffice, in South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida; the seizure by the several governments of these States of forts and other Federal property, and the organization of these States into a Confederation which "was already invoking recognition, aid, and intervention from foreign powers." The President recounted his forbearance in pursuing the policy expressed in his inaugural address of exhausting all peaceful measures before resorting to stronger ones.

He then lucidly recited the story of the assault upon Fort Sumter by South Carolina, demonstrating that it was in no sense an act of defence, but on the contrary

of deliberate aggression, designed to force the hand of the Federal Government.

> That this was their object the Executive well understood; and having said to them, in the inaugural address, "You can have no conflict without being yourselves the aggressors," he took pains not only to keep this declaration good, but also to keep the case so free from the power of ingenious sophistry that the world should not be able to misunderstand it. By the affair at Fort Sumter, with its surrounding circumstances, that point was reached. In this act, discarding all else, they have forced upon the country the distinct issue, "immediate dissolution or blood."
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> And this issue embraces more than the fate of the United States. It presents to the whole family of man the question whether a constitutional republic or democracy—a government of the people by the same people—can or cannot maintain its territorial integrity against its own domestic foes. It presents the question whether discontented individuals, too few in numbers to control administration according to organic law in any case, can always, upon the pretences made in this case, or on any other pretences, or arbitrarily without any pretence, break up their government, and thus practically put an end to free government upon the earth. It forces us to ask: "Is there, in all republics, this inherent and fatal weakness?" "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?"
>
> So viewing the issue, no choice was left but to call out the war power of the Government; and so to resist force employed for its destruction by force for its preservation.

The President then discussed the action of the border States, particularly Virginia, pursuant to the attack on Sumter.

> The course taken in Virginia was the most remarkable—perhaps the most important. A convention elected by the people of that State to consider the very question of disrupting the Federal Union was in session at the capital of Virginia when Fort Sumter fell. To this body the people had chosen a large majority of professed Union men. Almost immediately after the fall of Sumter, many members of that majority went over to the original disunion minority, and with them adopted an ordinance for withdrawing the State from the Union. Whether this change was wrought by their great approval of the assault upon

Sumter or their great resentment at the Government's resistance to that assault is not definitely known. Although they submitted the ordinance for ratification to a vote of the people, to be taken on a day then somewhat more than a month distant, the convention and the legislature (which was also in session at the same time and place), with leading men of the State not members of either, immediately commenced acting as if the State were already out of the Union. They pushed military preparations vigorously forward all over the State. They seized the United States armory at Harper's Ferry, and the navy yard at Gosport, near Norfolk. They received—perhaps invited—into their State large bodies of troops, with their warlike appointments, from the so-called seceded States. They formally entered into a treaty of temporary alliance and coöperation with the so-called "Confederate States," and sent members to their congress at Montgomery. And, finally, they permitted the insurrectionary government to be transferred to their capital at Richmond.

The people of Virginia have thus allowed this giant insurrection to make its nest within her borders; and this Government has no choice left but to deal with it where it finds it. And it has the less regret as the loyal citizens have, in due form, claimed its protection. Those loyal citizens this Government is bound to recognize and protect, as being Virginia.

The attitude of "armed neutrality" adopted by Kentucky the President characterized as "disunion completed."

Figuratively speaking, it would be the building of an impassable wall along the line of separation—and yet not quite an impassable one, for under the guise of neutrality it would tie the hands of Union men and freely pass supplies from among them to the insurrectionists, which it could not do as an open enemy. . . . It recognizes no fidelity to the Constitution, no obligation to maintain the Union; and, while very many who have favored it are doubtless loyal citizens, it is, nevertheless, very injurious in effect.

The President proceeded to justify his orders to Lieutenant-General Scott authorizing him at discretion to suspend the writ of *habeas corpus,* an order which had been harshly criticised as arbitrary and unconstitutional.

The provision of the Constitution that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it," is equivalent to a provision—is a provision—that such privilege may be suspended when, in case of rebellion or invasion, the public safety does require it. It was decided that we have a case of rebellion, and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made. Now it is insisted that Congress, and not the Executive, is vested wth this power. But the Constitution itself is silent as to which or who is to exercise the power; and, as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.

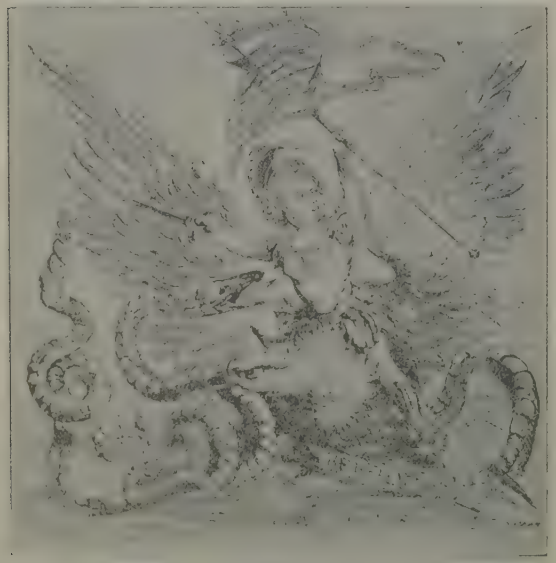
The President concluded his message proper with an appeal to Congress to pass those measures which would enable him to suppress the rebellion quickly and decisively:

It is now recommended that you give the legal means for making this contest a short and decisive one: that you place at the control of the Government for the work at least four hundred thousand men and $400,000,000. That number of men is about one-tenth of those of proper ages within the regions where, apparently, all are willing to engage; and the sum is less than a twenty-third part of the money value owned by the men who seem ready to devote the whole. A debt of $600,000,000 now is a less sum per head than was the debt of our Revolution when we came out of that struggle; and the money value in the country now bears even a greater proportion to what it was then than does the population. Surely each man has as strong a motive now to preserve our liberties as each had then to establish them.

A right result at this time will be worth more to the world than ten times the men and ten times the money. The evidence reaching us from the country leaves no doubt that the material for the work is abundant, and that it needs only the hand of legislation to give it legal sanction, and the hand of the Executive to give it practical shape and efficiency. One of the greatest perplexities of the Government is to avoid receiving troops faster than it can provide for them. In a word, the peo-

ple will save their Government if the Government itself will do its part only indifferently well.

The latter half of the message was in its nature an address to the country upon the fallacies of secession



THE AMERICAN EAGLE SCOTCHING THE SNAKE OF SECESSION
[Cover picture of "Vanity Fair," May 4, 1861]
From the collection of the New York Public Library

and the constitutional duty imposed upon the President to suppress it by arms. The movers of secession, said Mr. Lincoln, in order to undermine the loyalty of the South to the Union, "invented an ingenious sophism, which, if conceded, was followed by perfectly logical steps through all the incidents to the complete destruc-

tion of the Union. The sophism itself is that any State in the Union may, consistently with the national Constitution, withdraw from the Union without the consent of the Union or of any other State. The little disguise that the supposed right is to be exercised only for just cause, themselves to be the sole judges of its justice, is too thin to merit any notice."

This sophism, said Mr. Lincoln, is based upon the false doctrine of State sovereignty. "Our States," he said, "have neither more nor less power than that reserved to them in the Union by the Constitution—no one of them ever having been a State out of the Union. . . . The States have their *status* in the Union, and they have no other legal *status.* If they break from this, they can only do so against law and by revolution. The Union, and not themselves separately, procured their independence. . . . The Union is older than any of the States, and, in fact, it created them as States."

The rights of the States reserved to them by the Constitution, argued Mr. Lincoln, are obviously administrative powers, and certainly do not include a power to destroy the Government itself. "This relative matter of national power and State rights, as a principle, is no other than the principle of generality and locality. Whatever concerns the whole should be confined to the whole—to the general Government, while whatever concerns only the State should be left exclusively to the State.

"The nation purchased with money," continued Mr. Lincoln, "the countries out of which several of these States were formed; is it just that they shall go off without leave and without refunding? . . . The nation is now in debt for money applied to the benefit of these so-called seceding States in common with the rest; is it just that . . . the remaining States pay the whole? . . . Again, if one State may secede, so may another, and when all shall have seceded none is left to pay the debts. . . . The principle itself is one of disintegration, and upon which no government can possibly endure."

It may be affirmed, without extravagance, that the free institutions we enjoy have developed the powers and improved the condition of our whole people beyond any example in the world. Of this we now have a striking and an impressive illustration. So large an army as the Government has now on foot was never before known without a soldier in it but who had taken his place there of his own free choice. But, more than this, there are many single regiments whose members, one and another, possess full practical knowledge of all the arts, sciences, professions, and whatever else, whether useful or elegant, is known in the world; and there is scarcely one from which there could not be selected a President, a Cabinet, a Congress, and perhaps a Court, abundantly competent to administer the Government itself. Nor do I say this is not true also in the army of our late friends, now adversaries in this contest; but if it is, so much better the reason why the Government which has conferred such benefits on both them and us should not be broken up. Whoever, in any section, proposes to abandon such a government, would do well to consider in deference to what principle it is that he does it; what better he is likely to get in its stead; whether the substitute will give, or be intended to give, so much of good to the people? There are some foreshadowings on this subject. Our adversaries have adopted some declarations of independence, in which, unlike the good old one, penned by Jefferson, they omit the words, "all men are created equal." Why? They have adopted a temporary national constitution, in the preamble of which unlike our good old one, signed by Washington, they omit, "We, the people," and substitute, "We, the deputies of the sovereign and independent States." Why? Why this deliberate pressing out of view the rights of men and the authority of the people?

This is essentially a people's contest. On the side of the Union it is a struggle for maintaining in the world that form and substance of government whose leading object is to elevate the condition of men; to lift artificial weights from all shoulders; to clear the paths of laudable pursuits for all; to afford all an unfettered start and a fair chance in the race of life. Yielding to partial and temporary departures, from necessity, this is the leading object of the Government for whose existence we contend.

I am most happy to believe that the plain people understand and appreciate this. It is worthy of note that, while in this, the Government's, hour of trial, large numbers of those in the army and navy who have been favored with the offices have re-

signed and proved false to the hand which had pampered them, not one common soldier or common sailor is known to have deserted his flag.

Great honor is due to those officers who remained true, despite the example of their treacherous associates; but the greatest honor, and most important fact of all, is the unanimous firmness of the common soldiers and common sailors. To the last man, so far as known, they have successfully resisted the traitorous efforts of those whose commands but an hour before they obeyed as absolute law. This is the patriotic instinct of plain people. They understand, without an argument, that the destroying the Government which was made by Washington means no good to them.

Our popular Government has often been called an experiment. Two points in it our people have already settled—the successful establishing and the successful administering of it. One still remains—its successful maintenance against a formidable internal attempt to overthrow it. It is now for them to demonstrate to the world that those who can fairly carry an election can also suppress a rebellion; that ballots are the rightful and peaceful successors of bullets; and that, when ballots have fairly and constitutionally decided, there can be no successful peal back to bullets; that there can be no successful appeal, except to ballots themselves, at succeeding elections. Such will be a great lesson of peace; teaching men that what they cannot take by an election neither can they take by a war; teaching all the folly of being the beginners of a war.

It was with the deepest regret that the Executive found the duty of employing the war power in defence of the Government forced upon him. He could but perform this duty or surrender the existence of the Government. No compromise by public servants could, in this case, be a cure; not that compromises are not often proper, but no popular government can long survive a marked precedent that those who carry an election can save the government from immediate destruction only by giving up the main point upon which the people gave the election. The people themselves, and not their servants, can safely reverse their own deliberate decisions.

As a private citizen the Executive could not have consented that these institutions shall perish; much less could he, in betrayal of so vast and so sacred a trust as the free people have confided to him. He felt that he had no moral right to shrink, nor even to count the chances of his own life in what might follow. In full view of his great responsibility he has, so far, done

what he has deemed his duty. You will now, according to your own judgment, perform yours. He sincerely hopes that your views and your actions may so accord with his as to assure all faithful citizens who have been disturbed in their rights of a certain and speedy restoration to them, under the Constitution and the laws.

And having thus chosen our course without guile and with pure purpose, let us renew our trust in God, and go forward without fear and with manly hearts.

CHAPTER III

The War-making Power: Does It Lie in the President or Congress?

General George B. McClellan's Victories in Western Virginia—Union Defeat at Manassas [Bull Run], Va.—Demoralization of the Country—Lincoln's War Measures—War Acts of Congress—Debate in the House on "Constitutionality of the President's Acts"; Against the Acts, Clement L. Vallandigham [O.]; in favor, William S. Holman [Ind.]—Debate on the Same in the Senate; Against the Acts, John C. Breckinridge [Ky.]; in Favor, Edward D. Baker [Ore.]; Kinsley S. Bingham [Mich.], Henry S. Lane (Ind.)—Anti-Secession Resolutions of Representative John J. Crittenden [Ky.] and Senator Andrew Johnson [Tenn.]; Carried—Lyman Trumbull [Ill.] Introduces in the Senate Bill to Suppress Insurrection (Virtually to Make War)—Debate on the Bill: in Favor, Senator Trumbull, Edward D. Baker [Ore.]; Opposed, James A. Bayard, Jr. [Del.], William P. Fessenden [Me.], John C. Breckinridge [Ky.], Jacob Collamer [Vt.]; Bill Is Not Pressed.

TEN days after the President had promulgated his enheartening message, Congress, as well as the Northern people, were rejoiced by the victories of General McClellan at Rich Mountain and Carrick's Ford, whereby western Virginia was secured to the Union. A week later, however, their joyful anticipation of an early and complete conquest of the seceded States was turned into dismay; instead of this easy victory perhaps it was the North which would be invaded; the national capital might fall, and the Southern Confederacy dictate from the halls of Congress terms for its recognition as a separate republic, and, indeed, the dominant one on the continent.

Battle of Bull Run [Manassas]

On July 21 the Confederate troops under Generals P. G. T. Beauregard and Joseph Johnston defeated the

Union troops under General Irwin McDowell at Manassas [Bull Run] Va. The Union retreat became a disorderly flight back to Washington. Many civilians had gone to see the battle, and these, mingling with the retreating soldiers, contributed to the confusion. One Congressman was captured by the rebels—a salutary

"WE WANT PEACE"

Benjamin Wood, of the New York *Daily News* (pro-South), and Horace Greeley, of the *Tribune* (anti-slavery)

From the collection of the New York Public Library

lesson to his colleagues of the evil effects of over-confidence.

The entire country was thrown into a panic, from which it was some time in recovering. On July 29, "after seven sleepless nights," Horace Greeley wrote a despairing letter to Lincoln, in which he advised the President that, if, in his opinion, the recent disaster was fatal, he should not shrink even from making peace with the rebels at once, and on their own terms.

Lincoln had spent sleepless nights, not in selfish

nursing of grief, but in planning for the salvation of the Republic. He placed General McClellan in chief command at Washington, with power to organize a new army out of the three years' regiments beginning to pour in upon the capital, and he devised plans for a vigorous offensive campaign in the West.

Congress, which, during the days of victory, had upheld the President in granting him the legislation he asked, did not falter in the days of defeat, but was, if anything, more whole-hearted in its support, passing more drastic measures than it otherwise might have done, to exert the full military power of the Republic in order to preserve its honor and integrity.

War Acts of Congress

It authorized a loan of $250,000,000; it passed laws to define and punish treason; it superseded the "Morrill Tariff," enacted during the previous session, by a "War Tariff" in which increases of rate of duty were made wherever these would result in increases of revenue; it passed an income tax; it authorized the President to close Southern ports in cases where collection of duties was impossible, to call out 500,000 volunteers if necessary, and to confiscate the property of secessionists, including slaves (where these were employed against the Government), and, in a section of the act of August 6 to increase the pay of the army, it validated all the President's preceding acts to suppress the rebellion, such as calling out troops, blockading Southern ports, and suspending the writ of *habeas corpus*.

In the discussion upon the President's message and the acts passed by Congress in accordance with his recommendations, strenuous opposition was manifested by "State Rights" Democrats to what they considered to be "executive usurpation."

On July 10, 1861, Clement L. Vallandigham [Dem.], of Ohio, replied in the House to the President's message. On July 16 William S. Holman [Dem.], of Indiana, replied to him.

Constitutionality of the President's Acts

House of Representatives, July 10-16, 1861

Mr. Vallandigham.—Holding up the shield of the Constitution, and standing here in the place and with the manhood of a representative of the people, I propose to myself to-day the ancient freedom of speech used within these walls.

Mr. Chairman, the President, in the message before us, demands the extraordinary loan of $400,000,000—an amount nearly ten times greater than the entire public debt, State and Federal, at the close of the Revolution in 1783, and four times as much as the total expenditures during the three years' war with Great Britain, in 1812.

Sir, that same Constitution which I hold up, and to which I give my whole heart and my utmost loyalty, commits to Congress alone the power to borrow money and to fix the purposes to which it shall be applied, and expressly limits army appropriations to the term of two years. Whenever this House shall have become but a mere office wherein to register the decrees of the Executive, it will be high time to abolish it.

Sir, it has been the misfortune of the President from the beginning that he has totally and wholly underestimated the magnitude and character of the revolution with which he had to deal, or surely he never would have ventured upon the wicked and hazardous experiment of calling thirty millions of people to arms among themselves, without the counsel and authority of Congress. But when at last he found himself hemmed in by the revolution, and this city in danger, as he declares, and waked up thus, as the proclamation of the 15th of April proves him to have waked up, to the reality and significance of the movement, why did he not forthwith assemble Congress, and throw himself upon the wisdom and patriotism of the representatives of the States and of the people, instead of usurping powers which the Constitution has expressly conferred upon us? aye, sir, and powers which Congress had, but a little while before, repeatedly and emphatically refused to exercise, or to permit him to exercise?

At twelve o'clock on the 4th of March last, from the eastern portico of this Capitol, and, in the presence of twenty thousand of his countrymen, but enveloped in a cloud of soldiery which no other American President ever saw, Abraham Lincoln took the oath of office to support the Constitution, and delivered his inaugural—a message, I regret to say, not written in the direct

and straightforward language which becomes an American President and an American statesman, and which was expected from the plain, blunt, honest man of the Northwest, but with the forked tongue and crooked counsel of the New York politician [Secretary Seward], leaving thirty millions of people in doubt whether it meant peace or war. But, whatever may have been the secret purpose and meaning of the inaugural, practically for six weeks the policy of peace prevailed; and they were weeks of happiness to the patriot and prosperity to the country. Business revived; trade returned; commerce flourished. Never was there a fairer prospect before any people. Secession in the past languished and was spiritless and harmless; secession in the future was arrested and perished. By overwhelming majorities, Virginia, Kentucky, North Carolina, Tennessee, and Missouri all declared for the old Union, and every heart beat high with hope that, in due course of time, and through faith and patience and peace, and by ultimate and adequate compromise, every State would be restored to it.

Mr. Vallandigham then claimed that *party necessity* caused the change from this pacific policy to one of coercion.

The peace policy was crushing out the Republican party. Under that policy, sir, it was melting away like snow before the sun. The general elections in Rhode Island and Connecticut, and municipal elections in New York and in the Western States, gave abundant evidence that the people were resolved upon the most ample and satisfactory constitutional guaranties to the South as the price of a restoration of Union. And then it was, sir, that the long and agonizing howl of defeated and disappointed politicians came up before the Administration. The newspaper press teemed with appeals and threats to the President. The mails groaned under the weight of letters demanding a change of policy; while a secret conclave of the Governors of Massachusetts, New York, Ohio, and other States assembled here promised men and money to support the President in the irrepressible conflict which they now invoked. And thus it was, sir, that the necessities of a party in the pangs of dissolution, in the very hour and article of death, demanding vigorous measures, which could result in nothing but civil war, renewed secession, and absolute and eternal disunion, were preferred and hearkened to before the peace and harmony and prosperity of the whole country.

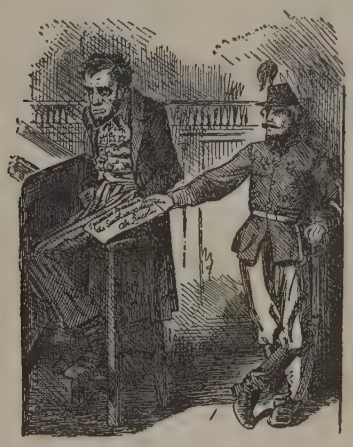
Another cause for the change of policy, said Mr. Vallandigham, was "the passage of an obscure, ill-considered, ill-digested, and unstatesmanlike high protective tariff act, known as the Morrill tariff." The Confederate Government had adopted the old United States revenue tariff of 1857, the lower duties of which began to turn trade southward.

Political association and union, it was well known, must soon follow the direction of trade and interest. The City of New York, the great commercial emporium of the Union, and the Northwest, the chief granary of the Union, began to clamor now loudly for a repeal of the pernicious and ruinous tariff. Threatened thus with the loss of both political power and wealth or the repeal of the tariff, and at last of both, New England—and Pennsylvania, too, the land of Penn, cradled in peace—demanded now coercion and civil war, with all its horrors, as the price of preserving either from destruction. And, sir, when once this policy was begun, these self-same motives of waning commerce and threatened loss of trade impelled the great City of New York, her merchants and her politicians and her press, with here and there an honorable exception, to place herself in the very front rank among the worshipers of Moloch. Much, indeed, of that outburst and uprising in the North which followed the proclamation of the 15th of April, as well, perhaps, as the proclamation itself, was called forth, not so much by the fall of Sumter—an event long anticipated—as by the notion that the "insurrection," as it was called, might be crushed out in a few weeks, if not by the display, certainly, at least, by the presence of an overwhelming force.

I will not venture now to assert, what may yet some day be made to appear, that the subsequent acts of the Administration, and its enormous and persistent infractions of the Constitution, its high-handed usurpations of power, formed any part of a deliberate conspiracy to overthrow the present form of Federal republican government, and to establish a strong centralized government in its stead. No, sir; whatever their purposes now, I rather think that, in the beginning, they rushed heedlessly and headlong into the gulf, believing that, as the seat of war was then far distant and difficult of access, the display of vigor in reinforcing Sumter and Pickens, and in calling out seventy-five thousand militia upon the firing of the first gun, and, above all, in that exceedingly happy and original conceit of commanding the insurgent States to "disperse in twenty

days," would not, on the one hand, precipitate a crisis, while, upon the other, it would satisfy its own violent partisans, and thus revive and restore the falling fortunes of the Republican party.

I can hardly conceive, sir, that the President and his advisers could be guilty of the exceeding folly of expecting to carry on a general civil war by a mere *posse comitatus* of three



"I PROMISE TO SUBDUE THE SOUTH IN TWENTY DAYS—A. LINCOLN."

months' militia. It may be, indeed, that, with wicked and most desperate cunning, the President meant all this as a mere entering wedge to that which was to rive the oak asunder; or possibly as a test, to learn the public sentiment of the North and West. But, however that may be, the rapid secession and movements of Virginia, North Carolina, Arkansas, and Tennesseee, taking with them, as I have said elsewhere, four millions and a half of people, immense wealth, inexhaustible resources, five hundred thousand fighting men, and *the graves of Washington and Jackson*, and bringing up, too, in one single day the frontier from the Gulf to the Ohio and the Potomac, together with the abandonment by the one side and the occupation by the other of Har-

per's Ferry and the Norfolk navy yard, and the fierce gust and whirlwind of passion in the North, compelled either a sudden waking up of the President and his advisers to the frightful significancy of the act which they had committed in heedlessly breaking the vase which imprisoned the slumbering demon of civil war, or else a premature but most rapid development of the daring plot to foster and promote secession, and then to set up a new and strong form of government in the States which might remain in the Union.

But, whatever may have been the purpose, I assert here today, as a Representative, that every principal act of the Administration since has been a glaring usurpation of power and a palpable and dangerous violation of that very Constitution which this civil war is professedly waged to support. Sir, I pass by the proclamation of the 15th of April summoning the militia—not to defend this capital; there is not a word about the capital in the proclamation, and there was then no possible danger to it from any quarter; but to retake and occupy forts and property a thousand miles away. The militia thus called out, with a shadow, at least, of authority, were amply sufficient to protect the capital against any force which was then likely to be sent against it—and the event has proved it—and ample enough also to suppress the outbreak in Maryland. Every other principal act of the Administration might well have been postponed, and ought to have been postponed, until the meeting of Congress; or, if the exigencies of the occasion demanded it, Congress should forthwith have been assembled.

But, sir, Congress was not assembled. The entire responsibility of the whole work was boldly assumed by the Executive, and all the powers required for the purposes in hand were boldly usurped from either the States or the people, or from the legislative department; while the voice of the judiciary, that last refuge and hope of liberty, was turned away from with contempt.

Sir, the right of blockade—and I begin with it—is a belligerent right, incident to a state of war, and it cannot be exercised until war has been declared or recognized; and Congress alone can declare or recognize war. But Congress had not declared or recognized war. On the contrary, they had but a little while before expressly refused to declare it, or to arm the President with the power to make it. And thus the President, in declaring a blockade of certain ports in the States of the South, and in applying to it the rules governing blockades as between independent powers, violated the Constitution.

But if, on the other hand, he meant to deal with these States as still in the Union, and subject to Federal authority, then he usurped a power which belongs to Congress alone—the power to abolish and close up ports of entry; a power, too, which Congress had also but a few weeks before refused to exercise. And yet, without the repeal or abolition of ports of entry, any attempt by either Congress or the President to blockade these ports is a violation of the spirit, if not the letter, of that clause of the Constitution which declares that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

Jackson, sir! the great Jackson! did not dare to do this without authority of Congress; but the mimic Jackson of today blockades not only Charleston harbor, but the whole Southern coast, three thousand miles in extent, by a single stroke of the pen.

Next after the blockade, sir, in the catalogue of daring executive usurpations, comes the proclamation of the 3d of May, and the orders of the War and Navy Departments in pursuance of it—a proclamation and usurpation which would have cost any English sovereign his head at any time within the last two hundred years. Sir, the Constitution not only confines to Congress the right to declare war, but expressly provides that "Congress (not the President) shall have power to raise and support armies"; and to "provide and maintain a navy." And yet the President, of his own mere will and authority, and without the shadow of right, has proceeded to increase, and has increased, the standing army by twenty-five thousand men; the navy by eighteen thousand; and has called for and accepted the services of forty regiments of volunteers for three years, numbering forty-two thousand men, and making thus a grand army or military force, raised by executive proclamation alone, without the sanction of Congress, without warrant of law, and in direct violation of the Constitution and of his oath of office, of eighty-five thousand soldiers enlisted for three and five years, and already in the field. And yet the President now asks us to support the army which he has thus raised; to ratify his usurpations by a law *ex post facto*, and thus to make ourselves parties to our own degradation and to his infractions of the Constitution. Meanwhile, however, he has taken good care not only to enlist the men, organize the regiments, and muster them into service, but to provide in advance for a horde of forlorn, wornout, and broken-down politicians of his own party, by appointing, either by himself or through the governors of the

States, major-generals, brigadier-generals, colonels, lieutenant-colonels, majors, captains, lieutenants, adjutants, quartermasters, and surgeons, without any limit as to numbers, and without so much as once saying to Congress, "By your leave, gentlemen."

Beginning with this wide breach of the Constitution, this enormous usurpation of the most dangerous of all powers—the power of the sword—other infractions and assumptions were easy; and, after public liberty, private right soon fell. The privacy of the telegraph was invaded in the search after treason and traitors; although it turns out, significantly enough, that the only victim, so far, is one of the appointees and especial pets of the Administration. The telegraphic dispatches, preserved under every pledge of secrecy for the protection and safety of the telegraph companies, were seized and carried away without search warrant, without probable cause, without oath, and without description of the places to be searched or of the things to be seized, and in plain violation of the right of the people to be secure in their houses, persons, *papers*, and effects against unreasonable searches and seizures. One step more, sir, will bring upon us search and seizure of the public mails; and finally, as in the worst days of English oppression—as in the times of the Russells and the Sydneys of English martyrdom—of the drawers and secretaries of the private citizen; though even then tyrants had the grace to look to the forms of the law, and the execution was judicial murder, not military slaughter.

But who shall say that the future Tiberius of America shall have the modesty of his Roman predecessor, in extenuation of whose character it is written by the great historian, *avertit oculos, jussitque scelera non spectavit!*[1]

Sir, the rights of property having been thus wantonly violated, it needed but a little stretch of usurpation to invade the sanctity of the person; and a victim was not long wanting. A private citizen of Maryland, not subject to the rules and articles of war—not in a case arising in the land or naval forces, nor in the militia when in actual service—is seized in his own house, in the dead hour of night, not by any civil officer nor upon any civil process, but by a band of armed soldiers, under the verbal orders of a military chief, and is ruthlessly torn from his wife and his children and hurried off to a fortress of the United States—and that fortress, as if in mockery, the very

[1] "He averted his eyes that he might not see the crimes which he ordered."

one over whose ramparts had floated that star-spangled banner immortalized in song by the patriot prisoner who,

"By the dawn's early light,"

saw its folds gleaming amid the wreck of battle, and invoked the blessings of Heaven upon it, and prayed that it might long wave—

"O'er the *land of the free* and the home of the brave."

And, sir, when the highest judicial officer of the land, the Chief Justice of the Supreme Court, upon whose shoulders, "when the judicial ermine" fell, it touched nothing not as spotless as itself, the aged, the venerable, the gentle and pure-minded Taney, who but a little while before had administered to the President the oath to support the Constitution and to execute the laws, issued, as by law it was his sworn duty to issue, the high prerogative writ of *habeas corpus*—that great writ of right, that main bulwark of personal liberty, commanding the body of the accused to be brought before him that justice and right might be done by due course of law, and without denial or delay; the gates of the fortress, its cannon turned toward and in plain sight of the city where the court sat, and frowning from the ramparts, were closed against the officer of the law, and the answer returned that the officer in command has, by the authority of the President, *suspended* the writ of *habeas corpus*. And thus it is, sir, that the accused has ever since been held a prisoner without due process of law; without bail; without presentment by a grand jury; without speedy or public trial by a petit jury of his own State or district, or any trial at all; without information of the nature and cause of the accusation; without being confronted with the witnesses against him; without compulsory process to obtain witnesses in his favor; and without the assistance of counsel for his defence.[1] And this is our boasted American liberty? And thus it is, too, sir, that here, here, in America, in the seventy-third year of the Republic, that great writ and security of personal freedom which it cost the patriots and freemen of England six hundred years of labor and toil and blood to extort and to hold fast from venal judges and tyrant kings; written in the great charter at Runnymede by the iron barons, who made the simple Latin and uncouth words of the times, *nullus liber homo*,[2] in

[1] This case is known as *ex parte* Merryman, and is found in 9 Amer. Law Reg. 524; 1 Taney's, Dec. 246.

[2] "No free man."

the language of Chatham, worth all the classics; recovered and confirmed a hundred times afterward, as often as violated and stolen away, and finally and firmly secured at last by the great act of Charles II, and transferred thence to our own Constitution and laws, has been wantonly and ruthlessly trampled in the dust. Ay, sir, that great writ, which no English judge, no English minister, no king or queen of England, dare disobey; that writ brought over by our fathers and cherished by them as a priceless inheritance of liberty, an American President has contemptuously set at defiance. Nay, more, he has ordered his subordinate military chiefs to suspend it at their discretion! And yet, after all this, he coolly comes before this House and the Senate and the country, and pleads that he is only preserving and protecting the Constitution; and demands and expects of this House and of the Senate and the country their thanks for his usurpations of power; while outside of this Capitol his myrmidons are clamoring for impeachment of the Chief Justice, as engaged in a conspiracy to break down the Federal Government!

Sir, however much necessity—the tyrant's plea—may be urged in extenuation of the usurpations and infractions of the President in regard to public liberty, there can be no such apology or defence for his invasions of private right. What overruling necessity required the violation of the sanctity of private property and private confidence? What great public danger demanded the arrest and imprisonment, without trial by common law, of one single private citizen, for an act done weeks before, openly, and by authority of his State? If guilty of treason, was not the judicial power ample enough and strong enough for his conviction and punishment? What, then, was needed in his case but the precedent under which other men, in other places, might become the victims of executive suspicion and displeasure?

As to the pretence, sir, that the President has the constitutional right to suspend the writ of *habeas corpus*, I will not waste time in arguing it. The case is as plain as words can make it. It is a legislative power; it is found only in the legislative article; it belongs to Congress only to do it. Subordinate officers have disobeyed it; General Wilkinson disobeyed it, but he sent his prisoners on for judicial trial; General Jackson disobeyed it and was reprimanded by James Madison; but no President, no body but Congress, ever before assumed the right to suspend it. And, sir, that other pretence, of necessity, I repeat, cannot be allowed. It had no existence in fact. The

Constitution cannot be preserved by violating it. It is an offence to the intelligence of this House and of the country to pretend that all this, and the other gross and multiplied infractions of the Constitution and usurpations of power, were done by the President and his advisers out of pure love and devotion to the Constitution. But if so, sir, then they have but one step further to take, and declare, in the language of Sir Boyle Roche in the Irish House of Commons, that such is the depth of their attachment to it that they are prepared to give up, not merely a part, but the whole of the Constitution, *to preserve the remainder*. And yet, if indeed this pretext of necessity be well founded, then let me say that a cause which demands the sacrifice of the Constitution and of the dearest securities of property, liberty, and life cannot be just; at least, it is not worth the sacrifice.

Sir, the power and rights of the States and the people, and of their Representatives, have been usurped; the sanctity of the private house and of private property has been invaded; and the liberty of the person wantonly and wickedly stricken down; free speech, too, has been repeatedly denied; and all this under the plea of necessity. Sir, the right of petition will follow next—nay, it has already been shaken; the freedom of the press will soon fall after it; and let me whisper in your ear that there will be few to mourn over its loss, unless, indeed, its ancient high and honorable character shall be rescued and redeemed from its present reckless mendacity and degradation. Freedom of religion will yield too, at last, amid the exultant shouts of millions, who have seen its holy temples defiled and its white robes of a former innocency trampled now under the polluting hoofs of an ambitious and faithless or fanatical clergy. Meantime national banks, bankrupt laws, a vast and permanent public debt, high tariffs, heavy direct taxation, enormous expenditure, gigantic and stupendous peculation, anarchy first and a strong government afterward, no more State lines, no more State governments, and a consolidated monarchy or vast centralized military despotism, must all follow in the history of the future, as in the history of the past they have, centuries ago, been written.

Sir, I have spoken freely and fearlessly to-day, as became an American Representative and an American citizen; one firmly resolved, come what may, not to lose his own constitutional liberties, nor to surrender his own constitutional rights in the vain effort to impose these rights and liberties upon ten millions of unwilling people. I have spoken earnestly, too, but

yet not as one unmindful of the solemnity of the scenes which surround us upon every side to-day. Sir, when the Congress of the United States assembled here on the 3d of December, 1860, just seven months ago, the Senate was composed of sixty-six Senators, representing the thirty-three States of the Union, and this House of two hundred and thirty-seven members—every State being present. It was a grand and solemn spectacle; the embassadors of three and thirty sovereignties and of thirty-one million people, the mightiest republic on earth, in general Congress assembled. The new wings of the Capitol had then but just recently been finished, in all their gorgeous magnificence, and, except a hundred marines at the navy yard, not a soldier was within forty miles of Washington.

Sir, the Congress of the United States meets here again to-day; but how changed the scene. Instead of thirty-four States, twenty-three only, one less than the number forty years ago, are here or in the other wing of the Capitol. Forty-six Senators and a hundred and seventy-three Representatives constitute the Congress of the now United States. And of these, eight Senators and twenty-four Representatives, from four States only, linger here yet as deputies from that great South which, from the beginning of the Government, contributed so much to mold its policy, to build up its greatness, and to control its destinies. The vacant seats are, indeed, still here; and the escutcheons of their respective States look down now solemnly and sadly from these vaulted ceilings. But the Virginia of Washington and Henry and Madison, of Marshall and Jefferson, of Randolph and Monroe, the birthplace of Clay, the mother of States and of Presidents; the Carolinas of Pinckney and Sumter and Marion, of Calhoun and Macon; and Tennessee, the home and burial place of Jackson; and other States, too, once most loyal and true, are no longer here. The voices and the footsteps of the great dead of the past two ages of the Republic linger still, it may be in echo, along the stately corridors of this Capitol; but their descendants from nearly one-half of the States of the Republic will meet with us no more within these marble halls. But in the parks and lawns, and upon the broad avenues of this spacious city, seventy thousand soldiers have supplied their places; and the morning drumbeat from a score of encampments within sight of this beleaguered capital gives melancholy warning to the Representatives of the States and of the people that AMID ARMS LAWS ARE SILENT.

Sir, some years hence, I would fain hope some months hence, the present generation will demand to know the cause of all

this; and some ages hereafter the grand and impartial tribunal of history will make solemn and diligent inquest of the authors of this terrible revolution.

At the close of his speech Mr. Vallandigham, merely to record his position, presented a resolution to the effect that the Federal Government, being the agent of the States, should be sustained by the people in the exercise of its constitutional powers for the preservation of the Union.

Mr. Holman, in his reply to Mr. Vallandigham, declared that a pacific policy could no longer be pursued by the Government; indeed at no time since the secession of the Confederate States would it have availed.

South Carolina, Florida, and Mississippi declared the separation to be eternal. It was not an apprehension of encroachment on their constitutional rights that induced secession; for, from the very beginning of this Administration the opposition would have controlled every measure of its policy. No, sir; the triumph of the Republican party was not the cause, but the pretence and the occasion, for dissolving the Union.

Thus, by the intemperate ambition of the leaders of public opinion in the South, war became inevitable; for upon the part of the secession leaders it is war—war with all its violence and hatred and malignity and bitterness. What, then, sir, on the part of the loyal men of the nation, is the object of the war?

It is not vengeance; for, in the midst of these vast preparations, the public indignation at the wanton wickedness of this attempt to overthrow the Constitution is softened by shame and sorrow, and the very bitterness of grief. It is not for the purpose of conquest or subjugation; not to enlarge the powers of the Government or increase its territorial limits; not to establish the supremacy of the one section of the Union, or to diminish the social or political rights of the other. But I say, sir, here in my place, in the presence of the Representatives of the people, on the authority of a well-defined public opinion, that the sole and only purpose of the people of the United States in this appeal to arms IS TO MAINTAIN THE UNION UNDER THE COMPACTS AND SAFEGUARDS OF THE CONSTITUTION. The popular instincts are not to be deceived. But for this high purpose, not a farmer would have left his field or a mechanic his shop; not a sword would have been withdrawn from its scabbard. Not only

has this single purpose summoned your army into the field, but if it were possible that any other purpose should be developed—as the invasion of any constitutional right or the usurpation of political power—your army would either, with irresistible fury, hew down the new enemies of the Constitution or, overwhelmed with grief, abandon the tented field in despair. I tell you, sir, that, for purity of purpose, unselfishness of patriotism, intelligence, and cultivation, the army of the Republic may challenge the history of the world for a parallel.

A generation unaccustomed to arms, and in the enjoyment of unexampled blessings of peace, trampling on every selfish consideration, is almost in a moment transformed into a nation of soldiers; peaceful cities and towns and villages and the scenes of rural life, unused to even the tones of martial music, except in celebrating the achievement of a past generation, became the camps of gathering armies. The hereditary feuds of party, bitter as they may have been, are silenced, and the landmarks of political opinion, apparently indelible in the growth of more than half a century, are, at least for the moment, swept away. One sentiment animates every bosom: "The Union must be preserved."

No people have ever so clearly comprehended the necessity of an appeal to arms. The whole people understand the origin and immediate cause of our misfortunes. The unbridled ambition of a few men, unfortunately too great in the confidence of the South, indulging in the delusive hope of a great Southern empire, and, by new commercial relations, making the cities of Charleston and Savannah and New Orleans the commercial rivals of New York and Philadelphia and Boston, suggested the policy of a Southern Confederacy; and the leading statesmen, whose power was to be increased, seizing upon the intemperate opinions of a few fanatical men of the North on the question of slavery, inspired the Southern mind with the belief that the North meditated an assault on the domestic policy of the South and an invasion of their constitutional rights, and thus ensnared the Southern people into the whirlpool of revolution, and aroused such a storm of public rage as might only be satiated by overturning a Union which they themselves and their fathers, for more than three generations, had believed to be the very palladium of their safety.

To recognize secession or acquiesce in the right of peaceful revolution is an end of the Government, destroying the foundation of public faith on which it rests. What State would aid in the construction of forts and arsenals, or other works of

national necessity, within the limits of other States, with the right of secession or acquiescence in revolution the established policy of the Government? To maintain the Union by an appeal to arms, or submit to total national ruin, is the only alternative. Could a brave and free people, controlled by sentiments of justice and honor, hesitate in their choice?

In my judgment an overwhelming majority of the people of the free States would not only have defended the constitutional rights of the South while in the Union, but would have made sacrifice upon sacrifice, even of opinion, to preserve the old fraternal relations and save us from the horrors of civil war, but secession has left us no alternative. It has appealed to the sword; and bitter as may be our grief, dark and gloomy as may be the future, we cannot escape the issue. The sword must decide the contest. A generation, twelve months ago the most happy and peaceful and prosperous that the world has ever seen, may be sacrificed by the mad ambition of the hour. But, if public liberty shall be upheld, the sacrifices of this generation, its shame and sorrow and tears, may redound to the stability and enduring honor of the Republic. As generations of the past have been, so ours may be sacrificed for the happiness and prosperity of the future.

But, sir, I cannot suppress my astonishment that a Representative of any part of the people of the great West, whose interests are so indissolubly united with the free navigation of the Mississippi River, should doubt the overwhelming necessity of maintaining the Union at every hazard.

Recognize the Southern Confederacy, and you place the navigation of the Mississippi, and with it the prosperity of the whole West, at the mercy of a foreign government. It may be said that mutual interests will produce treaties of mutual advantage. But a right existing in nature, sustained by every consideration of justice, and sanctioned by national compacts, cannot be the further subject of treaty. It is a right which the brave men of the West, following the example of their fathers, will hold, if it must be, by the tenure of the sword, and not by the arts of diplomacy. They will not pay one cent for the right to navigate the Mississippi River or any of its tributaries. If the South persists in the obstruction of this right, as she must do if she would maintain her separate nationality, the universal sentiment will be, "millions for war, but not one cent for tribute." If the Government shall hesitate in the vindication of this right, the people will vindicate it for themselves, and will never desist until the great river of the West, from its

springs to the Gulf, shall be as free to their commerce as the ocean is to the commerce of the world.

So far, then, as the great West is concerned, there can be but one sentiment—*there can be no compromise at the expense of the Union;* there can be no settlement of pending difficulties except on the basis of the Constitution and the union of the States. The constitutional rights of no loyal citizen are to be impaired. The domestic and social policy of no State is to be invaded. The constitutional powers of the general Government are to be sustained, not to be enlarged. It is war for the Union, and not for the subjugation of States. As a Democrat and a citizen of the dominant section, I would hail with joy any proposition for compromise and peace coming from the people of the States the wild ambition of whose leaders has plunged the nation into the horrors of civil war, and for the time crushed the Union sentiment of the South. I would insist that the Government should meet such propositions, springing from a returning sense of patriotism and honor, in a spirit of magnanimity, of conciliation, and kindness. I would only demand, sir, that the misguided people of the South should submit, not to the supremacy of the North, or to the force of military power, or to new forms of government, but to the majesty of the Constitution—the Constitution as it was made by their and our fathers; and until that auspicious hour shall come, sir, the army of the Union, following the flag of the Republic wherever it shall be unfurled, cannot with honor return their swords to their scabbards or turn their thoughts upon the sweet blessings of peace.

In the Senate on July 16 John C. Breckinridge [Ky.] attacked the acts of the President as unconstitutional and denied the power of Congress to validate them. Edward D. Baker [Ore.], Kinsley S. Bingham [Mich.], and Henry S. Lane [Ind.] replied to him.

Constitutionality of the President's Acts

Senate, July 16, 1861

Senator Breckinridge.—I deny, Mr. President, that one branch of this Government can indemnify any other branch of the Government for a violation of the Constitution or the laws. The powers conferred upon the general Government by the

people of the States are the measure of its authority. Those powers have been confided to the different departments and the boundaries of those departments determined with perfect exactitude, and I deny that one can encroach upon another, or can indemnify it for a usurpation of powers not confided to it by the Constitution. Sir, Congress, by a joint resolution, has no more right, in my opinion, to make valid a violation of the Constitution and the laws by the President than the President would have by an entry upon the executive journal to make valid a usurpation of the executive power by the legislative department. Congress has no more right to make valid an unconstitutional act of the President than the President would have to make valid an act of the Supreme Court of the United States encroaching upon executive power; or than the Supreme Court would have the right to make valid an act of the Executive encroaching upon the judicial power.

On the contrary, I think that the acts of the President were usurpations, and that, so far from a resolution being passed ratifying and approving them, I think the Chief Magistrate of the country—and I have a right in my place to say it—should be rebuked by the vote of both Houses of Congress.

The President of the United States, first, has established a blockade of the whole Southern coast and an interior blockade of the chief rivers. By what authority has he done it? Where is the clause of the Constitution that authorized him? An attempt was made at the last session of Congress to confer the authority by bill. It did not pass. Congress refused to grant this authority by law in face of the fact that seven States had then withdrawn from the Federal Union. Will any Senator say that the power exists, under the Constitution, upon the part of the President to establish a blockade? It is an incident of war, sir; it is the exercise of the war power; and the Constitution of the United States declares that Congress shall pass an act to declare war, or exercise that power.

In this connection the speaker quoted from remarks made by Daniel Webster during the troubles in South Carolina in 1832-33, when it was suggested that President Jackson would blockade the port of Charleston.

"For one, I raise my voice beforehand against the unauthorized employment of military power, against superseding the authority of the laws by an armed force, under pretence of putting down nullification. The President has no authority to blockade Charleston; the President has no

authority to employ military force, till he shall be duly required so to do, by law, and by the civil authorities. His duty is to cause the laws to be executed. His duty is to support the civil authority."

It is proposed, continued the speaker, to make valid the act of the President in enlisting men for three and five years. I ask you by what authority of Constitution or law he has done this act? The power is not conferred in the Constitution; it has not been granted by the law. It is, therefore, an unconstitutional and illegal act of Executive power. The President, of his own will—and that is one of the acts enumerated in this joint resolution which it is proposed to approve and ratify—has added immensely to the force of the regular army. The Constitution says that Congress shall raise armies, and a law now upon your statute book limits the number of the regular force, officers and men. Hence, sir, that is an act in derogation both of the Constitution and of the laws.

The President has added immensely to the navy of the United States. The Constitution says that Congress shall provide and maintain a navy, and there is now a law upon the statute book limiting the number of men to be employed in the navy. That, like the rest, sir, will not bear argument.

Mr. President, it needs no elaborate argument to show that the Executive authority of the United States has no right to suspend the writ of *habeas corpus.* I content myself here, unless some defence be offered upon this floor, with referring to the fact that the privilege to suspend the writ in case of rebellion or invasion is classed among the legislative powers of the Constitution. That article of the Constitution which refers to the powers of the President, executive powers, touches not the question. I may add that upon no occasion has it ever been asserted in the Congress of the United States, as far as I recollect our history, that this power exists upon the part of the Executive. On one memorable occasion in our history, Jefferson thought a period had arrived when, perhaps, that writ might properly be suspended. He did not undertake to do it himself. He submitted the question to Congress. He did not even recommend that it should be done; and in the long debates that occurred in this and the other branch of Congress upon the question of suspending the writ, which finally was not suspended, not one intimation was given by any speaker in either House, as far as I remember, that the power existed on the part of the President.

What part of the Constitution is it, sir, which confers upon

the President the right to do this act more than upon any other officer, executive or judicial, of the Government? Surely it is not that portion of the Constitution which declares that he shall take care that the laws be faithfully executed. The most eminent commentators on the Constitution of the United States concur in saying that it is purely a legislative act. Justice Story, one of the most eminent judicial lights of New England, in his "Commentaries on the Constitution," declares it to belong to the legislature and not to the Executive. The Supreme Court of the United States have determined that Congress alone can suspend the privilege of the writ. Upon a recent occasion, in a case which arose in Maryland,[1] the present Chief Justice [Roger B. Taney], in an opinion which has never been answered, and which never will be answered, exhausts the argument, and makes all other reference to the subject idle and superfluous.

You propose to make valid the President's suspension of the writ, without making a defence of his act either upon constitutional or legal grounds. What will be the effect, sir? In approving what the President has done in this regard in the past, you invite him to do the like in the future; and the whole country will lie prostrate at the feet of executive power when, in the opinion of the President, the time shall have come to suspend the rights of individuals and to have substituted military power for judicial authority.

I enumerate what I regard as usurpations of the Executive to go upon the record as a protest of those of us who are not willing to see the Constitution subverted and the public liberty trampled under foot, under whatever pretext of necessity or otherwise.

The Constitution declares that Congress alone shall have power "to declare war." The President has made war. Congress alone shall have power "to raise and support armies." The President has raised and supported armies on his own authority. Congress shall have power "to provide and maintain a navy." The President has provided an immense navy and maintains it without authority of law. The Constitution declares that no money shall be taken from the treasury except in pursuance of appropriations made by law. The President has taken money from the treasury without appropriations made by law for the purpose of carrying out the preceding unconstitutional acts. One of the amendments to the Constitution declares that—

[1] See page 77.

"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

They have been disarmed, and disarmed without criminal charge and without warrant. One of the amendments to the Constitution declares that—

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The people have not been exempt from unreasonable searches and seizures. Their property has been taken from them; their houses have been searched without authority of law, and by a pure military authority.

"No person"—

says one of the amendments to the Constitution—

"shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Many persons have been held to answer for infamous crimes without presentment or indictment, and without warrant, by military authority. The same amendment continues:

"Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

Citizens have, by military authority, been deprived of liberty and property without due process of law.

These great and fundamental rights, sir, the sanctity of which is the measure of progress and of civilization, which have been carefully guarded and locked up in your Constitution, have been trampled under foot by military power, are being now every day trampled under foot by military power here and hereabouts in the presence of the two Houses of Congress; and yet, so great upon the one side is the passion of the hour, and so astonishing the stupid amazement on the other, that we receive it as natural, as right, as of course. We are rushing, and with rapid strides, from a constitutional government to a military despotism.

The Constitution says the freedom of speech and of the press shall not be abridged. Three days ago, in the city of St. Louis,

a military officer, with four hundred soldiers—that was his warrant—went into a newspaper office of that city, removed the types, and declared that it should no longer be published, giving, among other reasons, that it was fabricating reports injurious to the United States soldiers in Missouri. We are told in the same dispatch that the proprietors of the paper submitted, and intended to make their appeal—where, and to whom? To the judicial authorities? No, sir; but to Major-General Frémont when he should reach St. Louis; to appeal from General Lyon to General Frémont. The civil authorities of the country are paralyzed, and a practical martial law is being established all over the land. The like never happened in this country before, and would not be tolerated in any country in Europe which pretends to the elements of civilization and regulated liberty. George Washington carried the thirteen colonies through the war of the Revolution without martial law. The President of the United States cannot conduct the Government three months without resorting to it.

Then, Mr. President, the Executive of the United States has assumed legislative powers. The Executive of the United States has assumed judicial powers. The executive power belongs to him by the Constitution. He has, therefore, concentrated in his own hands executive, legislative, and judicial powers, which, in every age of the world, has been the very definition of despotism, and exercises them to-day, while we sit in the Senate Chamber and the other branch of the legislative authority at the other end of the Capitol. What is the excuse; what is the justification; what is the plea? Necessity. Necessity? I answer, first, there was no necessity. Was it necessary, to preserve the visible emblems of Federal authority here, that the Southern coast should have been blockaded? Did not the same necessity exist when Congress, at its last session, refused to pass the force bill, that existed at the time the President assumed these powers? Was it necessary, until Congress should meet, to the existence of the Union of these States, and of its Constitution, that powers not conferred by the instrument should be assumed? Was there any necessity for overrunning the State of Missouri? Was there a necessity for raising the largest armies ever assembled upon the American continent, and fitting out the largest fleets ever seen in an American harbor? Will any Senator point out the necessity for the occurrences which are now taking place every day of arresting individuals without warrant of law? If that be a necessity in the present condition of affairs, and when Congress is in session here, what a

long necessity we have before us and impending over us! Sir, let Congress adjourn, approving and ratifying these acts, and the same character of necessity precisely, even stronger, perhaps, will justify the President in superseding the laws in every State of this Union where, in his opinion, it should be done; and, sir, there will not be a vestige of civil authority left to rise after the passing tread of military power.

But, Mr. President, I deny this doctrine of necessity. I deny that the President of the United States may violate the Constitution upon the ground of necessity. The doctrine is utterly subversive of the Constitution; it is utterly subversive of all written limitations of government; and it substitutes, especially where you make him the ultimate judge of that necessity, and his decision not to be appealed from, the will of one man for a written constitution. Mr. President, the Government of the United States, which draws its life from the Constitution, and which was made by that instrument, does not rest, as does the constitution in many other countries, upon usage or upon implied consent. It rests upon express written consent. The Government of the United States may exercise such powers, and such only, as are given in this written form of government and bond which unites the States; none others. The people of the States conferred upon this agent of theirs just such powers as they deemed necessary, and no more; all others they retained. That Constitution was made for all contingencies; for peace and for war.

Mr. President, is this contest to preserve the Constitution? If so, then it should be waged in a constitutional manner. Is the doctrine to obtain that the provisions of the Federal Constitution are to be entirely subordinated to the idea of political unity? Shall the rallying cry be, "the Constitution and the Union," or are we prepared to say, "the Constitution is gone, but the Union survives"? What sort of Union would it be? Let this principle be announced, let us carry on this contest with this spirit, and wink at or approve violations of this sacred instrument, and, sir, the people will soon begin to inquire what will become of their liberties at the end of the strife. The pregnant question, Mr. President, for us to decide is whether the Constitution is to be respected in this struggle; whether we are to be called upon to follow the flag over the ruins of the Constitution. Without questioning the motives of any, I believe that the whole tendency of the present proceedings is to establish a government without limitations of powers, and to change radically our frame and character of government.

Sir, in proof of my statement that the disposition is to conduct this contest without regard to the Constitution, witness the remarks that fell the other day from the able and very eloquent Senator from Oregon [Edward D. Baker]. He is a constitutional lawyer; he knows what the Constitution of his country is—no man better. He declared, in the presence of the Senate and the country, that he meant direct war, and that for that purpose nothing was so good as a dictator; he therefore was for conferring upon the President of the United States almost unlimited powers. I heard no rebuke administered to that eminent gentleman. Upon the contrary, I saw warm congratulations from more than one Senator, apparently upon the sentiments and the character of the address.

In the course of the same speech to which I have referred that eminent Senator declared that not only must that country be ravaged by armies, but that unless the people of those States paid willing and loyal obedience to the Federal Government, their State form must be changed, and they must be reduced to the condition of Territories; to be governed by governors sent from Massachusetts and Illinois.

Senator Baker.—On the contrary, I spoke against giving too much power to the President. I was occupying my usual constitution guarded position against the increase of a standing army. I gave, as an excuse for voting for an army at all, the present condition of public affairs; and, in that light and with that purpose, I did say that, in order to save the Union, I would take some risk of despotism. I repeat that now: I will risk a little to save all.

Again: I expressed my sincere hope—perhaps I may have added my conviction—that in a better and not a very distant day the Southern States would not only return to their allegiance, but would become loyal in sentiment as well as opinion. But I declared then what no comment of his will drive me from, that if, contrary to that hope, they did not do it, if they would not send members here to govern them, it was better, for the sake of ultimate peace, for freedom, civilization, humanity, that they should be governed as Territories are governed, rather than permit perpetual anarchy, confusion, discord, and civil war. [Manifestations of applause in the galleries.] I did say that and I do believe that now; and I think the events of the next six months will show that it would be better for the country and the world and the Senator himself if he believed it. [Applause in the galleries.]

Senator Breckinridge.—Mr. President, I did not misunder-

stand the position of the Senator from Oregon, and I think that I stated it in substance as he has stated it himself. The Senator reaffirms upon this floor that, if it should become necessary in the opinion of Congress, he would be in favor of reducing these States to a territorial condition. Well, sir, if they are out of the Union, I suppose we have the power to make war on them under that general power which exists in all people to make war, and conquer them and do as we please with them; but, if they are regarded as still being States in this Union, and to be treated according to the provisions and the powers conferred by the Federal Constitution, there is no pretence of argument, none will be made, that the instrument contains any authority to reduce them to the territorial condition. It is an additional proof of the statement I made that the Constitution of the United States is put aside in this contest. I want the people to know it. Let them determine. They will determine as they think best for their own interest and their own destiny. Perhaps, sir, they will pause and consider what is likely to become of their own liberties after this spirit shall have worked out itself.

I consider it not only subversive of the Constitution, but I consider it subversive of the public liberty, to clothe any man with dictatorial powers, and to undertake, under a republican form of government, to govern ten million people as if they were in a territorial condition.

Mr. President, as a further proof, I will accumulate two or three more. The excellent Senator from Connecticut [James Dixon], heretofore always regarded as one of the most moderate and conservative in the political organization to which he is attached, said in substance that, if the institution of African slavery stood in the way of the Union, it must be abolished.

Let us pause one moment, Mr. President, and consider to what that leads. Men who love the Constitution and the Union of the States as sincerely and cordially as the Senator himself could possibly do consider the Union not an end, but a means—a means by which, under the terms of the Constitution, liberty may be maintained, property and personal rights protected, and general happiness secured. The substance of what is declared by the Senator is that the unity of the Government shall survive not only the Constitution, but all rights both of persons and of property.

The institutions of the Southern States existed before the Constitution was formed, and were intended to be secured by it. Their property of any other description is no more sacred in

OPPONENTS OF THE "UNNATURAL AND FRATRICIDAL WAR."
[Satire on Breckinridge's Petition]
From the collection of the New York Public Library

view of the Constitution, or of their own laws, than the description of property to which the Senator referred. To declare that this contest shall be prosecuted, if necessary, to the abolition of slavery in the Southern States is in principle to declare that, if it becomes necessary, it shall be prosecuted to the total subversion of all State authority, to the total overthrow of all rights, personal and political, and to the entire subversion of their liberties, possibly of ours. The conclusions are not too large which I draw from the principle announced by the Senator; and taken in connection with the declaration of the Senator from Oregon, taken in connection with the acts which are treated in this joint resolution, and the other acts which I have enumerated, it proves what I fear, and what I desire the country to understand, that the Constitution of the United States is no longer to be held as the measure of power on one side and of obedience on the other, but that it is to be put aside to carry out the purposes of the majority.

I hold, sir, that it is no legitimate mode to preserve the Union of the States by trampling the Constitution under foot; and I do not believe that the people of the adhering States are willing to go into this strife with vast armies, make war, abolish institutions and political communities themselves, struggling simply for the idea of territorial integrity and national unity, and finding, when they come out of the contest, the Constitution gone and themselves at sea as to the character of the institutions with which they shall emerge from it.

Mr. President, I regret to say that what may be called the more extreme, violent, and resolute men of the Republican organization appear to have control of its destiny at this time, and all efforts are being made for the purpose of preventing any return to peace, and of inflaming the public passions against the institutions of the South. I heard a bill read at that table this morning by its title, "A bill to suppress the slaveholders' rebellion."[1] If it had had a title, "A bill to provide for the execution of the laws," or any other parliamentary title known heretofore in American legislative proceedings, of course I should not have been astonished; but when I see in a deliberative body an attempt made, through the very heading of a bill, to create odium and prejudice against a particular interest, which is equally protected with others under the Constitution of your country, it shows a frame of mind which leads all thoughtful men to despair both of the Constitution and the country, if such a spirit can prevail.

[1] Introduced by Samuel C. Pomeroy [Kan.].

Senator Bingham.—I wish to ask the Senator if he denies that the present rebellion is a slaveholders' rebellion?

Senator Breckinridge.—I do, sir. I have no doubt that the question of slavery, and their rights as connected with that institution, as they understand them, had a great deal to do first with the controversies which preceded the separation, and then with the act of separation itself; but it is perfectly manifest that, whereas the proportion of slaveholders to non-slaveholders is very small in the seceded States, the sentiments of the population are almost unanimous. Allow me to ask the Senator a question. Does he approve the title of that bill?

Senator Bingham.—I do.

Senator Breckinridge.—I regret to hear that answer; but it serves to bring the mind of the country to consider the actual condition of affairs, and the danger which is impending over us.

My colleague has this moment handed me the bill referred to. The enacting clause, as might have been anticipated from the title, reads as follows:

Be it enacted, That from and after the passage of this act, there shall be no slavery or involuntary servitude in any of the States of this Union that claim to have seceded from the Government and are in open and armed resistance to the execution of the laws and the provisions of the Constitution of the United States.

I believe that is to be carried out by a proclamation of the President.

And be it further enacted, That immediately after the passage of this act, the President of the United States shall cause his proclamation to be issued, setting forth the immediate and unconditional emancipation of all persons held as slaves in any of the aforesaid States under the laws thereof, and also ordering all officers to give protection to all such emancipated slaves, and to accept the services of all who may tender them in behalf of the Government, if, in the judgment of such officers, such services shall be useful or necessary to the prosecution of this war.

It is not only a congressional act of emancipation, but it is intended to arm the slaves against the masters. It is not only to confiscate the whole property, but it is to foment a servile war. That is a proposition offered in the Senate of the United States! Sir, I shall find myself denounced in the newspapers to-morrow morning as a man who was uttering treason here for speaking a word in favor of the Constitution; but not one word will be uttered against a Senator who deliberately proposes to trample that Constitution under his feet, and to plunge the country into all the horrors of civil and of servile war.

I shall trouble the Senate no longer. I know that argument and appeal are all in vain. The Senate pants for action. I am quite aware that, in the present temper of Congress, one might as well oppose his uplifted hand to the descending waters of Niagara as to reason or to appeal against the contemplated proceedings. The few of us left here who are faithful to our convictions can only look with sadness upon the melancholy drama that is being enacted before us. We can only hope that this flash of frenzy may not assume the form of chronic madness, and that in any event Divine Providence may preserve for us and for posterity, out of the wreck of a broken Union, the priceless principles of constitutional liberty and of self-government. [Applause in the galleries.]

SENATOR LANE.—Gentlemen take a technical objection against the action of the President, and say that he has violated the Constitution of the United States. I remember an incident, I think in Roman history, where an African pro-consul was required to swear that he had not violated the laws of Rome; instead of which, with uplifted hand, he swore that he had saved the Roman republic. And, whatsoever differences of opinion may this day exist in reference to the action of the President, I take it for granted that every intelligent patriot in the land not only believes but knows that the President has saved the Republic by his energetic and patriotic action since the 4th of March. I sanction and approve everything that the President has done during the recess of Congress, and the people sanction and approve it, and there is no power this side of Heaven that can reverse that decision of the American people. I not only sanction all that they have done, but I sanction all that they are soon to do. When your victorious and conquering columns shall sweep treason out of old Virginia; when they shall make that old commonwealth a fit residence for the patriotic descendants of her revolutionary fathers, I shall sanction and approve that. I sanction and approve the use of force now, at once, immediately; and I would shake that traitorous commonwealth as with an earthquake tread of a hundred thousand armed men.

What is it that the President has done since the last meeting of Congress? First, he has declared a blockade of the Southern ports, and gentlemen tell us there is no constitutional authority for that. It is the first duty of the President to see that the laws are faithfully executed. We have a tariff law imposing duties upon foreign importations. That has been disregarded by the seceding States; they have assumed to pass a tariff act

different from ours. That law of Congress cannot be enforced by the ordinary course of procedure under your collections of revenue at the proper ports established by law. There is no higher power in the Constitution of the United States delegated to the President than the power to "take care that the laws be faithfully executed." These high and extraordinary powers, although not perhaps technically granted in the Constitution, result as an incident to the war power, which is invoked, and constitutionally invoked, under that provision of the Constitution which authorizes the President to use force to suppress insurrection and to put down rebellion. I sanction, then, the proclamation establishing a blockade.

The next objection is to the declaration of martial law, by which the writ of *habeas corpus* was suspended. I only regret that when the writ was suspended the *corpus* of Baltimore treason was not "suspended" too. It is necessary to the enforcement of the laws and to the preservation of the Union that this writ of *habeas corpus* should be suspended; and the Constitution of the United States says, in express terms, it may be suspended in case of rebellion and insurrection. Then the whole question comes to this: Who is to judge? Where is the discretion lodged? Clearly with the President of the United States; and it can be safely lodged nowhere else. Suppose an insurrection breaks out during the recess of Congress: the President is sworn to uphold the law and the Constitution; he finds armed rebellion; has he no power to put it down? May he not use all proper power to put down armed rebellion? I approve, then, the suspension of the writ of *habeas corpus*.

What more does the honorable Senator from Kentucky say? That General Washington prosecuted the Revolutionary War to a successful termination without ever suspending the writ of *habeas corpus*. That is true. He was in a contest with a foreign foe. Here we are engaged in entirely a different war, where our enemies are in our midst. What would gentlemen have the President do? Suppose my distinguished friend from Kentucky had been elected President, and seven States had seceded and levied war against the United States, and were with an embattled host threatening to take and capture the capital: what would have been his action? Would he have folded his arms? No, no. He, I doubt not, would have made a blow to defend the Union and the Constitution of the United States. Then what else could he have done than President Lincoln has done? If, as I suppose he does, the distinguished Senator from Kentucky echoes public opinion in Kentucky or intends to

echo public opinion there, I have no doubt that that proud commonwealth would have sanctioned and approved and advised the very step the President has taken to vindicate the laws and to defend the Constitution of the United States.

But another charge which he made against this Administration—that private papers were seized. I suppose the honorable and distinguished Senator from Kentucky refers to telegraphic dispatches. They were seized, but not quite soon enough, as I think; and still they have proven a California placer of treason. It was right and proper to seize them. It was right to seize the dispatches to vindicate the character of honorable Senators on this floor.

Another count in this indictment is that citizens have been imprisoned without any authority of law, which amounts to precisely the former charge that martial law has been declared under the proclamation of the President in some few localities where it was eminently necessary. Citizens of Baltimore have been imprisoned under military authority, and, as I believe, have been rightfully imprisoned. When a New England regiment cannot march through the city of Baltimore to defend the capital without being attacked and shot down by a mob, it is time that the military authority should do what the civil authority was not able to do—suppress and put down that unauthorized mob. I sympathize with the true and loyal citizens of Baltimore. I sympathize with the patriotic soldiery of Massachusetts who were coming to defend the capital. I have no sympathy to waste upon armed traitors and rebels. I leave others to pronounce their eulogy and to show them sympathy.

Another charge is that the President has violated the Constitution of the United States in this: that he has disarmed citizens; refused them the privilege, under the Constitution, of bearing arms. Sir, it is true that he has refused traitors the privilege of using arms against the Government of the country. General Lyon, of Missouri, and the gallant Frank Blair, and their associates, did disarm some fifteen hundred rebels at Camp Jackson, near St. Louis; and for that we are told they are violators of the Constitution. The President has not only guaranteed by his action the right to bear arms, but he has invited the patriotic citizens of the United States to bear arms for the only noble purpose for which men can take arms—in defence of the Constitution and liberties of the people. Is the right to bear arms in Kentucky so sacred that it may never be violated? Then why do you not bear arms in defence of the Constitution and liberties of the Republic? There is a right

to bear arms that is worth something. Does Kentucky stand upon the right to bear arms? Why is she not bearing arms upon the battlefield to-day, beside Massachusetts and Indiana and Ohio, and the loyal States? Why does she not insist upon her right to bear arms, when traitors are seeking to tear down the Government under which we live? The right to bear arms, forsooth, is a forgotten right in the chivalric old commonwealth of Kentucky. I have listened for her voice in this war; I have heard it not; and why? Because her action is, as I believe, paralyzed by the course of her State authorities; but on the first Monday of next August the true voice of old Kentucky will be heard, and you will have a two-thirds majority in favor of loyalty to the Union, and the places that know her distinguished governor now will soon know him no more forever.

Another count in this indictment against the Administration is that they have put down treasonable newspapers. The Administration have shown a forbearance beyond all parallel in history. There is no government of constituted authority upon earth that would have tolerated either the treasonable utterance or publications of these traitors. I say that I not only approve of the destruction of that St. Louis paper, but I rejoice at it as an evidence of returning common sense in those who are to defend the Government of the country.

One word, before I forget it, on the subject of this war and the object of the war. There is no war levied against any State, or against any State institutions. The President has called out troops to suppress insurrection and put down rebellion. These are the objects for which your troops have been called into the field. The abolition of slavery is no object contemplated for which this war is to be prosecuted. But let me tell gentlemen that, although the abolition of slavery is not an object of the war, they may, in their madness and folly and treason, make the abolition of slavery one of the results of this war. That is what I understand to be precisely the position of the Administration upon the subject of this war.

The gentleman closes his very able and eloquent speech with the assumption of a position and doctrine that I do not for one moment admit; and that is that the States made this National Union of ours. I have read wrongfully, and to little purpose, the history of the convention that formed the Constitution if that is historically corect. I understand the people of the United States to have made this Constitution; and so Webster understood it.

This doctrine of State rights, as opposed to the rights of

the general Government, under the Federal Constitution, is a most dangerous and pestilent heresy, which underlies this whole controversy. Out of that idea, and one other idea, the present disastrous state of things has been brought upon the country. The idea of social, political inequality among the respective members of the Confederacy underlies this war at its very foundation. We are to teach them, I hope, a lesson of respect for the North; we are to teach them a lesson of equality. Whatever else this war may do, it will teach a lesson of equality for a thousand years; nay, more, it will add a thousand years to the glorious lifetime of this, the only republic upon the earth.

So much for these objections to what the President of the United States has done. But the closing argument, after all, and that upon which the gentleman places most stress, is that an effort was made at the last session of Congress to give to the President this very power, and that the Congress of the United States refused to pass that bill. That is true; and why? Because the vacant seats around us were then filled by traitors, many of whom are now in arms against the Republic. For that reason, and that alone, we failed to confer this power upon the President of the United States.

But the gentleman says he is glad that the people have their attention now directed to the true posture of American politics. I am glad that the people have their eye turned in the same direction. In the last sixty days four hundred thousand troops have volunteered to defend the Stars and Stripes and to defend the Constitution. There is no parallel in all human history to the widespread enthusiasm which has pervaded the whole people. The nearest parallel is when Peter the Hermit preached a crusade for the recovery of the Holy Sepulcher; and our cause is little less sacred than that for the recovery of the grave of the Savior of mankind, for we propose a crusade in defence of the Constitution, the rights of man, and the liberties of the American people.

I understand by coercion a right to march troops wheresoever the Government desires to march them. You hear much said about the invasion of a sovereign State. Who can invade a State? The home government or a foreign government? Virginia is to-day as much a part of the United States as Indiana, and the President has as much right to march troops there, and I hope is now engaged in marching troops there for the purpose of crushing out rebellion. Let us stand by the compromises of the Constitution. Let us hereafter send all our pacific messages to traitors at the mouth of the cannon. Let

J. J. Crittenden

the politicians reflect honestly the will of the people, and your volunteer soldiers will crush out this rebellion without leaders and without officers. They have determined to do this very thing.

But gentlemen say how, from the ruins, will you reconstruct the Republic? We do not contemplate any destruction of the Republic which involves a reconstruction. We intend to protect the Union men of the border States, to foster the Union sentiment, to get up a counter revolution, which will lay all secession and treason in ruins. We expect soon to readmit Tennessee into the Union, as we have recently readmitted old Virginia; we expect soon to readmit North Carolina; and we expect to present in six months an unbroken front to all foreign powers, no single star erased, the light of no star obliterated by treason in any part of the country. When we get the seceding States properly represented upon the floor of the Congress of the United States, then we shall have nothing to do but to punish the last remains and remnants of this most disgraceful rebellion; and the remedy, after all, is a Kentucky remedy; we propose—hemp. That is the remedy for treason; not under mob law, but under indictments in courts. We propose to have courts and judges sworn to support the law, and who will abide by that sacred oath. When this is done, I promise you that treason and rebellion will be buried forever.

Anti-Secession Resolutions

The day after the Union defeat at Bull Run, John J. Crittenden [Ky.], who had retired from the Senate to enter the House of Representatives, introduced in the House a resolution confirming the President's theory of secession, namely, that war had been forced on the Government by the Southern disunionists; that it was waged by the Government not for subjugating the seceded States, nor interfering with their rights and institutions, but to maintain the supremacy of the Constitution, the dignity and integrity of the Union, and the equality of all the States; and that, so soon as these objects were accomplished, the war ought to cease.

This was passed by the House on July 22 with only two dissenting votes, those of Henry C. Burnett [Ky.] and John W. Reid [Mo.], other opponents of the

measure, such as Clement L. Vallandigham [O.], not voting. On July 24 the Senate passed a resolution to the same effect (introduced by Andrew Jackson of Tennessee) with only five dissenting votes, John C. Breckinridge [Ky.] being among the number.

On July 17 Lyman Trumbull [Ill.] introduced in the Senate a bill to suppress insurrection in places proclaimed by the President, by giving the military authorities power in their respective districts to suspend the writ of *habeas corpus* by proclamation, arrest persons on the charge of sedition and try them by court-martial, compel suspected persons to take the oath of allegiance, etc. This came up for discussion on July 30.

Martial Law by Legislative Enactment

Senate, July 30-August 1, 1861

Senator Trumbull supported his resolution. He said:

I wish to premise by saying that I am as much for standing by the Constitution of the country and for putting down this rebellion in a constitutional and legal way as any gentleman here. I will not yield to the Senator from Kentucky [Mr. Breckinridge] or any other Senator in my veneration for the Constitution of the United States. I believe that that instrument was intended by its framers to be perpetual. I believe it contains all the power necessary to suppress even this gigantic rebellion; and the object of this bill is to confer the necessary power on the military authorities, in cases of insurrection and rebellion, to suppress them, and to regulate, as far as practicable, by law the exercise of those powers. The object of the bill is to provide for putting down rebellion in a constitutional and legal manner.

When the Constitution gives authority to call forth the militia for the purpose of enforcing the laws of the Union it is not a meaningless authority, and whatever authority it may be necessary to exercise to accomplish that object I say your militia and your army may lawfully exercise. If it be necessary to suspend the writ of *habeas corpus*, if it be necessary to ravage the country and plunder towns, if it be necessary to slay persons, to search houses, to do anything that men in time of war may do, then that authority is given in the Constitution.

You will find, by reference to the works upon international law, that it is laid down by all writers that whenever an insurrection assumes such formidable proportions as to be recognized by the Government, and whenever the civil authority is unable to put it down and the military is called out, then all the incidents which, according to the laws of nations, may be done by an army follow your army called out for that purpose.

The Supreme Court of the United States has so decided this very question [Luther *vs.* Borden and others, in 1849, reported in 7 Howard]. Judge Woodbury dissented from the opinion of the court, and placed his dissent chiefly upon the ground that a State had not this power, admitting that the Government of the United States might exercise it.

Here is an express decision that the military power may interfere in a case where the civil authorities are overborne, and may arrest anyone when they have reasonable grounds to believe that he is engaged in the insurrection, and may enter houses for that purpose; and the court say that, if this were not so, the military array of the Government would be mere parade, and rather encourage than repel attack. Shall it then be said, when express power is given by the Constitution of the United States to call out the militia to enforce the laws of the country, that they are merely to make a parade? What more has your military power done in this instance than was done in the State of Rhode Island? Have they done anything more in Baltimore than to arrest persons suspected of favoring this insurrection? Nothing. The writ of *habeas corpus* cannot relieve them; the courts cannot interfere; and this power, the court say, is essential to the preservation of order and free institutions and the existence of every government, and they would draw the power from the nature of government itself if it were not expressly given in the Constitution.

That case covers, in my judgment, every feature of the bill now under consideration.

James A. Bayard, Jr. [Del.], considered the bill "exceedingly dangerous to the personal liberties and rights of every citizen of the United States, and also entirely unnecessary for the purpose of carrying on this war with the seceded States." In order that it might have grave consideration he moved its postponement until next day.

William P. Fessenden [Me.] wished the bill settled

at once, or to be postponed indefinitely; with his present impressions he would vote against it.

John C. Breckinridge [Ky.] concurred with the Senator from Maine. He said:

If there is a serious intention to pass it, at some time before the vote is taken I may briefly express my opposition to it. I content myself now with saying that it appears to me to combine in eleven sections everything most atrocious which has been resisted, fought against, and trampled down by a free people for the last five hundred years; and that I think the introduction of such a bill into the American Senate is the most gloomy commentary we could have upon the degenerate character of the times.

After some discussion the bill was postponed until next day, and, when it then came up, until the day following (August 1).

Jacob Collamer [Vt.] opposed the bill as a usurpation by Congress of the powers of the President.

Mr. President, it is quite useless for men to talk about Congress having the war-making power. All there is in that argument is this: Among the powers enumerated in the Constitution is that Congress shall have power to declare war; that is to say that that department of the Government which can initiate a war in this country is Congress; but that has nothing to do with a war made upon us. If a war be waged and declared by another nation upon this nation, I take it, it needs no declaration of Congress about it; it is a state of war. The difficulty that arose in my mind was this: War has been declared by those whom we do not recognize as a sovereign power. We do not regard it as a regularly declared war. Therefore, in order to avoid all doubt about the fact that an insurrection existed, in order to give to that insurrection in this country, by whatever name called, a local and legal existence, recognized by us, we passed a law in the early part of this session by which we authorized the President, wherever the insurrection existed in a State, and especially if it claimed to do so by State authority, and the State authority did not disclaim it, to declare the people of that State, or any section of it, where the insurrection existed, in a state of war. This is what we have done in order to give it all formal sanction.

Now, Mr. President, the war, I take it, exists. It has been suggested by some gentlemen here that that war cannot be

legally prosecuted after Congress meets; that though it might be, from the necessity of the case, prosecuted by the President, in the exercise of the powers that ordinarily belong to the prosecution of war, until Congress met, yet when Congress did meet he could do nothing but what Congress authorized. I utterly disclaim any such principle in our Government. Why, sir, since we have met and during the three or four weeks we have been sitting here, the President, or those acting under him, have sent down twenty, thirty, or forty thousand of our own citizens into Virginia, and have killed hundreds of people. Is this murder? Where is your law to authorize it? Look through your acts and through all your statutes, and where do you find any authority of that kind? Has it been done by any action of Congress? Not at all. Sir, we may as well come to it first as last: the power to prosecute war and the manner of carrying on that war is entirely executive—it is so in every country everywhere—and the laws that govern those who thus prosecute that war are the laws of war, not the laws of municipalities.

They are not the laws of Congress, nor of Parliament, nor of the National Assembly of France: they are the laws of war; and no war can be prosecuted in any other way. The President, or the general of our armies, in the prosecution of this war, is to conduct it just the same as any other. I desire no resentments or irritations about it; but they do not derive their authority from Congress. Not only do they not derive their authority from that source, but they cannot. The laws of war are laws between the belligerents. When you capture a spy you can execute him, according to the laws of war. Those laws are recognized, and do not come out of legislation by anybody.

Again, Mr. President, the mere powers which are absolutely necessary to the prosecution of a war are many of them powers which Congress, in the express words of the Constitution, is forbidden to adopt. Now, take one feature of the bill before us which recognizes the trying of people and punishing them capitally, executing them, by court-martial. The Constitution provides expressly that all crimes shall be tried by a jury, unless they are offences committed by those who are members either of the army or navy. That is the provision of the Constitution. Now it is not with that clause as it may be with the *habeas corpus*. That clause may be suspended; but the provision in regard to trial by jury Congress has no power to suspend anywhere.

I mention that as one illustration. I can find a number of others similar to it, wherein the prohibitions of the Constitution—prohibitions upon the action of Congress—are of that character that shows it is not possible to give, by any action of Congress, those powers which everybody recognizes as the rights of war, under the laws of war. Therefore, without occupying any further time about it, the war now being in legal existence, and, if any more particular locality should be given to it, it is by presidential proclamation, under the statute we have already passed; my idea is that the rights of war, the power of prosecuting it, and the mode of carrying it on, with all its limitations, are to be derived from what are known in the world as the laws of war. They are entirely in the executive administration, not derived from Congress, and, I think, ought not to be undertaken to be legislated about in Congress, because, as I before said, the very attempt to legislate upon them is to negative the idea that they have any other power; and we should want more time and more forethought and foresight to provide for the various exigencies which may present themselves in war than we should ever be able to give to the subject. Therefore, I think it better to leave it to the laws of war, where it properly belongs.

Senator Trumbull.—The Senator from Vermont asserts that this is war; that you cannot regulate a war by Congress; it is the law of nations that regulates war; and he wants to know, if this is a bill providing for war, why you do not provide for spies, and why you do not make other provisions? He goes on to say that it is directly against the Constitution of the United States to try a man by court-martial, because a man is entitled to a jury trial. Why, sir, did the learned Senator from Vermont never read the acts of Congress? It is provided by the act of 1806, in force to-day, that—

"Whoever shall be convicted of holding correspondence with, or giving intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial."

The Senator says we cannot regulate the proceedings during a time of war; that Congress has no power over them. The statute is full of regulations of the army in time of war; and this very act, the very case he puts, provides the punishment for a spy.

The statute is full of provisions controlling and governing the army in time of war. Express authority is given to Con-

gress by the very words of the Constitution to make the rules and regulations for the government of the army; and yet, forsooth, we are told by the Senator from Vermont Congress cannot make any laws at all; war is declared, and the President can carry on the war just as he pleases. Now, sir, I deny his very premises. I deny that this is a war in the sense in which he speaks. There is a rebellion. We have treated it as a rebellion. The Executive has treated it as a rebellion. The Senator wants to know if it was murder when our army went over to Virginia a few days ago and killed several hundred persons? Certainly not. It was not necessary to write down in the statute book that our army should have authority to go into Virginia and shoot men; but what has Congress done? Congress has recognized this existing state of things. It has voted hundreds of millions of money and hundreds of thousands of men to put down the rebellion. It has authorized the calling out of the militia for the purpose of enforcing the laws; and the courts have decided that when the militia are called out for that purpose they may use all the means necessary to accomplish the object; and the provision of the Constitution which provides for trial by jury has no application. When the military authority is called out to enforce the laws and suppress rebellion, they have all the authority necessary to accomplish the end for which that power is given; and if it be necessary to level houses, to ravage the country, and to shoot men, they have the authority. The military power is not called out as a display. Nor is this a war in the sense the Senator from Vermont would intimate. His doctrine would recognize these Southern rebels as a government. He wants to provide for an exchange of prisoners, and he asks why that is not in the bill.

Senator Collamer.—I disclaimed that they were a government. I said the reason we passed a law to authorize the President to issue his proclamation was because we did not recognize such a power on earth.

Senator Trumbull.—Then, if he does not recognize this as a war in that sense, why undertake to apply to it the rules of war? Is a war existing in my State? By virtue of the military authority men in the State of Illinois have been arrested. Is war existing in Baltimore? By what authority are you arresting men in the city of Baltimore and holding them in custody? Is the Senator from Vermont, or is anybody in this country, for leaving the power in the hands of the President, or, rather, in the hands of your commanding general, just when he pleases, without proclamation, to march to any locality, arrest men, put

them in prison, and do what he pleases with them? Shall we be told that Congress has no power, although the express authority to make rules and regulations for the government of every officer is vested here in Congress and nowhere else? Our power is omnipotent over this army; and they ought to have rules and regulations by which to be governed. And, let me tell Senators, it is no new feature for courts-martial, in time of rebellion, insurrection, and civil war, to bring men before them and try them, sentence them, and shoot them without the intervention of any grand or petit jurors.

Senator Breckinridge.—I endeavored, Mr. President, to demonstrate a short time ago that the whole tendency of our proceedings was to trample the Constitution under our feet and to conduct this contest without the slightest regard to its provisions. Everything that has occurred since demonstrates that the view I took of the conduct and tendency of public affairs was correct. Already both Houses of Congress have passed a bill virtually to confiscate all the property in the States that have withdrawn. Nothing can be more apparent than that that is a general act of emancipation.

Again, sir: to show that all these proceedings are characterized by an utter disregard of the Federal Constitution, what is happening around us every day?

The police commissioners of Baltimore were arrested by military authority without any charges whatever. In vain they have asked for a specification. In vain they have sent a respectful protest to the Congress of the United States. In vain the House of Representatives, by resolution, requested the President to furnish the Representatives of the people with the grounds of their arrest. He answers the House of Representatives that, in his judgment, the public interest does not permit him to say why they were arrested, on what charges, or what he has done with them—and you call this liberty and law and proceedings for the preservation of the Constitution! They have been spirited off from one fortress to another, their locality unknown, and the President of the United States refuses, upon the application of the most numerous branch of the national legislature, to furnish them with the grounds of their arrest, or to inform them what he has done with them.

Well might the Senator from Delaware [Willard Saulsbury] say that this bill contains provisions conferring authority which never was exercised in the worst days of Rome, by the worst of her dictators. I have wondered why the bill was introduced. I have sometimes thought that possibly it was introduced for

the purpose of preventing the expression of that reaction which is now evidently going on in the public mind against these procedures so fatal to constitutional liberty. The army may be thus used, perhaps, to collect the enormous direct taxes for which preparation is now being made by Congress; and, if in any part of Illinois, or Indiana, or New York, or any State, North or South, there shall be difficulty or resistance the President, in his discretion, may declare it to be in a state of insurrection, all the civil authorities may be overthrown, and his military commander may make rules and regulations, collect taxes, and execute the laws at his pleasure.

Mr. President, gentlemen talk about the Union as if it was an end instead of a means. They talk about it as if it was the union of these States which alone had brought into life the principles of public and of personal liberty. Sir, they existed before, and they may survive it. Take care that in pursuing one idea you do not destroy, not only the Constitution of your country, but sever what remains of the Federal Union. These eternal and sacred principles of public and of personal liberty, which lived before the Union and will live forever and ever somewhere, must be respected; they cannot with impunity be overthrown; and, if you force the people to the issue between any form of government and these priceless principles, that form of government will perish; they will tear it asunder as the irrepressible forces of nature rend whatever opposes them.

The Senator from Vermont [Mr. Collamer] says that all these proceedings are to be conducted according to the laws of war; he adds that these laws require many things to be done which are absolutely forbidden in the Constitution; which Congress is prohibited from doing, and all other departments of the Government are forbidden from doing by the Constitution; but that they are proper under the laws of war, which must alone be the measure of our action now. I desire the country, then, to know this fact: that it is openly avowed upon this floor that constitutional limitations are no longer to be regarded; but that you are acting just as if there were two nations upon this continent, one arrayed against the other; some eighteen or twenty millions on one side and some ten or twelve millions on the other, as to whom the Constitution is nought, and the laws of war alone apply.

Sir, if the Constitution is really to be put aside, if the laws of war alone are to govern, and whatever may be done by one independent nation at war with another is to be done, why not act upon that practically? I do not hold that the clause of

the Constitution which authorizes Congress to declare war applies to any internal difficulties. I do not believe it applies to any of the political communities bound together under the Constitution in political association. I regard it as applying to external enemies. Nor do I believe that the Constitution of the United States ever contemplated the preservation of the Union of these States by one half the States warring on the other half. It details particularly how military force shall be employed in this Federal system of government, and it can be employed properly in no other way; it can be employed in aid of the civil tribunals. If there are no civil tribunals, if there is no mode by which the laws of the United States may be enforced in the manner prescribed by the Constitution, what follows? The remaining States may, if they choose, make war, but they do it outside of the Constitution; and the Federal system, as determined by the principles and terms of that instrument, does not provide for the case. It does provide for putting down insurrections—illegal uprisings of individuals—but it does not provide, in my opinion, either in its spirit or in its terms, for raising armies by one half of the political communities that compose the Union for the purpose of subjugating the other half; and the very fact that it does not is shown by the fact that you have to avow on the floor of the Senate the necessity for putting the Constitution aside and conducting the whole contest without regard to it and in obedience solely to the laws of war.

Then, if we are at war, if it is a case of war, treat it like war. Practically it is being treated like war. The prisoners whom the United States have taken are not hung as traitors. The prisoners which the other States have taken are not hung as traitors. Is it war? The Senator is right in saying it is war; but, in my opinion, it is not only an unhappy but an unconstitutional war. Why, then, all these proceedings upon the part of the Administration, refusing to send or to receive flags of truce; refusing to recognize the actual condition of affairs; refusing to do those acts which, if they do not terminate, may at least ameliorate the unhappy condition in which we find ourselves placed?

So much, then, we know. We know that admitted violations of the Constitution have been made and are justified. We know that we have conferred by legislation, and are, perhaps, still further by legislation to confer, authority to do acts not warranted by the Constitution of the United States. We have it openly avowed that the Constitution of the Union, which is the

bond of association, at least, between those States that still adhere to the Federal Union, is no longer to be regarded. It is not enough to tell me that it has been violated by those communities that have seceded. Other States have not seceded; Kentucky has not seceded; Illinois has not seceded; some twenty States yet compose the Federal Union, nominally under this Constitution. As to them, that instrument, in its terms and in its spirit, is the bond of their connection under the Federal system. They have a right, as between themselves and their comembers of the Union, to insist upon its being respected. If, indeed, it is to be put aside, and we are to go into a great continental struggle, they may pause to inquire what is to become of their liberties and what their political connections are to be in a contest made without constitutional warrant and in derogation of all the terms of the instrument? How can this be successfully controverted? Though you may have a right to trample under foot the Constitution and to make war (as every power has a right to make war) against the States that have seceded, have you a right to violate it as to any of the adhering States who insist upon fidelity to its provisions? No, sir.

EDWARD D. BAKER [Ore.].—Will the gentleman be kind enough to tell me what single particular provision there is in this bill which is in violation of the Constitution of the United States?

SENATOR BRECKINRIDGE.—They are all, in my opinion, so equally atrocious that I dislike to discriminate. The Senator can select which he pleases.

SENATOR BAKER.—Let me try, then, if I must generalize as the Senator does, to see if I can get the scope and meaning of this bill. It is a bill providing that the President of the United States may declare, by proclamation, in a certain given state of fact, certain territory within the United States to be in a condition of insurrection and war; which proclamation shall be extensively published within the district to which it relates. That is the first proposition. I ask him if that is unconstitutional? He will not dare to say it is.

SENATOR BRECKINRIDGE.—The State of Illinois, I believe, is a military district. The State of Kentucky is a military district. In my judgment, the President has no authority, and, in my judgment, Congress has no right to confer upon the President authority, to declare a State in a condition of insurrection or rebellion.

SENATOR BAKER.—The bill does not say a word about States.

SENATOR BRECKINRIDGE.—Does not the Senator know, in fact,

that those States compose military districts? It might as well have said "States" as to describe what is a State.

SENATOR BAKER.—The objection certainly ought not to be that the President can declare a part of a State in insurrection and not the whole of it. In point of fact, the Constitution of the United States, and the Congress of the United States acting upon it, are not treating of States, but of the territory comprising the United States; and I submit once more to his better judgment that it cannot be unconstitutional to allow the President to declare a county or a part of a county, or a town or a part of a town, or part of a State or the whole of a State, or two States, or five States in a condition of insurrection, if, in his judgment, that be the fact.

In the next place the bill provides that, that being so, the military commander in that district may make and publish such police rules and regulations as he may deem necessary to suppress the rebellion and restore order and preserve the lives and property of citizens. I submit to him, if the President of the United States has power, or ought to have power, to suppress insurrection and rebellion, is there any better way to do it, or is there any other? The gentleman says do it by the civil power. Look at the fact. The civil power is utterly overwhelmed; the courts are closed; the judges banished. Is the President not to execute the law? Is he to do it in person, or by his military commanders? Are they to do it with regulation, or without it? That is the only question.

Mr. President, the honorable Senator agrees with the Senator from Vermont that there is a state of war. What then? There is a state of public war; none the less war because it is urged from the other side; not the less war because it is unjust; not the less war because it is a war of insurrection and rebellion. It is still war; and I am willing to say it is public war—public as contradistinguished from private war. What then? Shall we carry that war on? Is it his duty as a Senator to carry it on? If so, how? By armies, under command; by military organization and authority, advancing to suppress insurrection and rebellion. Is that wrong? Is that unconstitutional? Are we not bound to do with whoever levies war against us as we would do if he was a foreigner? There is no distinction as to the mode of carrying on war; we carry on war against an advancing army just the same, whether it be from Russia or from South Carolina. Will the honorable Senator tell me it is our duty to stay here, within fifteen miles of the enemy seeking to advance upon us every hour, and talk about nice questions of constitutional con-

struction as to whether it is war or merely insurrection? No, sir. It is our duty to advance, if we can; to suppress insurrection; to put down rebellion; to dissipate the rising; to scatter the enemy; and, when we have done so, to preserve, in the terms of the bill, the liberty, lives, and property of the people of the country by just and fair police regulations. When we took Mexico did we not do it there? Is it not a part, a necessary, an indispensable part of war itself, that there shall be military regulations over the country conquered and held? Is that unconstitutional?

It is true that the Constitution of the United States does adopt the laws of war as a part of the instrument itself during the continuance of war. The Constitution does not provide that spies shall be hung. Is it unconstitutional to hang a spy? There is no provision for it in terms in the Constitution; but nobody denies the right, the power, the justice. Why? Because it is part of the law of war. The Constitution does not provide for the exchange of prisoners; yet it may be done under the law of war. Indeed the Constitution does not provide that a prisoner may be taken at all; yet his captivity is perfectly just and constitutional. It seems to me that the Senator does not, will not, take that view of the subject.

Again, sir, when a military commander advances, as I trust, if there are no more unexpected great reverses, he will advance, through Virginia, and occupies the country, there, perhaps, as here, the civil law may be silent; there perhaps the civil officers may flee as ours have been compelled to flee. What then? If the civil law is silent, who shall control and regulate the conquered district—who but the military commander? As the Senator from Illinois has well said, shall it be done by regulation or without regulation? Shall the general, or the colonel, or the captain be supreme, or shall he be regulated and ordered by the President of the United States? That is the sole question. The Senator has put it well.

I agree that we ought to do all we can to limit, to restrain, to fetter the abuse of military power. Bayonets are at best illogical arguments. I am not willing, except as a case of sheerest necessity, ever to permit a military commander to exercise authority over life, liberty, and property. But, sir, it is part of the law of war; you cannot carry in the rear of your army your courts; you cannot organize juries; you cannot have trials according to the forms and ceremonial of the common law amid the clangor of arms, and somebody must enforce police regulations in a conquered or occupied district. I ask the Senator

from Kentucky again respectfully, is that unconstitutional; or, if, in the nature of war, it must exist, even if there be no law passed by us to allow it, is it unconstitutional to regulate it? That is the question, to which I do not think he will make a clear and distinct reply.

I would ask the Senator what would you have us do now—a Confederate army within twenty miles of us, advancing, or threatening to advance, to overwhelm your Government; to shake the pillars of the Union; to bring it around your head, if you stay here, in ruins? Are we to predict evil and retire from what we predict? Is it not the manly part to go on as we have begun, to raise money and levy armies, to organize them, to prepare to advance; when we do advance, to regulate that advance by all the laws and regulations that civilization and humanity will allow in time of battle? Can we do anything more? To talk to us about stopping is idle; we will never stop. Will the Senator yield to rebellion? Will he shrink from armed insurrection? Will his State justify it? Will its better public opinion allow it? Shall we send a flag of truce? What would he have? Or would he conduct this war so feebly that the whole world would smile at us in derision? What would he have? These speeches of his, sown broadcast over the land, what clear, distinct meaning have they? Are they not intended for disorganization in our very midst? Are they not intended to dull our weapons? Are they not intended to destroy our zeal? Are they not intended to animate our enemies? Sir, are they not words of brilliant, polished treason, even in the very Capitol of the Confederacy? [Manifestations of applause in the galleries.]

What would have been thought if, in another capitol, in another republic, in a yet more martial age, a Senator as grave, not more eloquent or dignified than the Senator from Kentucky, yet with the Roman purple flowing over his shoulders, had risen in his place, surrounded by all the illustrations of Roman glory, and declared that advancing Hannibal was just and that Carthage ought to be dealt with in terms of peace? What would have been thought if, after the battle of Cannæ, a Senator there had risen in his place and denounced every levy of the Roman people, every expenditure of its treasure, and every appeal to the old recollections and the old glories? Sir, a Senator, himself learned far more than myself in such lore [Mr. Fessenden], tells me, in a voice that I am glad is audible, that he would have been hurled from the Tarpeian rock. It is a grand commentary upon the American Constitution that we permit these words to

be uttered. I ask the Senator to recollect, too, what, save to send aid and comfort to the enemy, do these predictions of his amount to? Every word thus uttered falls as a note of inspiration upon every Confederate ear. Every sound thus uttered is a word (and falling from his lips, a mighty word) of kindling and triumph to a foe that determines to advance. For me, I have no such word as a Senator to utter. For me, amid temporary defeat, disaster, disgrace, it seems that my duty calls me to utter another word, and that word is: bold, sudden, forward, determined war, according to the laws of war, by armies, by military commanders clothed with full power, advancing with all the past glories of the Republic urging them on to conquest.

I do not stop to consider whether it is subjugation or not. It is compulsory obedience, not to my will, not to yours, sir, not to the will of any one man, not to the will of any one Senate; but compulsory obedience to the Constitution of the whole country. When we subjugate South Carolina what shall we do? We shall compel its obedience to the Constitution of the United States; that is all. We do not mean, we have never said, any more. If it be slavery that men should obey the Constitution their fathers fought for, let it be so. If it be freedom, it is freedom equally for them and for us. We propose to subjugate rebellion into loyalty; we propose to subjugate insurrection into peace; we propose to subjugate Confederate anarchy into constitutional Union liberty. When the Confederate armies are scattered; when their leaders are banished from power; when the people return to a late repentant sense of the wrong they have done to a Government they never felt but in benignancy and blessing, then the Constitution made for all will be felt by all, like the descending rains from heaven which bless all alike. Is that subjugation? To restore what was as it was for the benefit of the whole country and of the whole human race is all we desire and all we can have.

Sir, how can we retreat? Sir, how can we make peace? Who shall treat? What commissioners? Who would go? Upon what terms? Where is to be your boundary line? Where the end of the principles we shall have to give up? What will become of constitutional government? What will become of public liberty? What of past glories? What of future hopes? Shall we sink into the insignificance of the grave—a degraded, defeated, emasculated people, frightened by the results of one battle and scared at the visions raised by the imagination of the Senator from Kentucky upon this floor? No, sir; a thousand times, no, sir! We will rally—if, indeed, our words be necessary—we will rally the people, the loyal people, of the whole country. They will pour forth their treasure, their money, their men, without stint, without measure. The most peaceable man in this body may stamp his foot upon this Senate chamber floor, as of old a warrior and a Senator did, and from that single tramp there will spring forth armed legions. Shall one battle determine the fate of empire, or a dozen? the loss of one thousand men or twenty thousand, or $100,000,000 or $500,000,000? In a year's peace, in ten years, at most, of peaceful progress, we can restore them all. There will be some graves reeking with blood, watered by the tears of affection. There will be some privation; there will be some loss of luxury; their will be somewhat more need for labor to procure the necessaries of life. When that is said, all is said. If we have the country, the whole country, the Union, the Constitution, free government—with these there will return all the blessings of well-ordered civilization; the path of the country will be a career of greatness and of glory such as, in the olden time, our fathers saw in the dim visions of years yet to come, and such as would have been ours now, to-day, if it had not been for the treason for which the Senator too often seeks to apologize.

Senator Breckinridge.—The Senator asks me: "What would you have us do?" I would have us stop the war. We can do it. I have tried to show that there is none of that inexorable necessity to continue this war which the Senator seems to suppose. I do not hold that constitutional liberty on this continent is bound up in this fratricidal, devastating, horrible contest. Upon the contrary, I fear it will find its grave in it. The Senator is mistaken in supposing that we can reunite these States by war. He is mistaken in supposing that eighteen or twenty million upon the one side can subjugate ten or twelve million upon the other; or, if they do subjugate them, that you can restore constitutional government as our fathers made it. You will have to govern them as Territories, as suggested by the Senator, if ever they are reduced to the dominion of the United States. Sir, I would prefer to see these States all reunited upon true constitutional principles to any other object that could be offered me in life; and to restore, upon the principles of our fathers, the Union of these States, to me the sacrifice of one unimportant life would be nothing; nothing, sir. But I infinitely prefer to see a peaceful separation of these States than to see endless, aimless, devastating war, at the end of which I see the grave of public liberty and of personal freedom.

The Senator asked if a Senator of Rome had uttered these things in the war between Carthage and that power, how would he have been treated? Sir, the war between Carthage and Rome was altogether different from the war now waged between the United States and the Confederate States. I would have said —rather than avow the principle that one or the other must be subjugated, or perhaps both destroyed—let Carthage live and let Rome live, each pursuing its own course of policy and civilization.

The Senator says that these opinions which I thus expressed, and have heretofore expressed, are but brilliant treason; and that it is a tribute to the character of our institutions that I am allowed to utter them upon the Senate floor. Mr. President, if I am speaking treason I am not aware of it. I am speaking what I believe to be for the good of my country. If I am speaking treason, I am speaking it in my place in the Senate, By whose indulgence am I speaking? Not by any man's indulgence. I am speaking by the guaranties of that Constitution which seems to be here now so little respected. And, sir, when he asked what would have been done with a Roman Senator who had uttered such words, another Senator on this floor replies in audible tones: "He would have been hurled from the Tarpeian rock." Since, in ancient Rome, (while the defenders of the public liberty were sometimes torn to pieces by the people, yet their memories were cherished in grateful remembrance,) to be hurled from the Tarpeian rock was ever the fate of usurpers and tyrants, this remark is an insult which ought not to be offered on the floor of the Senate chamber to a Senator who is speaking in his place.

Senator Trumbull's bill was not brought to a vote, owing to the opposition of such influential Republicans as Senators Fessenden and Collamer, who thought it both unnecessary and of doubtful constitutionality.

Senator Breckinridge soon after left the Senate to become a general in the Confederate army. Senator Baker also shortly resigned his seat to become a Union officer. He was killed while gallantly leading his regiment in a hopeless charge at the battle of Ball's Bluff, Va., on October 21, 1861.

CHAPTER IV

Military Emancipation

Gen. Benjamin F. Butler Declares Slaves Employed on Confederate Works "Contraband of War"; the Doctrine Is Upheld by the President and Congress—Gen. John C. Frémont Issues an Order of Military Emancipation; It Is Revoked by the President, Who Is Criticized Therefor by Anti-Slavery Radicals–His Reply to Sen. Orville H. Browning [Ill.]—Frémont Is Removed—Gen. Henry W. Halleck Is Put in Charge of Department of Missouri—He Excludes Fugitive Slaves from the Army—Henry Wilson [Mass.] Introduces in the Senate a Bill to Punish Army Officers for Returning Fugitives—Debate: in Favor, Jacob Collamer [Vt.], Sen. Wilson; Amendment to Punish Officers for Enticing Slaves to Run Away, Supported by Willard Saulsbury [Del.], James A. Pearce [Md.]—Francis P. Blair, Jr. [Mo.] Makes a Similar Proposition in the House—Debate: in Favor, Mr. Blair, John A. Bingham [O.]; Opposed, Robert Mallory [Ky.), Charles A. Wickliffe [Ky.], Henry Grider [Ky.]—Bill Passed by House and Senate—Gen. David Hunter's Proclamation of Military Emancipation; It Is Revoked by the President.

SLAVES employed on the earthworks of General John B. Magruder [Conf.], in May, 1861, ran away to Fortress Monroe, Va., which was held by Union troops under Benjamin F. Butler, and General Butler refused to give them up to their owners on the ground that, Virginia claiming to be a foreign State, its citizens who endorsed this claim (as did the owners) could not assert as their right a duty of the Federal Government which extended only to its citizens.

This reasoning led to an even more advanced position which was concisely summed up in a single phrase, *viz.*, that negroes employed in aid of rebellion were "contraband of war, and so subject to confiscation." Since the Southerners regarded slaves as chattels they could not consistently except to this conclusion.

The Government heartily approved General Butler's

course. On May 30 Secretary Cameron of the War Department gave him a formal order authorizing him to pursue the policy he had adopted. Even the border-State Union men did not voice any objections, for to do so would impeach their loyalty. The public generally applauded Butler.

Congress, as we have seen (page 70), declared that all negroes employed upon fortifications, etc., by the Confederates, should not, if taken by the Union troops, be returned to their owners, and in this it was supported by public opinion in the North and even in the border States.

When, however, Major-General John C. Frémont, in command of the Western Department, consisting of

"CONTRABANDS"

An envelope cut during the Civil War

Illinois and all the region between the Mississippi and the Rocky Mountains, attempted to gain a similar popular acclaim by issuing on his own responsibility a proclamation confiscating all property of persons in rebellion, and emancipating their slaves, neither the Administration nor the country as a whole supported him, although the Abolitionists hailed it as the most important act thus far of the war.

To President Lincoln and his military advisers the previous course of General Frémont had been most disappointing. His neglect to reënforce the brave General Lyon, isolated at Springfield in southwestern Missouri among gathering rebel forces, had led to the defeat and death of Lyon at Wilson's Creek on August 10, and his egotism in refusing to consult with the civil authorities and his subordinate officers had thoroughly demoralized his entire department.

President Lincoln therefore was watching for danger in that quarter, and, as soon as he was informed of Frémont's proclamation on August 30 of military emancipation, wrote him on September 2 to modify it so that it should conform to the act of Congress confiscating property used for insurrection, giving as a reason for his objection that the liberation of slaves would alarm Southern Unionists, and perhaps precipitate Kentucky into the Confederacy.

Before Lincoln received a reply to this he wrote to General David Hunter a letter full of shrewd foresight and delicate diplomacy:

September 9, 1861.

My dear Sir: General Frémont needs to have by his side a man of large experience. Will you not, for me, take that place? Your rank is one grade too high to be ordered to it; but will you not serve the country and oblige me by taking it voluntarily?

Two days later he received an answer from Frémont to his letter of September 2. It was full of excuses and self-justification. Mrs. Frémont brought it in person. She adopted a hostile attitude toward the President, and, insinuating that there was a conspiracy against her husband, demanded a copy of the President's Missouri correspondence. Lincoln courteously but firmly replied:

I do not feel authorized to furnish you with copies of letters in my possession, without the consent of the writers. No impression has been made on my mind against the honor or integrity of General Frémont, and I now enter my protest against being understood as acting in any hostility toward him.

The situation precipitated by General Frémont's proclamation was most critical. The border States, for whose adherence to the Union Lincoln had thus far most successfully played, seemed about to escape from his control. Besides, soldiers from the Northern States, who had enlisted to save the Union and not to free the negro, were greatly disaffected by Frémont's

proclamation. On the other hand events had rapidly developed many conservative Northerners into anti-slavery radicals, and these, together with the original Abolitionists, made a hero of General Frémont. Such persons had to be treated with utmost consideration.

One of these was an old friend and adviser of Lincoln, Orville H. Browning, who had succeeded Stephen A. Douglas in the Senate. On September 17 he wrote to the President objecting to his attitude toward Frémont's proclamation. To this letter Lincoln replied on the 22d:

My dear Sir: Yours of the 17th is just received; and, coming from you, I confess it astonishes me. That you should object to my adhering to a law which you had assisted in making and presenting to me less than a month before is odd enough. But this is a very small part. General Frémont's proclamation as to confiscation of property and the liberation of slaves is purely political and not within the range of military law or necessity. If a commanding general finds a necessity to seize the farm of a private owner for a pasture, an encampment, or a fortification he has the right to do so, and to so hold it as long as the necessity lasts; and this is within military law, because within military necessity. But, to say the farm shall no longer belong to the owner, or his heirs forever, and this as well when the farm is not needed for military purposes as when it is, is purely political, without the savor of military law about it. And the same is true of slaves. If the general needs them, he can seize them and use them; but, when the need is past, it is not for him to fix their permanent future condition. That must be settled according to laws made by law-makers, and not by military proclamations. The proclamation on the point in question is simply "dictatorship." It assumes that the general may do anything he pleases—confiscate the lands and free the slaves of loyal people as well as of disloyal ones. And, going the whole figure, I have no doubt, would be more popular with some thoughtless people than that which has been done! But I cannot assume this reckless position, nor allow others to assume it on my responsibility.

You speak of it as being the only means of saving the Government. On the contrary, it is itself the surrender of the Government. Can it be pretended that it is any longer the Government of the United States—any government of constitution and laws—wherein a general or a president may make permanent rules of property by proclamation? I do not say Congress might not with propriety pass a law on the point just such as General Frémont proclaimed. I do not say I might not, as a member of Congress, vote for it. What I object to is, that I, as President, shall expressly or impliedly seize and exercise the permanent legislative functions of the Government.

So much as to principle. Now as to policy. No doubt the thing was popular in some quarters, and would have been more so if it had been a general declaration of emancipation. The Kentucky legislature would not budge till that proclamation was modified; and General Anderson telegraphed me that, on the news of General Frémont having actually issued deeds of manumission, a whole company of our volunteers threw down their arms and disbanded. I was so assured as to think it probable that the very arms we had furnished Kentucky would be turned against us. I think to lose Kentucky is nearly the same as to lose the whole game. Kentucky gone, we cannot hold Missouri, nor, as I think, Maryland. These all against us, and the job on our hands is too large for us. We would as well consent to separation at once, including the surrender of this capital. On the contrary, if you will give up your restlessness for new positions, and back me manfully on the grounds upon which you and other kind friends gave me the election and have approved in my public documents, we shall go through triumphantly. You must understand I took my course on the proclamation because of Kentucky. I took the same ground in a private letter to General Frémont before I heard from Kentucky.

There has been no thought of removing General Frémont on any ground connected with his proclamation. . . . I hope no real necessity for it exists on any ground.

Frémont's continued inaction, however, compelled the President at last to supersede him with General David Hunter. A few months later Frémont was placed in charge of the Mountain Department [western Virginia and eastern Kentucky and Tennessee].

On November 9, 1861, General Henry W. Halleck was placed in charge of the Department of Missouri [Missouri, Arkansas, western Kentucky, Iowa, Minnesota, Wisconsin, and Illinois], and Hunter put in command of the Department of Kansas [Kansas, Nebraska, Colorado, Dakota, and Indian Territory].

General Halleck set himself at once to settle the vexatious problem of the relation of the army to fugitive slaves. Contrary to Frémont's policy he issued an order on November 20 excluding these fugitives from the army lines on the ground that they conveyed information to the enemy. For this order he was violently attacked by the anti-slave press and Congressmen, who averred that, on the contrary, the fugitives brought in valuable information about the enemy.

During the session of December, 1861–July, 1862, several bills were proposed in both the Senate and the House to punish officers and privates of the army and navy for aiding owners to recover fugitive slaves. That of Henry Wilson [Mass.] was reported on January 6, 1862, in the Senate. On January 17 it came up for discussion.

Return of Fugitive Slaves by Army Officers

Congress, January 6-March 10, 1862

Jacob Collamer [Vt.] said:

It is a perversion entirely to undertake to use soldiers as a mere *posse comitatus*, or as a mere police force, or to use them in any way in the enforcement of the laws of any particular section into which they may be marched. They have nothing to do with that; their business is to suppress the rebellion, and disperse the insurgents wherever they may be found in arms. I believe we are generally agreed that there is great impropriety in military men exercising military authority within the States in relation to their internal and municipal affairs; it is very likely to produce collisions that ought to be avoided.

Willard Saulsbury [Del.] moved to amend the resolution by making it punish soldiers for enticing slaves from their masters or harboring them. This amendment was amended by limiting the cases to slaves of loyal masters.

Senator Wilson was opposed to any amendment. James A. Pearce [Md.] supported the amendment.

The bill without it is an invitation to all slaves in the vicinity to resort to the lines of the army as a harbor of refuge where they can be safe from the operation of the undoubted legal rights of the owner. It is an invitation to the whole body of such people within a loyal State, such as Maryland, to accomplish their freedom by indirection. It is not an act of emancipation in its terms; but, so far as it can operate and does operate, it leads directly to that result. I know that fact that the slaves of masters whose titles are undoubted and their loyalty unquestioned have resorted to camps, and the officers sometimes have been very unwilling and have positively refused to take any step whatever in the matter? What is the result of that? A great many of these soldiers come from States where they hold this whole system of domestic servitude in such dislike that they will not permit the master to exercise his undoubted, valid rights, even though he goes accompanied by an officer of the law. He cannot exercise his rights except at the peril of personal ill treatment from these soldiers, who are not to be restrained by a military officer and who, therefore, will make their will the law of the case. Sir, I do not think that is right. I think that is making a camp of the United States army a refuge for runaway negroes. I think we are violating the rights of loyal masters in loyal States.

As for its operation in seceded States the bill will have no operation there anyway. Its effect is to take away the property of the people of Maryland, and of the loyal people of Maryland too. If it does not have that effect it will have none. I think, therefore, the amendment ought to be retained and that equal justice demands it. If it is not retained we of Maryland shall have to consider that our rights in this species of property are set aside, so far as this Government can set them aside by such an act.

The bill was kept from a vote by the tactics of the Democrats aided by a few conservative Republicans.

In the House, however, Francis P. Blair, Jr. [Mo.], of the Military Committee, on February 25, reported the substance of the Wilson resolution in an additional Article of War. The article was strongly opposed by Robert Mallory [Ky.], who argued with great ability that the army was intended to aid the Government in enforcing its laws, of which the Fugitive Slave Act was one, and, if the articles were not intended to repeal this

act, it was a denial to the State where that law was sought to be enforced by the aid of the general Government in its enforcement.

"If it be the intention to repeal that law I wish gentlemen of the House to say so candidly and at once, and to let us know what we are to expect in regard to this matter."

Mr. Blair refused to decide whether his bill was a virtual repeal of the Fugitive Slave Act, contenting himself with saying that in common with a great many others he believed that "the army of the United States has a great deal better business than returning fugitive slaves."

John A. Bingham [O.], however, took it upon himself to declare that:

"it is impossible by any fair construction to make the bill imply any interference with the administration of civil justice in this country, either under the legislation of 1850 or under any act that has ever been passed by this Government. Sir, the bill simply provides that your officers in the army and navy, and those under them, shall not exercise in the future, as in the past, the functions which belong alone and exclusively to the civil magistrates of the country, upon the penalty of being tried by a court-martial, and, upon conviction, of being dismissed from the service thus abused and disgraced."

Mr. Mallory, while granting the high legal attainments of the gentleman from Ohio, was

"very suspicious of the accuracy of the working of his mind upon questions of this character. [Laughter.] Upon this question, at any rate, I cannot concur with him in opinion upon the construction he gives to this bill."

Charles A. Wickliffe [Ky.], referring to General Grant's return to their owners of slaves captured at Fort Donelson [February 16, 1862], asked the gentleman from Ohio if the bill would prevent a military commander from the exercise of such a power hereafter?

Henry Grider [Ky.], stating that the Rebel army had run off with $300,000 worth of slaves in three counties

of Kentucky, asked the gentleman if the bill proposed that these should not be intercepted and returned, and whether he would make the military power paramount to every other consideration, even of constitutional obligation, and turn these negroes free.

Mr. Bingham replied that the prevalent practice of officers in the army returning without trial slaves to those claiming to be their owners was in direct violation of the carefully guarded provisions of the Fugitive Slave act, and this practice the bill was intended to prevent.

This practice is a military despotism that the American people should not tolerate for a moment, nor lose a moment in ending by the enactment of this bill into a law. Mr. Speaker, if I had my way, instead of having this bill provide, as it does simply provide, that persons in the United States military or naval service thus offending should, upon conviction by court-martial, be dismissed from the service, I would have the bill provide that such offenders should, by the sentence of a court-martial, be shot as kidnappers and as invaders of the rights of persons, as violators of justice and of the very sanctuary of justice.

Mr. Mallory said that he did not ask that slaves be returned where there was doubt as to their ownership. The laws of his State, indeed, forbade it.

Mr. Bingham replied:

There is always a doubt, a doubt imposed by law upon the conscience of every civil magistrate, in favor of the party brought before him and attempted to be deprived of his liberty—a doubt which should bind the magistrate to stand by the party who is thus sought to be deprived of his liberty until that doubt is overcome by lawful evidence. But, sir, no man in the military or naval service of this country has the right to hear evidence or to determine that question of doubt. I go further. The presumption of law is that every man in this land is entitled to his liberty until the contrary shall be made to appear. I want to know by what authority any officer in the naval or military service of the United States has the right to assume for himself to hear evidence and to determine against that presumption?

Mr. Mallory.—I understand my friend from Ohio to admit

in a case where there is no doubt either in law or in fact, where the officer knows the party is the slave of the loyal master who claims him, that he is willing that the slave should be restored to the master by the United States officer.

Mr. Bingham.—The gentleman will pardon me; I admit no such thing.

Mr. Mallory.—Does the gentleman deny that in that case it becomes the duty of the officer to restore the slave to his loyal master?

Mr. Bingham.—I do deny it. I deny that he has the right to entertain the question. I deny that he has the right, where no offence is charged, to clothe himself with authority to sit upon the right of any human being in this land to his liberty. One of the strongest utterances of the Declaration of Independence may be repeated upon this floor this day in favor of the enactment of this very bill. That utterance was: that "the King," whose character is thus marked by every act which may define a tyrant, "has affected to render the military independent of, and superior to, the civil power."

That is what is so offensive in this practice which has obtained in your camps, from the shores of the Potomac to the shores of the Mississippi—the attempt by the military power to assume and exercise civil authority in contempt of the civil power of the land. Some of your military officers of high and low degree have been detailing their men for the purpose of seizing, and have seized, persons not accused of crime, but *suspected* of the virtue of preferring liberty to bondage. Are we to revive here in this land the hated rule of the Athenian ostracism, by which men were condemned, not because they were charged with crime or proved guilty of crime, but because they were *suspected* to possess and practice the virtues of justice and patriotism in such degree as rendered their presence in the state dangerous to republican equality? Aristides was condemned because he was just, and Themistocles because he was the savior of the city.

These alleged fugitive slaves, who are subjected to this intolerable military despotism, are seized, not upon the charge or the proof that they have stolen anybody's goods, not that they have invaded anybody's rights, but upon the suspicion that they have been guilty of asserting their right of personal liberty, and of running away from a cruel and unjust bondage. Some of your officers, according to the practice of late, assume the right to sit in judgment upon the delicate question of the liberty of these suspected persons, to seize them, to condemn

them as slaves, and to surrender them over to stripes and punishment.

I have read in the papers, and I believe it is true, that one of these persons *suspected* of escaping from bondage to liberty swam across the Ohio River, making for an encampment upon the Indiana shore, where he saw the banner of liberty flying which he fondly looked upon as consecrating that place, at least, as sacred to the rights of person, and where even the rights of a hunted bondman would be respected. After having been beaten about, bruised, and mangled against the rocks in the channel of the river, to whose rushing waters he committed his life that he might regain his liberty, he reached the opposite shore. Somebody went into the camp and reported that this man was suspected of the crime of having run away from chains and slavery. A company of soldiers, it is said, were detailed to seize him, and did seize and return him as a slave to the man who claimed him. If that practice is to be pursued by the army and navy under the American flag it ought to cover with midnight blackness every star that burns upon its field of azure, and with everlasting infamy the men who dare to desecrate it to such base uses.

What are we fighting for in this land? For the supremacy of the laws; for the administration of justice according to law; for liberty regulated and sheltered by law. We are fighting for the principle, among others, that no man shall be deprived of his liberty in this land without a hearing before the only tribunals authorized by law to hear and determine the question. The bill now under consideration proposes to provide against interfering with that right, sacred as any other, guarded and protected by the very letter and spirit of the Constitution. And it surprises me that any gentleman should stand here to-day objecting to the enactment of such a law.

The bill was passed by a substantially party vote—yeas, 83; nays, 44. Coming before the Senate on March 4 it was vehemently opposed by the Democrats, and as stoutly supported by the Republicans, and on March 10 was passed by 29 yeas to 9 nays—a party vote, with the exception that James A. McDougall [Dem.] of California voted for it.

The capture of Port Royal, S. C., on November 7, 1861, opened the way to the Federal occupation of the coast of South Carolina, Georgia, and Florida, which

was formed into the military department of the South, General Hunter being called from Kansas to command it.

General Hunter's Emancipation Proclamation

On May 9, 1862, General David Hunter issued a proclamation on the ground that, martial law having been declared in it (on April 25), slavery and martial law were "altogether incompatible in a free country."

On May 19 the President revoked the order, saying that he "had no knowledge, information, or belief" of an intention on General Hunter's part to issue it, nor had the general nor any other commander or person authority from the Government to declare the slaves of any State free.

I further made known that, whether it be competent for me, as commander-in-chief of the army and navy, to declare the slaves of any State or States free, and whether, at any time, in any case, it shall have become a necessity indispensable to the maintenance of the government to exercise such supposed power, are questions which, under my responsibility, I reserve to myself, and which I cannot feel justified in leaving to the decision of commanders in the field. These are totally different questions from those of police regulations in armies and camps.

CHAPTER V

Abolition of Slavery in the District of Columbia

Sen. Wilson Introduces Bill in Senate for Abolition of Slavery in the District of Columbia—Debate: in Favor, John P. Hale [N. H.], Sen. Wilson, James Harlan [Ia.], Charles Sumner [Mass.]; Opposed, Garrett Davis [Ky.], Waitman T. Willey [Va.], Anthony Kennedy [Md.], Willard Saulsbury [Del.]; Bill Is Passed in Senate and House—Points Made by Representative Benjamin F. Thomas [Mass.]—The President Signs the Bill, with Remarks.

IN his first annual message (December 2, 1861) President Lincoln recommended that steps be taken to colonize the "contraband" freedmen and other free negroes in a congenial climate.

To carry out the plan of colonization may involve the acquiring of territory and also the appropriation of money beyond that to be expended in the territorial acquisition. Having practiced the acquisition of territory for nearly sixty years, the question of constitutional power to do so is no longer an open one with us. The power was questioned at first by Mr. Jefferson, who, however, in the purchase of Louisiana, yielded his scruples on the plea of great expediency. If it be said that the only legitimate object of acquiring territory is to furnish homes for white men, this measure effects that object; for the emigration of colored men leaves additional room for white men remaining or coming here. Mr. Jefferson, however, placed the importance of procuring Louisiana more on political and commercial grounds than on providing room for population.

On this whole proposition, including the appropriation of money with the acquisition of territory, does not the expediency amount to absolute necessity—that, without which the Government itself cannot be perpetuated?

On February 13, 1862, a bill drawn by Henry Wilson [Mass.] was reported in the Senate from the Committee

on the District of Columbia abolishing slavery in the District. It provided for compensation to the owners, which was fixed by commissioners appointed by that purpose, but with limitation of an average of $300 per slave to each owner, for the punishment of kidnapping of such freedmen and other negroes as felony, and appropriated $100,000 to be expended under direction of the President for colonizing these and other negroes of the District, if they so desired, in tropic countries outside of the United States.

The bill came up for discussion on March 12, six days after the receipt of a special message from the President proposing compensated emancipation in any State so desiring it (see page 163).

Abolition of Slavery in the District of Columbia

Senate, March 12-April 3, 1862

Garrett Davis [Ky.] objected to the bill; he first attacked the voluntary colonization feature as impracticable.

Not one slave in a hundred will consent to be colonized when liberated. The liberation of the slaves in this District, and in any State of the Union, will be just equivalent to settling them in the country where they live; and whenever that policy is inaugurated, especially in the States where there are many slaves, it will inevitably and immediately introduce a war of extermination between the two races. Free negroes are notoriously worthless. A negro's idea of freedom is freedom from work as a general rule. Where you have a few free negroes in a white community, and the negroes have but a small association and the examples all around them are the examples of diligence, industry, and thrift, this outward influence will force them to a modicum of labor and of thrift, too. But whenever you settle negroes in large numbers, or liberate them in large numbers, and they become a society to themselves, you will have a thriftless, worthless, indolent, inefficient population.

The negroes that are now liberated, and that remain in this city, will become a sore and a burden and a charge upon the white population. They will be criminals; they will become paupers. They will be engaged in crimes and in petty misdemeanors. They will become a charge and a pest upon this society, and the power which undertakes to liberate them ought to relieve the white community in which they reside, and in which they will become a pest, from their presence.

Mr. President, whenever any power, constitutional or unconstitutional, assumes the responsibility of liberating slaves where slaves are numerous they establish as inexorably as fate a conflict between the races that will result in the exile or the extermination of the one race or the other. I know it. We have now about two hundred and twenty-five thousand slaves in Kentucky. Think you, sir, that we should ever submit to have those slaves manumitted and left among us? No, sir; no, never; nor will any white people in the United States of America where the slaves are numerous. If, by unconstitutional legislation, you should, by laws which you shrink from submitting to the test of constitutionality in your courts of justice, liberate them, without the intervention of the courts, the moment you reorganize the white inhabitants of those States as States of the Union, they will reduce those slaves again to a state of slavery, or they will expel them and drive them upon you, or south of you, or they will hunt them down like beasts and exterminate them. They will not do this from choice, but they will do it from necessity. Emancipation will produce such a conflict between the races as will render extermination inevitable, and there will be no escape from it.

I maintain that it is a matter of humanity to the negro in this city, and of justice to the white population of this city, that, when you turn three or four thousand negroes who are now in a state of slavery free, you should relieve them from the curse of such a population, from its expense, from its burdens upon this community in every form; you ought to assume the philanthropy and the justice—the philanthropy to the negro race and the justice to the white race—to remove these people from the District. You may refuse to do it. If you do, a few years' experience will tell you what a mistake you made. I shall speak, though, on this subject at more length on another occasion. I will only say now that, when the negroes are liberated in the cotton States, it is giving up the cotton States to the negro race. and it is expelling, in a very short time, by inevitable necessity, the white population from that country, or it is introducing war between the two races that will result in the exile or expulsion of one or the other.

I know what I talk about. Mr. President, the loyal people of the slave States are as true to this Union as any man in the

Senate chamber, or in any of the free States; but never, never will they submit by unconstitutional laws to have their slaves liberated and to remain domiciled among them; and the policy that attempts it will establish a bloody La Vendée in the whole of the slave States, my own included. If, at the time you commenced this war, you had announced as the national policy that was to prevail the measures and visionary schemes and ideas of some gentlemen on this floor, you would not have had a solitary man from the slave States to support you. Whenever you seek to carry those measures into operation you unite the slave States as one man. They will tell you that in resisting such schemes they are fighting for the Union and the Constitution; and they will tell you so truly. They will tell you that your system of policy is no less aggressive and destructive upon the Union and the Constitution than that of the rebels of Secescia themselves; and they will tell you so truly. They will feel it as incumbent on them as men and as freemen to resist your unconstitutional policy, by which you will overturn and trample under your feet the principles of the Constitution, as they feel it to be their duty to resist the war which the secessionists have made upon the Union.

On March 18 John P. Hale [N. H.] replied to Senator Davis.

Of all the forms skepticism ever assumed the most insidious and the most fatal is that which suggests that it is unsafe to perform plain and simple duty for fear that disastrous consequences may result therefrom.

This question of emancipation, wherever it has been raised in this country, has rarely ever been argued upon the great and fundamental principles of right, but upon what are to be the consequences. Men entirely forget to look at the objects that are to be effected by the bill, in view of the inherent rights of their manhood, in view of the great questions of humanity, of Christianity, and of duty; but what is to be its effect upon the price of sugar, tobacco, cotton, and other necessaries and luxuries of life? The honorable Senator from Kentucky looks upon it in that point of view entirely. Now, it does not become me to venture my opinions against the opinions of that Senator who has lived among the population of which he speaks; but it is as much my prerogative as it is the honorable Senator's to read a little of history, and to know what is its teaching upon this question, and by that test to compare the predictions of the honorable Senator with some other predictions of a different character that have been made elsewhere on other occasions.

The Senator here discussed the situation of Jamaica. He admitted that a steady decline had occurred there in its staple industries, particularly sugar, but showed from official British statistics that this deterioration had begun long before emancipation [1838], and was therefore due to other causes, the chief of which, he declared, was the system of great estates operated not by the owners, but by overseers.

But, sir, since emancipation the island has been divided into small proprietorships, and the proprietors of these estates have got up a system of exports of other things, such as cocoanuts, etc., which now amount to a very considerable sum.

But, sir, Jamaica is almost the only island that shows a comparative decrease of wealth from the effect of emancipation. It is different in the island of Barbadoes. That island has increased in its exports, in its value, in its wealth more than double since emancipation. Similar progress has been made in the Leeward Islands, Antigua, Dominica, Nevis, Montserrat, and St. Kitts.

I hope that it will be gratifying to the humane feelings of the honorable Senator from Kentucky to find that he is altogether mistaken as to the effects that emancipation will produce upon this laboring class of population. I hope that it will do something to expel from his mind that skepticism which makes him shrink from looking at this measure in the light in which an enlightened and philanthropic statesman ought to look at it, and that is in regard to its bearings upon the great question of human rights.

Mr. President, it seems to me that in the good providence of God He presents to this nation to-day an opportunity never presented before. If the rebellion which is now rending this Republic, and which is strewing our plains with the dead of our young men who have gone out to do battle on the field, has horrors, if it has miseries, if it has everything or almost everything to make humanity weep, it is not without some aspects that relieve the dark shade of the picture. If this rebellion—I trust ere long to be crushed out—shall, in the progress of the great injury that it is doing, afford this Republic, these United States, the opportunity of trying here, in this little District of less

than ten miles square, the experiment which other nations are trying upon a great scale; and if we are enabled to show to the world that it is sometimes safe to do right, and not always inexpedient; then, sir, we shall have achieved something at which humanity will rejoice and something for which our posterity, to the latest generations, will bless us.

Sir, the governments of the world the world over are trying this experiment. The Emperor of Russia [Alexander II] over his vast dominions is now striking the bands of oppression from his long trodden down millions of serfs. The ameliorating influences of better principles and purer Christianity than have yet prevailed in the monarchies of the Old World are melting those iron despotisms and carrying into practical effect that great lesson of Christianity: "to loose the bands of wickedness" and "let the oppressed go free"; and it would be a reproach that ought to mantle the cheek of every citizen of this Republic with burning shame, if, at this day and this hour, when the monarchies of the earth are waking up to the great questions of human rights and making Christianity, instead of being a barren speculation, a practical and efficient principle of their government, this nation, at a time when the providence of God presents this opportunity to it, should, from any skepticism or fear of consequences, fail to meet the question and do justice by the oppressed.

Sir, I do not ask that the Government of the United States should trample upon the Constitution in any one of its provisions. I believe that, up to a very late period in our history, it was the conceded doctrine of this Republic, by statesmen North and South, that the constitutional power to legislate upon the subject of slavery in this District existed in Congress. I know that in late years that has been questioned and even denied. I know that within the last ten or twelve years this nation has been rent upon a new dogma, which denied the constitutional power of Congress to legislate for the Territories; and, while that question was rending the country, while it was tearing political parties in twain, dividing churches, bringing itself home to the hearts and consciences of this people, the Supreme Court of the United States undertook, with their puny efforts, to throw themselves in the way of the great question by the Dred Scott decision, and to say to the surging waves of humanity that, while washing out the stains of oppression from our history, they should go thus far and no further. The Supreme Court will find out ere long how much that has effected. Whether it has done more to wipe out the controversies that they wanted to crush

out, or to obliterate whatever of respect there was remaining in the public heart for themselves, they will find out before the issue is settled.

But, sir, while by this decision the Territories of the United States were taken theoretically from the management of the Federal Government, I believe, though I never read the Dred Scott decision in reference to that particular view of it, it did not go to the extent of saying that Congress had no constitutional power to legislate in the District of Columbia. I am glad they did not. I think they would if they had thought of it. [Laughter.] But, sir, that is left to us. Over this little spot of ten miles square, or what there is left of it after the retrocession of the part ceded by Virginia, we have confessedly the right of legislation; and here in our midst, and by our laws, this system of human slavery exists, and we are called upon to-day to abolish it, to repeal the laws upon which it rests, and to the most limited extent to try what will be the effect of emancipation upon the few slaves that are in this District.

When the midnight clock ushered in the 1st of August, 1838, the last manacle fell from the last slave in the British West India Islands. This population knew it, and what was the aspect they exhibited? Riots, drinking, acts of degradation and crime; such scenes as you might expect from what the Senator from Kentucky said when he predicted that they would become pests to society? Was there anything of that kind exhibited? No, sir; but on the preceding night almost the whole population gathered themselves together in their churches, in their places of worship, and when the hour of twelve struck, which told them that the slaves had been converted into British freemen, they rose and sent up one united shout of thanksgiving to Almighty God for the great boon He had conferred upon them; and the conduct that these emancipated slaves have exhibited in most, if not all, the islands since has been such as indicates not only the wisdom and the justice but the expediency of this measure.

Mr. President, there is nothing on earth that is more unjust, nothing more unkind, than for this boasted white Caucasian race to enslave the colored race, to keep them in a state of ignorance, to keep them in a state where it is a penal offence to teach them to read so much out of the Bible as that they may learn that God made them and Christ died to redeem them; I say it is cruel and unjust to such a people, denied the right of bringing a suit in court, denied the right of testifying as to their own personal rights and wrongs, the whole intelligence

of the world shut out by the bar of an inexorable penal statute from enlightening their understandings; to pronounce them as degraded, ignorant, incapable of representation, because under the crushing weight of all these disabilities they have not made such progress as to enable them to step at once on an equality into a condition which their masters have enjoyed for many years. It is cruel. The injustice of it cannot be winked out of sight. It is as unjust as it would be to put out the eyes of a man and then taunt him with his blindness, as unjust as it would be to reproach any man with a personal deformity. It is as unjust as it is possible for perverted human intellect to be. Take off these burdens, give them a fair chance, let the light of science shine into their minds, make it no longer a crime punishable with imprisonment to open to them the pages of God's eternal truth, let them read something of the world that is about them, and something of the hope which leads to the world beyond them, give them the elevating influence of some of the motives that have elevated you, and then, if against all that, they fail to rise and fail to improve, then, and not till then, will it be time to reproach them with their inability to cope and contend with their white masters.

On March 20 Waitman T. Willey [Va.] opposed the measure.

Sir, this bill is a part of a series of measures, already initiated, all looking to the same ultimate result—the universal abolition of slavery by Congress. The consequences, in my judgment, involve the lives of thousands of my fellow-citizens and the happiness of all the loyal people of all the border slaveholding States. Perhaps I should be justified in saying that they involved in most serious peril the restoration of the Union and the Constitution.

Mr. President, I shall not trouble the Senate with any argument respecting the constitutional power of Congress to pass laws emancipating slaves. The arguments already made against this power by Congress in the States where slavery exists have not been answered, and, I believe, they never will be. But I do not think the argument against the expediency and practicability of such laws has been exhausted. Sir, I admit that the rebels, especially the leaders of the rebellion, should be punished. They ought, in some manner, to be made to bear the burdens of the war they have forced upon the country, as far as is possible, and to indemnify loyal men for the injuries inflicted

upon them by the rebellion. But this punishment should be according to law. To punish treason by unconstitutional penalties is to be guilty of virtual treason ourselves, to say nothing of the inconsistency and danger of such a procedure. And it is worthy of remark, that no measure of emancipation yet proposed contains any indemnity for injuries received by the Government or individuals. Simply to emancipate the slave of the rebel may be a punishment to him, but it affords no relief to the loyal man who has suffered by the rebellion. Nay, one of the fundamental provisions of the confiscation bill of the Senator from Illinois [Mr. Trumbull] is to make the loyal people of the Union contribute of their means to transport and colonize the emancipated slaves of rebels. I cannot understand either the justice or expediency of such a policy. It seems to me to involve a manifest inconsistency. It punishes the traitor, indeed, but it only increases the burdens and taxes of the loyal people.

The agitation of these questions, under existing circumstances, must be positively mischievous. Will it not create strife and divisions here? Will it not disturb the country? Above all, will it not afford aid and comfort to the enemy? I am sure it will. It will be used by the leaders of the rebellion to "fire the Southern heart." The people of the South have been taught to believe that the object and design of the Republican party are to abolish slavery in all the States. These propositions will be seized upon as evidence of this intention. They will say: "Look at their unconstitutional confiscation laws, making no safe nor practical discrimination between Union men and secessionists. Look at the bill to abolish slavery in the District of Columbia; it is a stepping-stone to further encroachments." Especially will they point to the sweeping resolutions of the great apostle of abolition, the Senator from Massachusetts [Mr. Sumner], which, by one dash of the pen, deprive every Southern man of his slaves. No recruiting officer will have such power to replenish the thinned ranks of the rebel army as these propositions. No financial skill of Southern statesmen will have such power to replenish the depleted treasury of the rebel Government. Thus will these measures advance the cause of rebellion in the South; and so, consequently, will they prolong the horrors of war on our part, increase our expenditures, and augment the burdens of taxation. Worse than all, they will destroy that Union settlement in the South on which we hope to reorganize the State governments and restore the authority of the Constitution. They will not only encourage our enemies in the South, but they will dishearten our friends there. Thus do the claims

of our common humanity, deprecating the evils of war, suggest the impolicy of such legislation at this time.

There is no necessity for driving the secessionists to such desperate extremities. Justice, moderation, generosity will meet a joyful response in many a Southern heart. They love the old flag; they love the old Union. Show them that their rights under the Constitution—their prejudices of education and habit, if you please to say so—are to be respected, and you will strike a blow more fatal to the rebel cause than a score of such victories as that at Fort Donelson. And this will be a victory without bloodshed. It destroys no valuable lives. It wastes no resources of the country's wealth. It makes no widows nor orphans. It desolates no homes. Why should not the North be generous and forbearing? Are not moderation and forbearance the invariable characteristics of a great people?

I understand Mr. Lincoln himself to be actuated by such principles. I understand that, in reference to this very matter of abolishing slavery in the District of Columbia, he was in 1858, and I hope is still, governed by the same considerations of expediency. If in 1858 considerations of expediency were enough to cause the Republican party to pause in their course at that day, now with the storm and tempest of war upon us, and an accumulating debt pressing down the people, should we not also hearken to the suggestions of expediency?

Why may we not to-day conquer a peace, and, after that, in the language of Mr. Douglas just before he died, settle all these difficulties? I will quote his words:

> "When we shall have rescued the Government and country from its perils, and seen its flag floating in triumph over every inch of American soil, it will then be time enough to inquire as to who and what has brought these troubles upon us. Let him be marked as no true patriot who will not abandon all such issues in times like these."

Again, I ask Senators to consider what may be the effect of these extreme measures upon the public sentiment of the loyal States. There is but one sentiment there now, but one mind, one purpose. Therein consist our strength and the surest guaranty of our success. But this unity of sentiment and purpose is predicated on the distinctly declared purpose of the war, to wit, the suppression of the rebellion and the restoration of the Constitution and the Government as they were prior to the rebellion, without change or modification. Sir, let it be understood that there is a different object to be accomplished—such as is indicated by some, if not all, of the measures to which I

have alluded—and that unity and harmony of public sentiment will be instantly destroyed. We shall thereafter in the loyal States be "a house divided against itself." Distraction will disturb our proceedings here, division will enter the army, and the cause of constitutional liberty will be imperiled with defeat and disgrace. Already are there indications of dissatisfaction in the public mind lest Congress should depart from the avowed purpose hitherto announced as the only object of the war.

Mr. President, what must be the practical effects of these measures of emancipation upon the welfare of the slave? You cannot enact the slave into a freeman by bill in Congress. A charter of his liberty may be engrossed, enrolled, and passed into a law, with all the formalities of legislation, and still he must remain, virtually, a slave. The servile nature of centuries cannot be eradicated by the rhetoric of Senators, nor by an act of Congress. You may call "spirits from the vasty deep," but they will not come. A freeman has the right of locomotion; he has the right of going into any State and of becoming the citizen of any State. Let me ask the Senators from Illinois and Indiana whether, if I set my slave free, they will allow him to come to these States. Sir, the constitutions of both of those States prohibit free negroes from becoming citizens of those States, or even residents thereof; and that is the liberty which you propose for the slave. Other States are agitating the question whether they will enact similar interdicts.

In how many States is the free negro entitled to the right of suffrage or to be a juror, or a judge, or to a seat in the legislature; to make, interpret, or execute the laws of the State in which he lives? I understand there are some negroes living in the North who possess large estates, are well educated, and of good morals and manners. Do you receive them into your families on terms of equality? Do you give them your daughters in marriage?

We must take things as they actually exist and, legislating for the slave, we must conform to his actually existing character and condition—moral, intellectual, and physical. We shall not deserve the name of statesmen if we do not; nor shall we entitle ourselves to the character of philanthropists if we disregard such considerations. Sir, would you recommend the Chinese to adopt a republican form of government? Would you advise the native Africans, cannibals and all, to organize a government on the model of the Constitution of the United States? The idea is preposterous.

And now, sir, candidly considering the ignorance, degrada-

tion, and helplessness of the slaves in the South, can you desire their immediate emancipation? Think of four millions of these degraded, helpless beings, without a dollar of money, without an acre of land or an implement of trade or husbandry, without house or home, thrust out upon the community to maintain themselves! Sir, they would starve to death, or they would steal, or they would murder and rob. Better drive them into the Gulf of Mexico and end their sufferings at once than perpetrate such a monstrous cruelty as this upon them.

We heard from the honorable Senator from New Hampshire [Mr. Hale] in regard to the prosperity of the British West Indies and of the French West Indies. I shall rejoice in the perfect success of those efforts to elevate the African race. But did not the Senator know how different was the position of the slaves in those states from that of the slaves in the United States? There were but few white men in those islands; the soil was all their own; implements of husbandry were put into their hands; and, with the moral influence and watchfulness of great Christian nations standing beside them and breathing upon them encouragement and words of good will, affording them moral and physical aid and protection; and yet, with all these advantages; with a soil all their own; with no white men to overshadow them; with a government of their own; with the moral influence and aid of these Christian patrons that had set them free, it is to-day, after so many years, a question whether it will not be a failure rather than a success. God grant that it may be a perfect success!

And now you, men of the North, I beg to ask, what would be the consequences of this wholesale emancipation on your own communities? How long would it be until this miserable population, like the frogs of Egypt, would be infesting your kitchens, squatting in your gates, and filling your almshouses? Sir, are you willing to receive them? If you set them free you must receive them. Will your operatives extend to them the right hand of fellowship and receive them as coequals and colaborers in your fields and shops? Meantime, what will become of the cotton fields of the South, and the cotton factories of the North? While you are increasing the number of your laborers, you will be destroying the sources of their employment. You will ruin the industrial interests of the South and bring serious detriment on the labor of the North.

The answer to all this is: transport and colonize the emancipated slaves in some tropical country. What then? Whither shall they be sent? Where shall we find a tropical territory for

four millions of inhabitants? And where shall we find the money to pay for a territory sufficient to settle four millions of inhabitants? How much will it cost? I say nothing of constitutional difficulties in the way. Let them pass, along with the suspension of the *habeas corpus, et id omne genus.*[1] Where is the money to come from? Rhetoric and philanthropic platitudes will not purchase territory nor furnish the cost of transportation and the cost of the outfit and the cost of houses to be built for the reception of four millions of people, and the cost of implements of husbandry and tools of trade, and the cost of food and clothing for the first year, at the least. And then, sir, our task is just commenced. We must provide for their continued supervision, direction, and protection. And how long must all this continue? How long will it be before this mass of ignorant and servile population will become capable of self-government and self-subsistence? How many generations will it require to divest the slave of his servility and to clothe him with the independence of the freeman? Who can pay the debt? The accumulating millions of the current war debt, now rising mountain high, and resting with the weight of mountains upon the people, sink into mole-hills before the Atlas-like dimensions of the sum that will be required for the accomplishment of this stupendous scheme of philanthropy.

Mr. President, if slavery shall suffer from the incidental and necessary effects upon it of this war, let it be so; I shall not regret it. I am no pro-slavery man. I wish there were no slavery. I believe that slavery is doomed. I believe the time is coming when it will be abolished. Heaven hasten the day when, under the regenerating and reforming influences of Christian civilization, the slave shall be qualified for the enjoyment of freedom, and when it shall be practicable and humane to strike the fetters from the limbs of the last bondman of our race. But let us abide the appointed time of divine Providence. Let us not, in our eagerness to avenge the wrongs, real or imaginary, of the slave, repeat the folly of Samson, and in the frenzy of an indiscreet zeal pull down the pillars of the Constitution and involve both the slave and ourselves in the ruins of our country.

On March 4 Senator Davis spoke again upon the bill.

An honorable member of the other House has proclaimed, audaciously proclaimed, that he has attended and harangued

[1] And the like.

negro meetings here, that he has told them they had the same right to their masters' labor that the masters had to theirs; that they had the same right to sell their masters as their masters had to sell them; that they had the same right to sell their masters' children as the masters had to sell their children. Are these the dogmas, destructive to society, that you intend to preach and establish in this District? Was there anything in British oppression upon the colonial inhabitants of this country at all comparable in grievance, in real wrong and outrage, to what you are endeavoring now to force upon the people of this District? Have they not as much right to say they will have slaves as you to say that you will not have slaves? If you will not allow them that privilege, will you not allow them the poor privilege of voting whether free negroes shall stay here among them or not, a curse to the soil, a blight upon this small and poverty-stricken society?

If you are so humane, so benevolent, buy the slaves of the poor helpless widows in this city at fair prices with your money and take them to your homes, and there make them your neighbors, if you choose, your equals in politics and in the social circle. When you do this the world will give you credit for benevolence and philanthropy, but now it is all cant, it is all ambition. You and the men in the South are trying to make the same use of the slavery question. The business of both parties is to agitate, agitate, and never cease to agitate, because it becomes an element of political power by which individuals or parties may vault into office. Out, out with such benevolence and philanthropy as that!

It is not for the advantage of the white man in the agricultural States that slavery exists. It is expensive labor; it would be better for the country if it had never been there. I am no friend to slavery as an abstract question. If now I could decide whether slavery should exist or not, or whether it should cease with the colonization of all the negroes, I would colonize them all. If my own will could prevail I would put into operation in my own State a system of gradual emancipation that it would take about a hundred years to consummate and the thing should die out so gradually that nobody would be injured by it. But I say, in relation to this District and these people, give them a fair compensation for their slaves, and, when you get them, remove them from the country; let the races be separated; let the negro go to a land where, when he is buried, memory may raise some trophies over his tomb. None, none can ever be raised over his tomb in this land.

On March 25 Senator Wilson spoke in defence of his bill. He referred to certain laws in regard to slavery in the District as barbarous in the extreme, such as the act of May 31, 1827, that all negroes, except they proved the contrary, were presumed to be absconding slaves, and were to be committed to jail as such.

In what age of the world, in what land under the whole heavens, can you find any enactment of equal atrocity to this iniquitous and profligate statute—this "legal presumption" that color is evidence that man, made in the image of God, is an "absconding slave"?

This monstrous doctrine, abhorrent to every manly impulse of the heart, to every Christian sentiment of the soul, to every deduction of human reason which the refined, humane, and Christian people of America have upheld for two generations, which the corporation of Washington enacted into an imperative ordinance has borne its legitimate fruits of injustice and inhumanity, of dishonor and shame. Crimes against man, in the name of this abhorred doctrine, have been annually perpetrated in this national capital which should make the people of America hang their heads in shame before the nations, and in abasement before that Being who keeps watch and ward over the humblest of the children of men. Men and women of African descent, no matter in what State they were born, no matter what rights and privileges they possessed under the laws and institutions of the States from whence they came, have annually been seized, imprisoned, fined, and sometimes sold into perpetual servitude.

This doctrine, that color is presumptive evidence of slavery—this ordinance, consigning its victims to imprisonment, offers a tempting bribe to the base, the selfish, the unprincipled, to become men-stealers and kidnappers. This bribe has converted Government officials, justices of the peace, constables, and police officers into manufacturers of slaves. This bribe has annually filled your jail with its victims, making it the workshop where the selfish, the base, the ignoble have plied their trade in the souls and bodies of men. Hundreds, aye, thousands of men of African descent have been seized, arrested, imprisoned since the District of Columbia became the seat of the national capital.

The men of New England, New York, and Pennsylvania of that generation were responsible before God for these deeds of inhumanity.

But, sir, we of this age in America are not guiltless of like enormities.

Here the Senator referred to the numerous negroes, many of them claiming to be free, that were incarcerated as fugitive slaves in Washington jails as late as the foregoing December.

In this national capital lurks a race of official and unofficial man-hunters, greedy, active, vigilant, dexterous, ever ready by falsehood, trickery, or violence to clutch the hapless black man who carries not with him a title-deed to freedom. Only a few days ago these harpies of the land, more merciless than the wreckers of the seas, pounced upon and hurried to your jail two men your officers in the field had sent to Washington to give important intelligence to your generals. For these deeds of inhumanity and injustice the intelligent, patriotic, and Christian freemen of America are responsible before man and before God! And if we, their representatives, who now for the first time have the power, do not end these crimes against man forever, the guilt and shame will rest upon our souls, and we shall be consigned to the moral indignation of Christendom.

Justice to a wronged and oppressed race demands that this corrupt and corrupting doctrine, that color is presumptive evidence of slavery in the capital of the Republic, shall be condemned, disowned, repudiated by the Government of the United States. For two generations it has pressed with merciless force upon a race who mingled their blood with the blood of our fathers on the stricken fields of the war of independence. In those days of trial black men, animated by the same mighty impulse, fought side by side with our fathers to win for America a place among the nations. They rallied at the tap of the drum on the morning of the 19th of April, 1775, to meet the shock of the first battle of the Revolution. They poured their unerring shots into the bosom of the veteran troops of England as they moved up the slopes of Bunker Hill. They met, and three times, by their steady valor repulsed the charges of British veterans on the battlefield of Rhode Island, which La Fayette pronounced "the best fought battle of the Revolution." They fought and fell by the side of Ledyard at Fort Griswold. They shared in the glorious defence and victory of Red Bank, which will live in our history as long as the Delaware shall flow by the spot made immortal by their valor. They endured with our fathers uncomplainingly the toils and privations of the battlefields and bivouacks of the seven years' campaigns of the Revolution, from Lexington to Yorktown, to found in America a Government which should recognize the rights of human nature. For more

than sixty years, unmindful of their rights and ungrateful for their services in our hour of weakness, we have recognized in the capital of the nation the wicked and insulting dogma which writes "slave" on the brow of all who inherit their blood. Let us of this age hasten to atone for this great wrong by erasing that word from the brow of this proscribed race here, and making manhood, here at least, forever hereafter presumptive evidence of freedom.

What wrongs, what outrages may not be perpetrated upon a race of men where "color is legal presumption of slavery," where they "may be arrested as absconding slaves," where their oath cannot be received as "good and valid evidence in law," where "every person seizing and taking up runaways shall receive two hundred pounds of tobacco or the value thereof," where, "if any slave strikes a white person, he may, upon the oath of the person so struck, have one of his ears cropped"? What wrongs, what outrages may not be perpetrated upon a race where, upon "information to any justice of the peace that any free negro or mulatto is going at large without any visible means of subsistence such justice is required to issue his warrant to any constable directing him to apprehend such free negro or mulatto; and, if such free negro or mulatto shall fail to give security for his good behavior, or to leave the State within five days, or if, after leaving the State, he shall return again within six months, such justice may commit said free negro or mulatto to the common jail; and, if such offender so committed shall not, within twenty days thereafter, pay his or her prison charges, the sheriff, with the approbation of any two justices of the peace, may sell such free negro or mulatto to serve six calendar months?"

The speaker here enumerated other oppressive laws against free negroes in the District, such as the punishment by whipping, fine, or imprisonment of frequenters of night assemblies and the fine or imprisonment of negroes found in the streets after 10 p. m.

Since I have held a seat in the Senate I have known colored men, trusted and employed by the Government, while quietly hastening to their homes after ten o'clock from their duties in the public service, to be arrested under color of this ordinance. An ordinance so oppressive, so barbarous should be annulled by the Congress of the United States.

Another act requires every free colored person to furnish the

mayor of the city of Washington evidence of his or her title to freedom, and to give bonds annually for his or her orderly conduct, and, failing so to do, to be sent to the workhouse; this places ten thousand free persons of color at the mercy of the corporation officials of this city, who may exercise, under color of this law, the most oppressive acts of petty tyranny.

Another act fines frequenters of religious meetings after 10 p. m.

The Christian men of New England, of the central States, of the West, must not forget that they are not free from responsibility for the existence, in their national capital, of a statute which imposes a fine of five dollars upon Christian men and women who may be found in a religious meeting after the hour of ten o'clock at night; that in the capital of this Christian Republic it is made the duty of police constables, under penalties of fine and disfranchisement, to enter a religious meeting after the hour of ten at night and disperse Christian men and women listening to the story of salvation, or offering up to Him who made the humblest of the race in His own image the praises and gratitude of contrite hearts.

The corporation of the city of Washington, from 1829 to 1841, enacted cruel and brutal laws for the punishment of slaves within the limits of the city by whipping on the bare back for breaking street lamps, exploding fire-crackers, etc.

Do Senators believe that there can be in the laws and ordinances of any Christian nation on the globe enactments so brutal, degrading, inhuman, indecent? It is time these bloody statutes for lashing men and lashing women should be obliterated from the laws and ordinances of the capital city of the Republic.

In spite, however, of these oppressive and cruel enactments which have pressed with merciless force upon the black race, bond and free, slavery, for more than half a century has grown weaker, and the free colored stronger, at every decade. Within the last half century the free colored population of the District of Columbia has increased from four to twelve thousand. In spite of the degrading influences of oppressive statutes, and a perverted public sentiment, this free colored population, as it has increased in numbers, has increased also in property, in churches, schools, and all the means of social, intellectual, and moral development. This despised race, upon which we are wont to look down with emotions of pity, if not of contempt or of hate, are industrious and law-abiding, loyal to the Government and its institutions. To-day the free colored men of the

District of Columbia possess hundreds of thousands of dollars of property, the fruits of years of honest toil; they have twelve churches, costing some $75,000, and eight schools for the instruction of their children. They are compelled to pay for the support of public schools for the instruction of the white children from which their own children are excluded by law, custom, and public opinion. Some of these free colored men are distinguished for intelligence, business capacity, and the virtues that grace and adorn men of every race. Some of these men have in possession considerable property, real and personal. The passage of this bill by the Congress of the United States will not, cannot, disturb for a moment the peace, the order, the security of society. Its passage will excite in the bosoms of the enfranchised, not wrath nor hatred nor revenge, but love, joy, and gratitude. These enfranchised bondmen will be welcomed by the free colored population with bounding hearts, throbbing with gratitude to God for inspiring the nation with the justice and the courage to strike the chains from the limbs of their neighbors, friends, relatives, brothers, and lifting from their own shoulders the burdens imposed upon them by the necessities, the passions, and the pride of slaveholding society.

This bill, to give liberty to the bondman, deals justly, ay, generously, by the master. The American people, whose moral sense has been outraged by slavery and the black codes enacted in the interests of slavery in the District of Columbia, whose fame has been soiled and dimmed by the deeds of cruelty perpetrated in their national capital, would stand justified in the forum of nations if they should smite the fetter from the bondman, regardless of the desires or interests of the master. With generous magnanimity this bill tenders compensation to the master out of the earnings of the toiling freemen of America. In the present condition of the country the proposed compensation is full, ample, equitable.

But the Senator from Kentucky [Mr. Davis] raises his warning voice against the passage of this measure of justice and beneficence. He assumes to speak like one having authority. He is positive, dogmatic, emphatic, and prophetic. The Senator predicted, in excited, if not angry, tones, that the passage of this bill, giving freedom to three thousand bondmen, will bring into this District beggary and crime, that the "liberated negroes will become a sore, a burden, and a charge"; that they "will be criminals"; that "they will become paupers"; that "they will be engaged in crimes and petty misdemeanors"; that "they will become a charge and a pest upon this society." Assured, con-

fident, defiant, the Senator asserts that "a negro's idea of freedom is freedom from work"; that after they acquire their freedom they become "lazy," "indolent," "thriftless," "worthless," "inefficient," "vicious," "vagabonds."

The Senator from Kentucky, who speaks with so much assurance, may have the right to speak in these terms of emancipated slaves in Kentucky; but he has no authority so to speak of the twelve thousand free colored men of the District of Columbia. Under the weight of oppressive laws and a public opinion poisoned by slavery they have by their industry, their obedience to law, their kindly charities to each other, established a character above such reproaches as the Senator from Kentucky applies to emancipated bondmen.

But the Senator from Kentucky, upon this simple proposition to emancipate in the national capital three thousand bondmen, with compensation to loyal masters, chooses to indulge in the vague talk about "aggressive and destructive schemes," "unconstitutional policy," the "horrors of the French Revolution," the "heroic struggle of the peasants of La Vendée," and the "deadly resistance" which the "whole white population of the slaveholding States, men, women, and children, would make to unconstitutional encroachments." Why, sir, does the Senator indulge in such allusions? Have not the American people the constitutional right to relieve themselves from the guilt and shame of upholding slavery in their national capital? Would not the exercise of that right be sanctioned by justice, humanity, and religion? Does the Senator suppose that we, the representatives of American freemen, will cowardly shrink from the performance of the duties of the hour before these dogmatic avowals of what the men and the women of the slaveholding States will do? Sir, I tell the Senator from Kentucky that the day has passed by in the Senate of the United States for intimidation, threat, or menace, from the champions of slavery.

I would remind the Senator from Kentucky that the people, whose representatives we are, now realize in the storms of battle that slavery is, and must ever be, the relentless and unappeasable enemy of free institutions in America, of the unity and perpetuity of the Republic. Slavery—perverting the reason, blinding the conscience, extinguishing the patriotism of vast masses of its supporters, plunged the nation into the fire and blood of rebellion. The loyal people of America have seen hundreds of thousands of brave men abandon their peaceful avocations, leave their quiet homes and their loved ones, and follow the flag of their country to the field, to do a soldier's duties, and fill, if

need be, soldiers' graves, in defence of their periled country; they have seen them fall on fields of bloody strife beneath the folds of the national flag; they have seen them suffering, tortured by wounds or disease, in camps and hospitals; they have seen them return home maimed by shot or shell, or bowed with disease; they have looked with sorrowful hearts upon their passing coffins, and gazed sadly upon their graves among their kindred, or in the land of the stranger; and they know—yes, sir, they know—that slavery has caused all this blood, disease, agony, and death. Realizing all this—ay, sir, knowing all this, they are in no temper to listen to the threats or menaces of apologists or defenders of the wicked and guilty criminal that now stands with uplifted hand to strike a death blow to the national life. While the brave and loyal men of the Republic are facing its shots and shells on the bloody fields their representatives will hardly quail before the frowns and menaces of its champions in these Chambers.

Anthony Kennedy [Md.] opposed the bill on the ground that it would tend to make his State, already containing the highest ratio of free negroes to population of any State in the Union," the great free negro colony of the country."

What must be the embittered state of feeling in Maryland when they find that this Congress, departing from every principle of good faith and of constitutional obligation to the compact of the Union, interferes to throw more of this class of free negroes in direct competition with the white labor of our own State?

Speaking of the proposition of the President for gradual compensated emancipation in Maryland he said that "it would produce an exodus of such of the slaveholding population from my State as can leave, and would force those who cannot emigrate either to manumit or to take the little pittance that is proposed."

But, sir, the worst of it all is that you will produce an exodus of that class of people upon whom the State of Maryland has rested more than all others for her great material prosperity —I mean her great mechanical and manufacturing class. Instead of the city of Baltimore being, as she has been heretofore,

the third commercial emporium of this country, I fear that the day is to come when the grass may grow in her streets and her vessels lie rotting at her wharves.

This Government was created to promote domestic tranquility and to insure the general welfare. The passage of this bill does not promote either the general welfare or insure the domestic tranquility of my State; it will create strife in our borders as a forerunner of that other question, which is shortly to become a leading and important question in the future discussions and organizations of parties, and that is the emancipation policy of the President. You can show me no possible way by which emancipation can be effected without colonization. If you do not carry with emancipation colonization at the same time, if you emancipate these eighty-seven thousand slaves in the State of Maryland, making one hundred and seventy-five thousand colored people to remain there, one race or the other will ultimately perish; and scenes of blood and carnage that we have little idea of will result from it.

Sir, I am constrained to submit to the people of Maryland, if this measure passes, how far good faith has been kept with their trusting confidence; how far their honor and devotion to principle have been respected in the taunts and low flings which have been made at various times in both branches of Congress against their loyalty to constitutional obligations. Sir, I may speak warmly, for I feel deeply. I feel that whatever of consideration my State has had heretofore she has lost it; that while we of Maryland avoided the rock of secession, still clinging to the Constitution upon which we were embarked, we may find ourselves fast drifting into the dark and overwhelming whirlpool of a relentless, unyielding, and reckless sectional policy, which will end forever, in my humble judgment, the last hope of bringing together the dismembered and broken ties that bound this great and prosperous nation in one fraternal bond of union and power? In the name of my State I protest against this measure.

Willard Saulsbury [Del.], referring to Northern missionaries going to Port Royal, S. C. (captured by the Federal army and navy), and these embracing the negroes as brothers and sisters, said Senators should carry their principles to the logical conclusions and take negroes to their bosoms.

James Harlan [Ia.] opposed the charge that miscegenation would result from emancipation, or that the white people would rise and murder the freedmen. He therefore opposed colonization.

Do you find white gentlemen and white ladies marrying the free negroes that are now in this District? Do Senators find that the amalgamation of the white and the negro race is in progress in the States they represent? And, if so, does it progress more rapidly in the free than in the slave States? I have known of but three cases in my own State, and all three of those men married to wenches have been residents of slave States, where, I doubt not, they acquired their tastes. [Laughter.] Liberating the negroes carries with it no obligation to marry their wenches to white men. Gentlemen may follow their tastes afterward as now.

It is here in a slave District and in the slave States that men learn to associate familiarly as laborers and mechanics with the colored population; and, as a result of that familiar association at the daily toils of life, there is less reluctance at receiving them into their embrace, so handsomely described by the Senator from Delaware but a moment since. You will find in every slaveholding community a much larger number of mulattoes than in the free States.

But, then, what is to be done with these fifteen hundred liberated slaves? If they are to be liberated we are told they must be expatriated; they must be sent into some other country, into a strange community, and there compelled to provide in a land of strangers for the supply of their daily wants? Where are they now? In the bosom of the families of this metropolis. They are the house servants and the field hands of those who now claim to be their owners. Whence, then, a necessity for expatriating them? It does not increase their number to liberate them. If their labor is now necessary for the industrial purposes and comfort of the people of this District, will it not be as necessary after they shall have been liberated? If they are now needed as house servants and hotel servants, laborers and mechanics, in shops and fields, will they not be as necessary afterward? The only change in this regard that I can perceive is that after their liberation, those who now enjoy their labor gratuitously will, if their services are continued, be compelled to pay them reasonable compensation, the Government paying them a bonus of $300 each to relinquish the supposed right to their labor without the payment of wages. This is the only wrong that will have been inflicted on those who now

own them. They now employ them, and give them food and raiment and shelter for their services, without reference to their own wishes, coercing obedience with the lash when found necessary. Afterward they will be compelled to consult the will and wishes of the employed, and to pay them probably stipulated wages, with which the servant will provide his own supplies. No injury is inflicted on society, no change is wrought on its organization, and no change is made in the political condition of the emancipated. They will have acquired no political rights or franchises. They will have acquired simply the right to enjoy as they choose the proceeds of their own labor. But if you confer this right on fifteen hundred more negroes now slaves in this District, we are gravely warned by Senators, in most eloquent and pathetic strains, that we will thus inaugurate a war of extermination between the white and black race! Rather than pay the negroes just compensation for their services their former masters, who have lived on the proceeds of their unpaid toil, will take down their rifles and shoot them! A war of extermination is to arise!

It is declared on the floor of the American Senate, in the face of a Christian nation, that, if men are to be liberated from a slavery that is more galling and degrading than any that has ever existed on the face of the earth from the commencement of time down to this moment, the people will rise and murder the poor freedmen. Senators say so without expressing so much as a regret. They thus approve and justify this savage feeling—if it exists; but, sir, it does not exist; I will defend the people of Kentucky, of Maryland, of Delaware, and of this District from any such slanderous aspersion. They entertain no such purpose on their part as the indiscriminate murder of the colored population, if they should become free. I doubt not but that the public sentiment that now exists, induced by the slaveholders themselves, in the State to which I have referred, is bitterly opposed to the liberation of the slaves; but if these slaves should be set free it will be effected by their own legislatures; and, if thus set free, no such savage war would arise.

You say that if two races are thrown together as freemen they will necessarily engender a war of extermination. Such a war never did commence between two races of free people; and, until the laws of the human mind and the human heart change, never will. To say that men of different, so called, races are natural enemies to each other, and will commence and wage a war of extermination when brought into contact, is a libel on humanity. It is a libel on the Author of the human race. The Almighty

never implanted such feelings in the human heart. They never have been cultivated by an enlightened people. Wars of extermination exist only among savages; and with them only between belligerent tribes.

On March 31 Charles Sumner [Mass.] made an exhaustive and carefully prepared speech on the bill.

Mr. President, with unspeakable delight I hail this measure and the prospect of its speedy adoption. It is the first installment of that great debt which we all owe to an enslaved race, and will be recognized in history as one of the victories of humanity. At home, throughout our own country, it will be welcomed with gratitude; while abroad it will quicken the hopes of all who love freedom.

In early discussions of this question it was part of the tactics of slavery to claim absolute immunity. Indeed, without such immunity it had small chance of continued existence. Such a wrong, so utterly outrageous, could find safety only where it was protected from inquiry. Therefore, slave masters always insisted that petitions against its existence at the national capital were not to be received; that it was unconstitutional to touch it even here within the exclusive jurisdiction of Congress; and that, if it were touched, it should be only under the auspices of the neighboring States of Virginia and Maryland. On these points elaborate arguments were constructed; but it were useless to consider them now. Whatever may be the opinions of individual Senators the judgment of the country is fixed. The right of petition, first vindicated by the matchless perseverance of John Quincy Adams, is now beyond question, and the constitutional power of Congress is hardly less free from doubt. It is enough to say on this point that, if Congress cannot abolish slavery here, then there is no power anywhere to abolish it here, and this wrong will endure always, immortal as the capital itself.

But as the moment of justice approaches we are called to meet a different objection, inspired by generous sentiments. It is urged that since there can be no such thing as property in man, especially within the exclusive jurisdiction of Congress, therefore all now held as slaves at the national capital are justly entitled to freedom, without price or compensation of any kind to their masters; or, at least, that any money paid should be distributed according to an account stated between masters and slaves. Of course, if this question were determined according to

divine justice, so far as we may be permitted to look in that direction, it is obvious that nothing can be due to the masters, and that any money paid belongs rather to the slaves, who for generations have been despoiled of every right and possession. But, if we undertake to audit this fearful account, pray what sum shall be allowed for the prolonged torments of the lash? What treasure shall be voted to the slave for wife ravished from his side, for children stolen, for knowledge shut out, and for all the fruits of labor wrested from him and his fathers? No such account can be stated. It is impossible. If you once begin the inquiry all must go to the slave. It only remains for Congress, anxious to secure this great boon, and unwilling to embarass or jeopard it, to act practically according to its finite powers, in the light of existing usages, and even existing prejudices, under which these odious relations have assumed the form of law; nor must we hesitate at any forbearance or sacrifice, provided freedom can be established without delay.

The clear-headed Senator from Kansas [Mr. Pomeroy] has asked, *first, has slavery any constitutional existence at the national capital? and, secondly, shall money be paid to secure its abolition?* The answer to these two inquiries will make our duty clear. If slavery has no constitutional existence here, then more than ever is Congress bound to interfere, even with money; for the scandal must be peremptorily stopped, without any postponement or any consultation of the people on a point which is not within their power.

It may be said that, whether slavery be constitutional or not, nevertheless it exists, and therefore this inquiry is superfluous. True, it exists as a monstrous fact; but it is none the less important to consider its origin, that we may understand how, assuming the form of law, it was able to shelter itself beneath the protecting shield of the Constitution.

It is true, there can be no such thing as property in man. If this pretension is recognized anywhere it is only another instance of the influence of custom, which is so powerful as to render the idolator insensible to the wickedness of idolatry, and the cannibal insensible to the brutality of cannibalism. To argue against such a pretension seems to be vain; for the pretension exists in open defiance of reason as well as of humanity. It will not yield to argument; nor will it yield to persuasion. It must be encountered by authority. It was not the planters in the British islands or in the French islands who organized emancipation, but the distant governments across the sea, far removed from the local prejudices, who at last forbade the outrage. Had

these planters been left to themselves they would have clung to this pretension as men among us still cling to it. Of course, in making this declaration against the idea of property in man, I say nothing new. An honored Senator from Maryland, whose fame as a statesman was eclipsed, perhaps, by his more remarkable fame as a lawyer—I mean William Pinkney, whom Chief Justice Marshall called the undoubted head of the American bar—in a speech before the Maryland House of Delegates, spoke as statesman and lawyer when he said:

> "Sir, by the eternal principles of natural justice no master in the State has a right to hold his slaves in bondage for a single hour."

And Henry Brougham spoke not only as statesman and lawyer, but as orator also, when, in the British Parliament, he uttered these memorable words:

> "Tell me not of rights—talk not of the property of the planter in his slaves. I deny the right—I acknowledge not the property. The principles, the feelings of our common nature, rise in rebellion against it. Be the appeal made to the understanding or to the heart, the sentence is the same that rejects it. In vain you tell me of laws that sanction such a claim. There is a law above all the enactments of human codes—the same throughout the world, the same in all times: it is the law written by the finger of God on the heart of man; and by that law, unchangeable and eternal, while men despise fraud and loathe rapine and abhor blood they will reject with indignation the wild and guilty phantasy that man can hold property in man."

It has often been said that the finest sentence of the English language is that famous description of law with which Hooker closes the first book of his "Ecclesiastical Polity"; but I cannot doubt that this wonderful denunciation of an irrational and inhuman pretension will be remembered hereafter with higher praise; for it gathers into surpassing eloquence the growing and immitigable instincts of universal man.

Of course, here in the national capital, which is under the exclusive jurisdiction of Congress, the force which now maintains this unnatural system is supplied by Congress. Therefore does it behoove Congress to act in order to relieve itself of this painful responsibility.

But this responsibility becomes more painful when it is considered that slavery exists at the national capital absolutely without support of any kind in the Constitution. Nor is this all. Situated within the exclusive jurisdiction of the Constitution, where State rights cannot prevail, it exists in open defiance of most cherished principles. Let the Constitution be rightly in-

terpreted by a just tribunal, and slavery must cease here at once. The decision of a court would be as potent as an act of Congress. If authority could add to the force of irresistible argument it would be found in the well-known opinion of the late Mr. Justice McLean, in a published letter, declaring the constitutional impossibility of slavery in the national Territories, because, in the absence of express power under the Constitution to establish or recognize slavery, there was nothing for the breath of slavery, as respiration could not exist where there was no atmosphere. The learned judge was right, and his illustration was felicitous. Although applied at the time only to the Territories, it is of equal force everywhere within the exclusive jurisdiction of Congress; for within such jurisdiction there is no atmosphere in which slavery can live.

Under the Constitution Congress has "exclusive jurisdiction in all cases whatsoever" at the national capital. But Congress can exercise no power except in conformity with the Constitution. Now, looking at the Constitution, we shall find, first, that there are no words authorizing Congress to establish or recognize slavery; and, secondly, that there are positive words which prohibit Congress from the exercise of any such power. The argument, therefore, is twofold: first, from the absence of authority, and, secondly, from positive prohibition.

Of course, a barbarism like slavery, having its origin in force, and nothing else, can have no legal or constitutional support except from positive sanction. It can spring from no doubtful phrase. It must be declared by unambiguous words incapable of a double sense. In asserting this principle I simply follow Lord Mansfield, who, in the memorable case of Sommersett, said: "The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by *positive law*. It is so odious that nothing can be suffered to support it but positive law." (Howell's "State Trials," Vol. 20, p. 82.) This principle has been adopted by tribunals even in slaveholding States. (See Horey *vs.* Decker, Walker's R., 42; Rankin *vs.* Lydier, 2 Marshall, 470.) But I do not stop to dwell on these authorities. Even the language, "exclusive jurisdiction in all cases whatsoever," cannot be made to sanction slavery. It wants those positive words, leaving nothing to implication, which are obviously required, especially when we consider the professed object of the Constitution, as declared in its preamble, "to establish justice and secure the blessings of liberty." There is no power in the Constitution to make a king, or, thank God, to make a slave, and the absence of all such

power is hardly more clear in one case than in the other. The word king nowhere occurs in the Constitution, nor does the word slave. But, if there be no such power, then all acts of Congress sustaining slavery at the national capital must be unconstitutional and void. The stream cannot rise higher than the fountain head; nay, more, *nothing can come out of nothing;* and, if there be nothing in the Constitution authorizing Congress to make a slave, there can be nothing valid in any subordinate legislation. It is a pretension which has thus far prevailed simply because slavery predominated over Congress and courts.

To all who insist that Congress may sustain slavery in the national capital I put the question, where in the Constitution is the power found? If you cannot show where, do not assert the power. So hideous an effrontery must be authorized in unmistakable words. Do not insult human nature by pretending that its most cherished rights can be sacrificed without solemn authority. Remember that every presumption and every leaning must be in favor of freedom and against slavery. Do not forget that no nice interpretation, no strained construction, no fancied deduction, can suffice to sanction the enslavement of our fellowmen. And do not degrade the Constitution by foisting into its blameless text the idea of property in man. It is not there; and if you think you see it there, it is simply because you make the Constitution a reflection of yourself.

A single illustration will show the absurdity of this pretension. If under the clause which gives to Congress "exclusive legislation" at the national capital slavery may be established, if under these words Congress is empowered to create slaves instead of citizens, then, under the same words, it may do the same thing in "the forts, magazines, arsenals, dock-yards, and other needful buildings" belonging to the United States, wherever situated, for these are all placed within the same "exclusive legislation." The extensive navy-yard at Charlestown, in the very shadow of Bunker Hill, may be filled with slaves, whose enforced toil shall take the place of that cheerful, well-paid labor whose busy hum is the best music of the place. Such an act, however consistent with slaveholding tyranny, would not be regarded as constitutional near Bunker Hill.

A court properly inspired, and ready to assume that just responsibility which dignifies judicial tribunals, would at once declare slavery impossible at the national capital, and set every slave free—as Lord Mansfield declared slavery impossible in England, and set every slave free.[1] The two cases are parallel;

[1] The famous Sommersett case; see Index.

but, alas! the court is wanting here. But the good work which courts have thus far declined remains to be done by Congress.

But the question is asked, shall we vote money for this purpose? I cannot hesitate. And here there are two considerations, which with me are prevailing. First, the relation of master and slave at the national capital has from the beginning been established and maintained by Congress, everywhere in sight, and even directly under its own eyes. The master held the slave; but Congress, with strong arm, stood behind the master, looking on and sustaining him. Not a dollar of wages has been taken, not a child has been stolen, not a wife has been torn from her husband, without the hand of Congress. If not a partnership, there was a complicity on the part of Congress, through which the whole country has become responsible for the manifold wrong. Though always protesting against its continuance, and laboring earnestly for its removal, yet gladly do I now accept my share of the promised burden. And, secondly, even if we are not all involved in the manifold wrong, nothing is clearer than that the mode proposed is the gentlest, quietest, and surest in which the beneficent change can be accomplished. It is, therefore, the most practical. It recognizes slavery as an existing fact and provides for its removal. And when I think of the unquestionable good which we seek; of all its advantages and glories; of the national capital redeemed; of the national character elevated; and of a manganimous example which can never die; and when I think, still further, that, according to a rule alike of jurisprudence and morals, *liberty is priceless*, I cannot hesitate at any appropriation within our means by which all these things of incalculable value can be promptly secured.

Let this bill pass, and the first practical triumph of freedom, for which good men have longed, dying without the sight—for which a whole generation has petitioned, and for which orators and statesmen have pleaded—will at last be accomplished. Slavery will be banished from the national capital. This metropolis, which bears a venerated name, will be purified; its evil spirit will be cast out; its shame will be removed; its society will be refined; its courts will be made better; its revolting ordinances will be swept away; and even its loyalty will be secured. If not moved by justice to the slave, then be willing to act for your own good and in self-defence. If you hesitate to pass this bill for the blacks, then pass it for the whites. Nothing is clearer than that the degradation of slavery affects the master as much as the slave; while recent events testify that, wherever slavery exists, there treason lurks, if it does not flaunt. From the beginning of this rebellion slavery has been constantly manifest in the conduct of the masters, and even here in the national capital it has been the traitorous power which has encouraged and strengthened the enemy. This power must be suppressed at every cost, and, if its suppression here endangers slavery elsewhere, there will be a new motive for determined action.

Amid all present solicitudes the future cannot be doubtful. At the national capital slavery will give way to freedom; but the good work will not stop here. It must proceed. What God and nature decree rebellion cannot arrest. And as the whole widespread tyranny begins to tumble, then, above the din of battle, sounding from the sea and echoing along the land, above even the exultations of victory on well-fought fields, will ascend voices of gladness and benediction, swelling from generous hearts wherever civilization bears sway, to commemorate a sacred triumph, whose trophies, instead of tattered banners, will be ransomed slaves.

The bill was passed on April 3 by 29 yeas to 14 nays, the Senators from the border and Pacific States and Joseph A. Wright of Indiana voting in the negative.

The bill was sent to the House and there debated on April 10-11, the discussion including the right of secession, the power of Congress to confiscate property and to emancipate slaves in the seceded States.

Judge Benjamin F. Thomas [Mass.], a conservative Republican, was the leading speaker on these subjects. He delivered a profound legal argument showing that there could be no secession of States, but only of citizens, and that the acts of these were rebellion and not war; that confiscation of the property of the rebels was unconstitutional, unjust, and impolitic; and that emancipation of slaves could be justified only as a military necessity.

The bill was passed upon this day (April 11), and signed by the President on April 16. In his message to the House communicating his act the President said:

I have never doubted the constitutional authority of Congress to abolish slavery in this District, and I have ever desired to see the national capital freed from the institution in some satisfactory way. Hence there has never been in my mind any

question upon the subject, except the one of expediency, arising in view of all the circumstances. I am gratified that the two principles of compensation and colonization are both recognized and practically applied in the act.

One curious result of the act was that under it a District negro (free) claimed and received compensation for his wife and their six children, whom he had previously purchased from their white master.

CHAPTER VI

Compensated Emancipation

The President's Special Message Proposing a Bill for Compensated Emancipation in States so Desiring It—His Conference with Border State Delegates—Roscoe Conkling [N. Y.] Introduces the Bill in the House—Debate: in Favor, Mr. Conkling, John A. Bingham [O.], Alexander S. Diven [N. Y.], Abraham R. Olin [N. Y.], Owen Lovejoy [Ill.], Thaddeus Stevens [Pa.], and John Hickman [Pa.] Supporting the Bill under Protest; Opposed, William A. Richardson [Ill.], Charles A. Wickliffe [Ky.], Daniel W. Voorhees [Ind.], John J. Crittenden [Ky.]—Bill Passed—It Is Introduced in the Senate—Debate: in Favor, Lot M. Merrill [Me.], John B. Henderson [Mo.], John Sherman [O.]; Opposed, Willard Saulsbury [Del.], James A. McDougall [Cal.], Lazarus W. Powell [Ky.]—The Bill Is Passed—Debate in the House on Abolition of Slavery in the Territories: in Favor, Isaac N. Arnold [Ill.], Owen Lovejoy [Ill.]; Opposed, Samuel S. Cox [O.], John W. Crisfield [Md.], Benjamin F. Thomas [Mass.]—Bill Becomes Law—The President Appeals to the Border States to Accept Compensated Emancipation—Results of Federal and State Action in Regard to Compensated Emancipation.

DURING the debates on abolition of slavery in the District of Columbia the President sent a special message to Congress on *compensated emancipation* in the States so desiring it.

Compensated Emancipation

Special Message of President Lincoln, March 6, 1862

I recommend the adoption of a joint resolution by your honorable bodies, which shall be substantially as follows:

"*Resolved*, That the United States ought to coöperate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State, in its discretion, to compensate for the inconveniences, public and private, produced by such change of system."

If the proposition contained in the resolution does not meet

the approval of Congress and the country, there is the end; but if it does command such approval I deem it of importance that the States and people immediately interested should be at once distinctly notified of the fact, so that they may begin to consider whether to accept or reject it.

The Federal Government would find its highest interest in such a measure, as one of the most efficient means of self-preservation. The leaders of the existing insurrection entertain the hope that this Government will ultimately be forced to acknowledge the independence of some part of the disaffected region, and that all the slave States north of such part will then say, "The Union for which we have struggled being already gone, we now choose to go with the Southern section." To deprive them of this hope substantially ends the rebellion; and the initiation of emancipation completely deprives them of it as to all the States initiating it.

The point is not that the States tolerating slavery would very soon, if at all, initiate emancipation; but, that while the offer is equally made to all, the more Northern shall, by such initiation, make it certain to the more Southern that in no event will the former ever join the latter in their proposed confederacy. I say "initiation" because, in my judgment, gradual and not sudden emancipation is better for all. In the mere financial or pecuniary view any member of Congress, with the census tables and treasury reports before him, can readily see for himself how very soon the current expenditures of this war would purchase, at fair valuation, all the slaves in any named State. Such a proposition on the part of the general Government sets up no claim of a right by Federal authority to interfere with slavery within State limits, referring, as it does, the absolute control of the subject in each case to the State and its people immediately interested. It is proposed as a matter of perfectly free choice with them.

In the annual message, last December, I thought fit to say, "The Union must be preserved, and hence all indispensable means must be employed." I said this not hastily, but deliberately. War has been made, and continues to be, an indispensable means to this end. A practical reacknowledgment of the national authority would render the war unnecessary, and it would at once cease. If, however, resistance continues, the war must also continue; and it is impossible to foresee all the incidents which may attend and all the ruin which may follow it. Such as may seem indispensable, or may obviously promise great efficiency, toward ending the struggle, must and will come.

The proposition now made, though an offer only, I hope it may be esteemed no offence to ask whether the pecuniary consideration tendered would not be of more value to the States and private persons concerned than are the institution and property in it, in the present aspect of affairs?

While it is true that the adoption of the proposed resolution would be merely initiatory, and not within itself a practical measure, it is recommended in the hope that it would soon lead to important practical results. In full view of my great responsibility to my God and to my country, I earnestly beg the attention of Congress and the people to the subject.

Lincoln's Conference on Compensated Emancipation with Border State Delegates

On March 10 the President held a conference with delegates from the border slave States. One of the delegates, John W. Crisfield [Md.], reported the substance of the conference.

The President disclaimed any intent to injure the interests or wound the sensibilities of the slave States. On the contrary, he declared that his purpose was to protect the one and respect the other. We were, he said, engaged in a terrible, wasting, and tedious war; immense armies were in the field, and must continue there as long as the war should last; these armies came of necessity into contact with slaves in the States we represented, and, as they advanced, would be brought into contact with the slaves of other States. Slaves came, and would continue to come, to the camps, thus keeping up continual irritation. He was constantly annoyed by conflicting and antagonistic complaints. On the one side a certain class complained if the slave was not protected by the army; persons were frequently found who, participating in these views, acted in a way unfriendly to the slaveholder. On the other hand, slaveholders complained that their rights were interfered with, their slaves were induced to abscond and were protected within the lines. These complaints were numerous, loud, and deep. They were a serious annoyance to him, and embarrassing to the progress of the war. They kept alive a spirit hostile to the Government in the States we represented; they strengthened the hopes of the Confederates that at some day the border States would unite with them, and thus tend to prolong the war; and he was of opinion, if this

resolution should be adopted by Congress and accepted by our States, that these causes of irritation and these hopes would be removed, and more would be accomplished toward shortening the war than could be hoped from the greatest victory achieved by Union armies. He made this proposition in good faith, and desired it to be accepted, if at all, voluntarily, and in the same patriotic spirit in which it was made. Emancipation was a subject exclusively under the control of the States, and must be adopted or rejected by each for itself; he did not claim, nor had this Government any right, to coerce them for that purpose.

The President disclaimed that he had any ulterior purpose, such as emancipation by Federal authority. He should lament the refusal of the States to accept compensated emancipation, but had no designs beyond their refusal.

In respect to the constitutionality of the proposition he said that it presented no difficulties, proposing as it did simply to cooperate with any State by giving it pecuniary aid. It was the expression of a sentiment, rather than the presentation of a constitutional issue. In any scheme to get rid of slavery the North as well as the South was morally bound to do its equal share. He thought that the institution was wrong and that it ought never to have existed; but yet he recognized the rights of property which had grown out of it, and he would respect those rights as fully as similar rights in any other property; he recognized that property can exist, and does legally exist, in slavery; he would get rid of the odious law, not by violating the right, but by encouraging the proposition and offering inducements to give it up.

Compensated Emancipation

House of Representatives, March 10-11, 1862

On March 10 Roscoe Conkling [N. Y.] introduced the President's bill in the House. He said:

This resolution is in the exact words of the President of the United States, as sent here with the message in which he recommends its passage. It relates to a subject in regard to which almost every member, if not every one, has made up his mind; and those who have not made up their minds will not have their conclusions settled by any discussion which may occur on this resolution.

William A. Richardson [Dem.], of Illinois, replied:

The gentleman from New York says that we ought to have our minds made up on the subject of this resolution. Why, sir, there is no subject which will engage the attention of this Congress of more magnitude. I venture to say that not one half of the members on this side of the House have had time to consider it. We have had no time to communicate with our people.

But I am prepared to say one thing in regard to that message of the President. So far as it recommends the doctrine of the rights of the States in this matter I recognize its force. My objection to it is not of that character; I object to it upon another ground altogether. I do not believe my people are prepared to enter upon this proposed work of purchasing the slaves of other people and turning them loose in our midst. I have long entertained the idea that this class of negroes in our country are incapable of becoming the repository of freedom or government.

In reference to another point embraced in that message I have but a single word to offer. Without the Constitution and the Union there is no liberty—no government—and whatever stands in the way of their preservation I am prepared to strike down or to yield up. Whatever stands in the way of our Government and its integrity must be destroyed. But I do not propose to go beyond the Constitution. I do not know why a single article of property should be singled out and made an exception.

But, sir, I am satisfied that gentlemen are not prepared to vote upon this question to-day. It is a subject which requires consideration; and I move, therefore, that it be postponed to this day week.

John A. Bingham [O.].—I hope the motion to postpone will not prevail. If gentlemen propose to entertain the proposition of the President they can have but little, if any, difficulty in coming to a just conclusion upon it, as it involves no principle save the power of the Government of the United States to contribute in aid of the gradual abolition of slavery in any State which, of its own motion, may initiate that policy. That is all there is of the resolution.

The President has told us that he deems it important, if the resolution meets the approval of Congress, that the people immediately interested should be *at once* distinctly notified of the fact, so that they may begin to consider whether they will accept or reject the proposition. The adoption of the resolution imposes upon no State any obligation to act in the premises. It

interferes with no right of any State by intendment or otherwise.

CHARLES A. WICKLIFFE [Ky.].—The gentleman is learned in the Constitution of the United States. Will he tell me under what clause of the Constitution he finds the power in Congress to appropriate the treasure of the United States to buy negroes, or to set them free? Is it under the head of "the general welfare"?

MR. BINGHAM.—I supposed, Mr. Speaker, that that question was settled long ago by those who made the Constitution. If the gentleman will pardon me, I beg leave to remind him again of the words of Madison, that

"It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain!"

And, says Hamilton:

"Congress have an unlimited discretion to make requisitions of men and money."

DANIEL W. VOORHEES [Dem.], of Indiana.—I shall vote against any postponement of this question. I, for one, as a member of this House, am fully prepared to act upon it now. If this measure is to be pressed, and to become a part of the policy of the Government, I think it is right and proper that the people should know it soon; that, while groaning under almost untold burdens, while trembling under the weight of taxation upon their shoulders, if this additional burden is to come upon them they may prepare in season their sad and oppressed hearts and almost broken bodies to bear it.

I will say one thing further: that if there is any border slave State man here who is in doubt whether he wants his State to sell its slaves to this Government or not, I represent a people that is in no doubt as to whether they want to become the purchasers. It takes two to make a bargain; and I repudiate, once and forever, for the people whom I represent on this floor, any part or parcel in such a contract. Slavery, wherever it exists under the Constitution, I and my constituents will recognize and respect in its legal rights; the *slave trade*, either domestic or foreign, we are opposed to, and it is no favorite of the Constitution. If *emancipation* means *taxation* on the free States, now lavishing their all for the Union and the Constitution, and ever ready to do so, I am opposed to that cause; and I here take my stand in the name of the people I represent against it.

Thaddeus Stevens [Rep.], of Pennsylvania, was in favor of postponing the bill in order to give every member time to consider it.

I have read it over; and I confess I have not been able to see what makes one side so anxious to pass it or the other side so anxious to defeat it. I think it is about the most diluted, milk and water gruel proposition that was ever given to the American nation. [Laughter.] The only reason I can discover why any gentleman should wish to postpone this measure is for the purpose of having a chemical analysis made to see whether there is any poison in it. [Laughter.]

The House adjourned with the motion to postpone the bill before it. The discussion was resumed on the following day (March 11). The motion to postpone was decided in the negative—yeas, 67; nays, 71.

Charles A. Wickliffe [Ky.] opposed the bill on constitutional grounds, stating that the only color of its justification was to be found in the "general welfare" clause in the preamble of the Constitution.

Under this pretence of power, Congress might think that it would be advancing the interests of the general Government to dot the whole country over with turnpikes, railroads, and bridges, or with schools and colleges, or to do anything or everything that a legislative body, unrestrained by a constitution, may do for the benefit of the people. I thought that this idea of a general welfare power had long since been exploded by our statesmen and jurists and courts whenever it was attempted to be asserted in the State or Federal tribunals. If you were to allow that to be taken as a granting power in the Constitution, then there is no limit to which the Federal Government or Congress may not go.

But we are told that this measure is to be consummated under the war power. It is alleged that we are now in a state of war, and we are told that the Constitution is, therefore, to be disregarded. It is said that whatever is *necessary* to carry on this war to a successful conclusion may be done with perfect freedom under the license and authority, not of the Constitution, but as a military necessity. I deny that a state of war, and especially the present state of war, enlarges the power of Congress. What will be the result of that military necessity which,

it is said, enables us to lay aside the Constitution? What is it, and what has caused this line of executive and military action? I greatly fear there are many who desire more the emancipation of the slaves of the South than the restoration of the Union of the States. If it had not been for that strong desire I think that we would never have heard of this military-necessity power.

I suspect, sir, that these old-fashioned opinions of mine may be taken as evidence of my want of loyalty. I have not as yet seen any necessity why we should violate the Constitution in order that we should do what is required of us, and that is to furnish the men and money necessary to the restoration of the Union—I deny that a state of war increases or enlarges the powers of Congress.

Furthermore, the proposition is unwise. If the measures which now seem to be the particular and favorite ones urged to our consideration shall be carried out, if you proclaim to these people extermination or subjugation, and the confiscation of private property, you will have a war that will last longer than the life of any man upon this floor. You may conquer battles, and gain victories; but you will not in that way secure the re-establishment of the Government and the restoration of the Union. How do you expect to maintain the Union and to re-establish the laws of the United States over the seceded States? How do you expect to induce the people of those States to aid and assist you in the restoration of the Union and of the Government? How do you expect to do that if you drive every man from his homestead under the threat you make here of utter destruction or subjugation? You destroy all hope of peace. Leave the peaceful non-combatants at rest; let them know that they have the pledge of their security by this Government. If that be done, when the war is over you will find a nucleus of Union men in the slave States around which the inhabitants of those States can rally, and then the Union may be restored. But if they are to be alarmed by threats of confiscation of estates of non-combatants, then their homesteads will be abandoned and burned either by themselves or the enemy. You see already the madness of the leaders of the rebellion. They urge the population of the South to burn their homesteads, and to destroy all their crops, in order to keep them out of the possession of what they term their enemies. You have taken possession of a portion of the South. I was glad when I heard of it. You have alarmed the population. They have now run off and left their slaves unprotected. What is proposed here? One gentleman has proposed that we shall have a land office in the South, and

that the lands of the nabobs shall be distributed to the slaves that have been abandoned. There are other projects equally as absurd, and in violation of the laws of civilized war.

Suppose you emancipate the whole of the black population of the Southern seceded States, something over three millions, what do you intend to do with them? Have you provided any colony to which you can send them? Do you intend to leave them in the South where they are? Or do you intend to locate them in the free States? One plan was before us, I think, in a bill this morning. It is proposed that the Congress of the United States shall open cotton plantations in the South, upon lands now in the possession of the army. Is that a *military necessity*? Is it a military necessity that we should employ, at the public expense, many agents (I do not know that they are called overseers, as they are in the South; that would not sound well), sub-agents or superintendents? They are none of them to be called *overseers*, that would sound too much like the agent of a Southern slaveholder. There was a peculiar provision in it—this bill to which I refer. They were to *force* these creatures to work —they were to use *"humane and Christian force,"* I believe. What do you mean by that? You are to send a parcel of men to superintend the negroes on the cotton plantations as overseers for the United States.

I ask the gentlemen who are advocating these propositions if it is a "military necessity" that this Government, with a debt now of upward of seven hundred millions of dollars, should commence the business of cotton planting in South Carolina and Georgia or elsewhere? I ask where are the power and authority in the Government of the United States to go into the business of farming—for it amounts to that practically? Where is the authority for the Government of the United States to send a parcel of men South to engage in the business of cotton-growing who, when they get there, will know as much about raising cotton as I do about preaching the Gospel, and not as much, for I have heard the Gospel preached, and they never saw a stalk of cotton growing. [Laughter.] If you carry out your plan it will be the finest position for one of your modern honest men to steal that you can find in the United States, not excepting army contracts.

What is to be the effect of this resolution upon the war? There seems to be an intimation, if I understand it, that there is danger that the border slave States, as they are termed, unless this measure shall be inaugurated, may wish to join the slave States of the South, not while the war is going on, but when the

Southern Confederacy, composed of the cotton States, shall have gained its independence. Sir, I can see how this message of the President and the vote of this House may be understood abroad greatly to our prejudice. The inference will be inevitably drawn there that you from the North who advocate this resolution look to the utter impossibility of carrying out your favorite scheme of emancipation and confiscation, and the liberation of the slaves of the South; that you do not desire Union until slavery is abolished; and that you are willing to give up the cotton States, provided you can get the border States to emancipate their slaves.

In Kentucky and all these border States the great difficulty that we have had to encounter from the influence of the South, and those of our own citizens who acted with the South, was to convince them that the Federal Government did not mean to interfere with slavery. I do not mean this to apply to the man alone who owns the slave; for it is a strange fact that the non-slaveholding portion of the population are most against emancipation.

The speaker concluded with declarations of the Administration, Congress, and the officers of the army, made at the beginning of difficulties and up to this time, that the war, being forced upon the United States, is to be prosecuted for the maintenance of the Constitution and the restoration of the Union as it was. He said:

To give it now a different purpose, to wage it for the destruction of the States, the abolition of slavery, would be a fraud so infamous that it would call down upon its authors the anathemas of all good and honest men.

Alexander S. Diven [N. Y.] believed that the reason which urged the President to his recommendation was that President Jefferson Davis of the Confederacy had issued a proclamation implying that the Confederate forces would be concentrated for the defence of the cotton States, and that the border States would be abandoned to the Union, thus inducing the United States Government to acknowledge the independence of the cotton States.

The rebels, he said, hugged the idea that we care but little for these States, if we could only get the border States—the

most valuable in a commercial point of view—and believe that with the Union thus broken, with that holy devotion broken which the whole country has ever had for the Union of Washington, Jefferson, and Madison, the loyalty for the Union would be broken. It was then hoped that a petty annoyance would be waged against the border States until they would be driven, one by one, to join that confederation of the Gulf States. They would thus add to their power, and secure what they now find they cannot secure by force of arms. Seeing that they were clinging to that hope, the President is desirous to strip them of their last hope of refuge, and to show them that, even though they should succeed in their rebellion, they will be disappointed in their expectation of drawing the border States with them. Disappointed in it by this, by a noble, just, fair proposition upon the part of the Government not to interfere with any of the reserved rights of these States; not, under the Constitution or above the Constitution, to meddle with any of their institutions; not to assume to pass laws, if we have the right to pass them, which could interfere with their reserved rights; but a magnanimous proposition to them, that if they would stand by the Union no injustice should be done to them. If the possession of their slaves should become intolerable they might have an opportunity to rid themselves of them without crushing them out and breaking them down. In a spirit of magnanimity the President of the United States recommended that this Congress should adopt this resolution, looking to an ultimate resort in case any of the States at any time find it necessary, for the protection of their rights, to adopt that ultimate resort.

When they pass a law for the emancipation of their slaves, if they ever do pass such an act, they will make it conditional that Congress shall pay a portion of the loss. If that condition be not complied with they lose nothing by their law. If it be complied with by Congress they gain. There is, I repeat, no tampering with their rights, no infringement upon their rights.

The gentleman from Indiana [Mr. Voorhees] has thought proper in the discussion of this proposition to refer to the expense that would be incurred. Why, sir, half a day's expense of this war will pay for the emancipation of all the slaves in Delaware. The cost of sustaining this war for half a month will pay for the emancipation of all the slaves in Kentucky. The cost of maintaining this war for a month would pay for the emancipation of the slaves in Missouri and Kentucky. And if we can cut off from these rebels their last hope, and in my judgment this is their last hope, for they have already been

obliged to surrender the hope to which they have so fondly clung of the intervention of European countries; and now if you will cut off this last desperate hope which the rebel leaders still entertain, you will do more to accelerate the termination of this rebellion than any other congressional measure that can possibly be adopted.

Abraham R. Olin [N. Y.] replied to Mr. Wickliffe.

It is not true that either this House or the people of this country have any other motive in the prosecution of this war than they had in August last. They are fighting this war for the maintenance of the Constitution and the Union. I know that there is a difference of opinion upon another question, and that is as to the means to be employed for the prosecution of this war. I know that some gentlemen, and perhaps my friend from Illinois [Owen Lovejoy] for one, think that the best way is, like the Dutch governor of New York, to fight it by proclamations, to proclaim liberty throughout the land to captives. Another gentleman would say, let the negro question alone.

Mr. Lovejoy.—I beg the gentleman's pardon for interrupting him; but I simply desire to say that I want to fight with bayonets and bullets, and not with proclamations.

Mr. Olin.—I am happy to hear that, and it will enlighten the House upon that point, I have no doubt.

Now, there is, as I have observed, a difference of opinion upon this subject. But every intelligent man in the free States as well as in the slave States knows—the whole world knows—that this institution of slavery, never very palatable to the free States of the Union, has been the cause of this accursed rebellion. Mr. Speaker, you remember Toombs said that that institution could only exist as long as slaveholders controlled this Government, and that, when they were deprived of the power and patronage of the Government to uphold it, that institution must fall. Slaveholders having been deprived of that power, this rebellion is the consequence. Now, gentlemen from slave States must treat with a little forbearance my friends upon this side of the House. I beg you remember they, together with all the world, know that this war has been brought upon us by men who sought to control the destinies of this country by wielding the influence of slavery. It is not to be wondered at that the people of the free States do not feel very kindly disposed toward that institution, or that every opportunity is sought within the constitutional limits of the Government to strike a blow at

slavery, which, if it shall not destroy that institution forever, will leave it in such a situation that it will never hereafter be a disturbing power in the administration of this Government.

Now, I am desirous to see this war prosecuted within the strict limits of the Constitution. I think that this Government is released from no obligation to my friend from Kentucky by reason of this rebellion; that the Government is bound to protect all his rights of property and everything that is dear to him in his social and political relations, and I wish to see the war prosecuted successfully, if it may be, with a most sacred regard to all the rights of every citizen. In my humble judgment the whole strength of this accursed rebellion rests in an entire delusion on the part of the Southern people. Every gentleman who has held a seat on the floor of this House as long as I have knows one fact, and that is that there has been for years a strenuous, constant, and persistent effort on the part of some Southern men in this House, and out of it, to imbue the entire Southern mind with the idea that the party now in power, if they ever did attain power, would, by force and violence, if necessary, emancipate their slaves; and it is that belief that now adds strength to their army. If that delusion could be dispelled this rebellion would melt away like frost-work before the sun. I believe as sincerely that that is so as I believe any truth revealed from above.

What, then, is obviously the policy of the Government in respect to this measure? Why, I think—though, perhaps, my opinion upon that subject is not worth much—that the President is pursuing a wise and prudent course, and I think that my friend from Kentucky is unnecessarily alarmed at the introduction of this resolution. What is it, in its whole scope and extent? Why, simply that if you gentlemen of the slave States are willing to get rid of slavery the general Government will aid you to do it by giving you a compensation for any loss that you may sustain; and, although I am not worth much, God knows I would divide my last crust of bread to aid our Southern friends to get rid of slavery, and let us live in peace and harmony together. If these gentlemen say, "we cannot afford to make the sacrifice of manumitting our slaves," the President says, "very well; the general Government will aid you to accomplish it." That is the magnanimous, the great, the God-like policy of the Administration. But, while it says that, it says to you and it says to the world, "we do not propose to force this question of emancipation upon you; you are perfectly free to

accept or to reject the offer. We disclaim entirely the right to constrain you in the matter."

But the gentleman from Kentucky [Mr. Wickliffe] says that the offer to aid in the emancipation of the slaves is an interference with this institution. Merciful God! Does this institution make you mad? Must you close your eyes to what is going on all over the civilized world? Look, I beseech you, at this matter! Conduct your army in the best way you can, with the most sacred regard to every right, and when it overruns a State, as it has overrun Missouri, what is the result? Where have gone to-day her slave population? Nearly two-thirds of them have fled either North or South; and, if our army marches successfully through Kentucky and Tennessee, to some extent this same result will be produced there. Nay, more. As they march through other States, as they are now marching through South Carolina, thousands upon thousands of these poor negro slaves will flock to the standard of the Union—the slaves of rebel masters, the slaves of men who have taken up arms to subvert this Government, a Government such as was never founded by man. And do you think, I pray you, that any power of this Government, judicial, military, or executive, can ever be induced to surrender those men to those rebel masters? Oh, no; you are touching there a chord that vibrates through the whole Northern heart, and it says we never will consent that property of this description shall be returned to men thus arrayed against the Government by the strong arm of the Government.

John J. Crittenden [Ky.] construed the proposition as asking the border States to give up their "domestic institution" of slavery as a pledge of loyalty to the Union.

What right have you to suppose now that old Kentucky will abandon her faith in the Constitution of the United States, and unite herself with the South? None at all. The way to conciliate Kentucky is not by pressing these questions upon her. The way to conciliate her is to let her alone. That is the way to show your confidence in her—your confidence that she will always, and under all circumstances, do her duty. That will make the old State proud. But when you demand of her a revolution in her domestic policy, when you make a demand of that sort upon her, I am apprehensive it may not have the good effect you suppose. The cardinal principle upon which our whole system of Government is founded is that matters of a local and domestic character shall be under the exclusive control of the State governments, and national and external matters under the control of the general Government. If you begin now to trench upon that paternal and patriarchal jurisdiction which belongs to the States by taking one domestic subject from under its control, what will be the result in the future?

I do not know how this proposition will be received by my constituents. It is suddenly brought before them. It relates to a subject about which they are very sensitive. I fear they will think that they ought to be let alone on this subject. You urge them to take a further step in proof of their loyalty. They will say: "Is this the way the other States of the Union treat us? The moment we come within their grasp, the moment we join hands with them, and take up the sword in defence of the Constitution, they desire that we shall modify our institutions in accordance with their wishes."

Do you demand of us a surrender of a part of our constitutional rights, while you are professing to support the whole Constitution?

MR. LOVEJOY.—I desire to ask the gentleman if he thinks it would be unconstitutional if Kentucky should emancipate her slaves, on condition that the Federal Government shall pay her a certain amount of money?

MR. CRITTENDEN.—I am not prepared to say that it would be unconstitutional. But the gentleman looks at the matter in a very limited way. When this Government makes a proposition of this sort, it is equivalent to an invitation, and by such an invitation agitation may be introduced at a time when we want no agitation.

But gentlemen say that this will break the hopes of the rebellion, and that otherwise the South will compel you to recognize her independent government. So says my friend from New York [Mr. Diven]; and this measure proposed is only to prevent Kentucky and the border States from acceding to that independent Southern government when it shall force itself upon our acknowledgment. Sir, I hope that that day is never to come. It is too remote a possibility to found any argument upon. If that time ever does come, when these twenty millions of people shall be content to see this great Government broken up; and if, looking forward beyond that infamous and disgraceful day, we shall be told that there is a fear on the part of the North that the border States will then join the Southern Confederacy, if you permit that day to come I shall not want to be with you. Are we recreantly to submit to have this country broken into pieces,

and then dare to think of things that are to happen afterward? No, sir; there is no thereafter; there is no future beyond that. I will not look into it. And yet the argument used here to-day is that we shall, without consideration, without knowing what will happen to this measure in Kentucky or the other border States, base this measure only upon things that may happen in the future, that may happen after that day of infamy. My policy does not reach so far, nor will I act upon any supposition of the sort.

Sir, we are in the habit of saying a great many things in the ardor of our feelings which we would like to recall. My friend from New York [Mr. Olin] has said so many admirable things that he will excuse me for alluding to one extravagance of this sort in the remarks which he has just made. He says that when it shall be necessary for the preservation of the country he would be willing to see the negro armed and servile war made in the South by Southern negroes upon Southern planters—a war of the black man upon the white man.

How can it ever become necessary for a nation to do what, in the sight of God and man, is condemnable under all circumstances? I will not suppose such a case. It is the very *argumentum* which ranges through the long series of resolutions here for confiscation and emancipation—that you have a right to do anything to weaken your enemy and to strengthen yourself. A doctrine more at war with every principle of ethics, of morals, and of religion cannot be proclaimed.

In the name of God, what are we fighting for this day? Are we not fighting to uphold the Government; to uphold humanity; to put down those who violate law, who would induce to disorder, homicide, and crime? And are you to say that you have a right to commit all manner of crimes for the purpose of accomplishing your object? No matter what your enemy was, he could not be worse than you are, if that is your morality. In a cause like ours, a glorious cause, which seeks to maintain justice and liberty and right among men, let not us, its chosen defenders, sink ourselves down to the level of those who have called forth this effort on our part to subdue them. This is a great contest. I want to see it waged on principles that become it; that are lofty as the subject itself is. It is not necessary for us to do wrong. It is only necessary for us to behave dutifully toward our country, and to enforce our laws. We shall thus do our whole duty, and shall have nothing to upbraid ourselves with when the war is over.

John Hickman [Pa.], a radical Republican, said that he would vote for the bill, although he thought it of little practical importance.

It does not possess any great intrinsic merit, for the reason that its adoption would not constitute legislation. It would be better distinguished as a plank in the platform of a political party. If carried through this House it will not even bind the present House to pass a law, much less a House that shall be convened in the future. It is, in my judgment, simply a declaration of opinion as to a policy, and nothing more. As I look at it is is rather a compensation to the North for disappointed hopes, and a warning to the people of the border slave States. The President of the United States cannot be ignorant of the fact that he has, thus far, failed to meet the just expectation of the party which elected him to the office he holds, and his friends are to be comforted, not so much by the resolution itself as by the body of the message, while the people of the border slave States will not fail to observe that with the comfort to us is mingled an awful warning to them.

The paper is somewhat of an assurance—slight, I admit—that the President still has convictions upon the great question of freedom and slavery, and that in a certain event the interests of slavery, which he seems anxious to protect, may be prostrated; and that, therefore, it is better for the border States to put themselves in a position to meet a great crisis. It is, therefore, rather a palliative and caution than an open and avowed policy; it is rather an excuse for non-action than an avowed determination to act. Neither the message nor the resolution is manly and open. They are both covert and insidious. They do not become the dignity of the President of the United States. The message is not such a document as a full-grown independent man should publish to the nation at such a time as the present, when positions should be freely and fully defined.

Sir, any man who sits down and carefully reads this message cannot fail to understand just what it was the President had in his mind at the time he penned it. In the first place, he says to the Republican party: "Gentlemen, I am not such a great defender of the institution of slavery as you would make the country believe I am. I am willing that the institution of slavery shall be sustained, and especially in the border States, but in case a dissolution of the Union, to any extent, shall occur, I will see, as far as my official influence extends, that those border States shall affiliate with the States of the North." In

the second place, he says to those border States: "Gentlemen, I give you warning in time that in the prosecution of the war a policy may eventually become necessary on the part of this Administration which will lead to the destruction of the slave interest in these States."

I am satisfied that I cannot be mistaken as to the points in the mind of the President. He does look, and we look, and you gentlemen from the slave States look to a contingency in which extreme war measures may become necessary. If this Union and Constitution are deserving of the eulogiums which have been passed upon them by gentlemen from all sections they are worth more than the pecuniary interests involved in any single local or domestic institution; and if you are possessed of the patriotic feelings which I suppose you to be possessed of, and which I am willing to admit you are possessed of, you will regard the preservation of the Constitution and the Union as paramount to the pecuniary interests involved in any domestic institution, not excepting slavery. That man who is not willing to save the Constitution and the Union by the sacrifice of a private interest is already a rebel, and I care not upon whose ear that declaration may fall with harshness; and, sir, when, a few weeks since, in a running discussion in this Hall, I propounded the question to gentlemen from the border slave States whether they would sustain the Constitution and the Union, although it might be necessary to sacrifice slavery to save them, there was but a solitary and a very feeble voice came up in affirmative response. Now, sir, although the North has magnanimity, the North has not too much patience. I proclaim here a fact which has studiously been concealed, as it seems to me, that the border States are not in this Union because they love freedom. They are in it because they fear force.

What means the action of Kentucky maintaining neutrality in the hour when the Union required friends? If a man professes to be a friend of mine I expect him to show his active friendship in the hour of my trial and my sufferings. Kentucky, proud, magnanimous Kentucky, as she has been designated here this morning—and I have nothing to say against either attribute—in that hour of trial and danger stood on the ground of perfect neutrality. But when the passage of our troops to the national capital had been secured, when the integrity of the Union had been put out of danger for the time being, and when the safety of Kentucky was imperiled, then she was the proud and magnanimous State to declare herself on the side of the Union.

And, sir, I do not hesitate to say that, from all I can see, there is no slave State population that has not the well-being of slavery so much at heart, and into the composition of whose hearts slavery does not enter to such an extent that they love human slavery, with its christianizing and republican influences, its separations of husbands and wives, of parents and children, its days of toil without recompense, its servility and utter degradation, its life without hope, and its death without knowledge, as much as they love the Government. Why, sir, I have found but one among the Representatives of slave constituencies on this floor who, when the Union was in the hour of its direst peril, was ready to make the open and distinct avowal that, if the Union and slavery could not both be saved, he would save the Union in preference to slavery.

Now, sir, but one word more. Mr. Lincoln has found himself between two swords—the sword of the party looking to a particular policy, to be pursued toward a rebellion springing from slavery, and the sword in the hands of the border States, who insist all the time that the war shall be prosecuted in such a way as to save their peculiar, divine, and humanizing institution. The President of the United States, if he has any recollection—and I do not know whether he has or not, for I do not perceive any evidence of the fact—if he has any recollection he will remember that he was taken up by a party, sustained and carried into his high position by a party whose very life was dedicated to the maintenance of the Constitution and the Union; and they had the right to expect the adoption of such measures, not inconsistent with the laws of war, as would be most likely to crush treason at the earliest moment. And when I say to this House that the nation at large has been somewhat disappointed in its reasonable expectation, I may be open to a charge of indiscretion, but not to one of misrepresentation.

I say, further, that the nation has felt a great lack of confidence, not only in the President, but in those military leaders put in the highest position by the President. He knows this well, and has made some changes. He knows, further, that the people of the Northern States regard this Government as sacred, and will never allow the sacrilegious hand to touch it without striking it off, and that its downfall cannot precede Northern desolation and death. No matter what interests may perish, no matter what lives may be sacrificed, they will command that the war shall be prosecuted with the greatest vigor, and that the Government shall be reëstablished, even if it be but over smoldering cities and wasted lands.

I speak for myself alone; I do not speak for organizations, political or otherwise, and I assume the responsibility. That may be my misfortune.

"Never mind!
My words, at least, are more sincere and hearty
  Than if I sought to sail before the wind.
He who has naught to gain can have small art; he
  Who neither wishes to be bound nor bind
May still expatiate freely, as will I,
Nor give my voice to slavery's jackal cry."

The bill passed the House on March 11 by a vote of 89 to 31. It came up in the Senate on March 24.

Compensated Emancipation

Senate, March 24-April 2, 1862

Willard Saulsbury [Del.] denounced the bill as in effect an interference with slavery in the States by fomenting agitation upon the subject, and by holding out inducements for the abolition of the institution. Whether force or bribery was used to accomplish this end, it was an infraction of the solemn pledge of the Republican party not to touch slavery in the States.

On March 26 James A. McDougall [Dem.], of California, opposed the bill on the ground that it would be ineffectual—indeed, would defeat the very end aimed at by arousing antagonism to emancipation through agitating the question.

I have seen the time when I hoped Missouri would soon provide for the gradual emancipation of her slaves, and it would have been done but for agitation. The same thing has been known in the history of Kentucky, Virginia, Maryland, and Delaware. I believe that by the just administration of the Government of its own affairs the legitimate course of events will accomplish all these results yet; but they never will be accomplished by legislation. We may have this subject agitated session after session, year after year, Congress after Congress, angry discussions, expensive discussions, profitless discussions—Federal legislation cannot cure this evil; it cannot be reached by any such medicine; for favorable times, circumstances, events,

we may hope; but if we here undertake the management of this great social problem we will find that we are not merely anticipating, but that we are usurping the ways of Providence, and assuming an office higher than any to which we have been yet elected.

Lazarus W. Powell [Ky.] regarded the measure as "a pill of arsenic, sugar-coated," its object being to inaugurate Abolition parties in the border States.

I happened a few nights ago, through curiosity, to go to the Smithsonian Institution, to hear a man of some distinction as an orator and lecturer in this country. There I heard this man, Wendell Phillips, for half an hour, and he distinctly announced, after eulogizing the President very highly for this message, that the interpretation of it was simply saying to the border slave State men: "Gentlemen, if you do not take this we will take your negroes anyhow." That was the interpretation given to it by some gentlemen of the House of Representatives, and that, in my opinion, is the plain, distinct, and proper interpretation of the message, when you take it as a whole.

Lot M. Morrill [Me.] defended the proposition of the President as generous and just. He could not conceive how it could possibly be offensive to any man who had not made up his mind to hold slavery supreme above the Constitution and the integrity and welfare of the Union.

John B. Henderson [Dem.], of Missouri, supported the bill (and, indeed, thereafter acted as an emancipationist).

It has been urged with a great deal of power in the border slaveholding States that the design of the bill is to effect the emancipation of the slaves in the border slaveholding States, and then to consent to a dissolution of the Union. I have no idea that any such thing is really contemplated.

The institution of slavery in the State of Missouri has not been sufficient, notwithstanding it has been deemed by Senators here to be sufficient in a great many of the States—because slavery has been charged to be the cause of all our troubles—to withdraw the people of my State from their allegiance to the

Federal Government. There are other interests in Missouri besides the interests of slavery of equal, if not superior, importance. One of the great reasons inducing them to remain firm and fixed to the Union is that they will never consent to surrender their right to the Mississippi River, over every inch of it, from the borders of Missouri to the Gulf of Mexico; and, sir, if they lose all idea that that is to be an object of the majority here, it will inevitably affect their feelings in the future.

We of the South have been annually frightened by some imaginary plot for the overthrow of slavery in the United States. We have been regularly informed by a race of politicians, whose watchful and jealous regard for our true interests has been about equal to that of the Abolitionist for the negro, that unless they were continued in power the whole institution would be immediately upset, the owner robbed of his property, and the negro made equal, if not superior, to the white man. We have listened to these stories, and been made alike to fear and hate the most unsubstantial and harmless thing on earth.

Why was this war forced upon us, and who are its authors? However opposed I may be to some radical measures which have been introduced in Congress, and which, no doubt, are largely attributable to the feelings engendered by this unjustifiable war, yet candor compels the Union men of the border States to do justice to the President, and even to his friends in Congress. This terrible revolution was brought about by Mr. Yancey and his confederates, by inflaming the Southern mind against the dangers of Abolition, which they knew to be false. They drove the South to madness, to self-destruction.

Now, sir, what has been the result of this unnecessary strife upon my State. In 1860 our slave population was one hundred and fourteen thousand nine hundred and sixty-five. Our white population at the same period was upward of one million. How is it now? I doubt whether there are fifty thousand slaves in the State.

The true value of real and personal property in Missouri in 1860 was $501,214,398. Aside from the depreciation of value, which no man can now estimate, and beyond the loss of slaves to which I have referred, I think it safe to say that ten per cent. of this vast amount of property has been destroyed and forever lost to the owners in consequence of this war—an amount equal to the aggregate value of all the slaves in the State at the commencement of hostilities.

If I were to add to this the loss occasioned to the people of the State by the utter prostration of its agricultural, commercial,

and manufacturing interests for the last twelve months I might add fifty millions more to the sum already named.

Looking, then, to my own State, I am not disposed to take issue with the President in regard to the future results of the war. I regard his expression as a prophecy, and not as a threat —a prophecy that I feel will be realized if this war continues. It is a new pledge of faith by the representatives of the people that this vexed question shall be left with the people of each State. It comes not in the spirit of arrogance, demanding conformity with the views of others, but with humility acknowledging if slavery be an evil it is a sin for which we are all responsible, and for the removal of which we are willing to come with practical benevolence. It means more than all this. It intimates to the States that the nation would prefer gradual to immediate emancipation, and that the measures now pending in Congress, looking to such results, should be superseded by one of conciliation and good will.

If this spirit had been more largely cultivated in days gone by we would not this day be forced to witness a ruined South and a deeply oppressed North. Why, sir, ninety-six days of this war would pay for every slave, at full value, in the States of Kentucky, Missouri, Maryland, Delaware, and the District of Columbia. Nine months of the expenditures of this strife would have purchased all the slaves in the States named, together with those in Arkansas, Tennessee, Mississippi, and Louisiana, thus preserving in peace the whole of the Mississippi to the Gulf. Less than two years of these expenditures would have paid for every slave that treads the soil of the nation. If Northern men had treasured these things, and learned that kind words can accomplish more than wrath, and if Southern men had resolved to look upon slavery as upon other questions of moral and political economy, and both had determined to examine this as all other subjects, in calmness and deliberation, we would have been spared the evils that now oppress us.

Mr. President, I have made up my mind to cast my vote for the resolution, and to leave it with the people of my State. I am indifferent as to the result upon myself. I feel that it is altogether a change from what we have witnessed for the last number of years on the floor of this and the other House. Instead of that wrangling controversy, instead of those rushing waves of tumult, of ill feeling, and of anger that have been engendered in the discussion of this question, it marches up and takes hold of the slavery question as a practical one, worthy of the calm, cool, and deliberate judgment of those in whom the

nation has trusted its prosperity and its future greatness. Then, sir, I shall cast my vote for it. I regard it as no insult to the people of my State; I regard it as no threat; but I regard it as a measure that is conciliatory, and looks to the future peace and harmony of the country, and to the early restoration of the Union.

On April 2 John Sherman [O.] spoke in behalf of the bill, closing the debate.

It is said that the resolution of the President now before us looks to an interference with slavery in the States. I do not so construe it. It does not assert the power or advise us to interfere with slavery in the States. On the contrary, it, by necessary implication as strong as express denial, denies the power. If the State of Maryland should, in its wisdom, see fit to commence a system of gradual emancipation of slaves, would they not have the right by this bill to call upon us for aid and assistance? We here announce beforehand that we will give them pecuniary aid, but not until they call for it. It is right that we should announce that doctrine. It is right that they should inaugurate that system; and I believe that in the providence of Almighty God the system will be inaugurated more rapidly even than we now hope for.

Why should we not give this aid? By it we accomplish great purposes. We banish from the Halls of Congress a disturbing element which in some form or other will permeate this body and every political organization in this country. It is for the peace and quiet and comfort of our people we should aid any State desiring to emancipate their slaves.

Besides, the policy of emancipation would tend to develop the resources of the States in a wonderful degree. Why, sir, I visited the other day the Chesapeake Bay, James River, and York River. It surprises me beyond expression that that magnificent region, with resources unrivaled in this country, is not now peopled by a million of men. When I look upon those deep bays, those fertile fields, requiring only energetic labor to develop them, when I see those marts of commerce in the very center of our Atlantic coast, I wonder in amazement that a million of men are not now crowded there, delving and striking and working with honest toil for an honest reward. But, sir, there is no other cause for this lack of development except simply that labor, upon which all civilization depends; labor which has built up New York, New England, and the West, is there degraded by

the presence of slaves, so that the master must live on the labor of the slaves, and the slaves must work for the master without hope of reward.

Sixty years ago Ohio was a wilderness, now she has two and a half millions of people. I believe that if Virginia was a free State now, in thirty years from this time she would contain three or four millions of people. Therefore I say that, if I were a citizen of a border State, I would at once raise the banner of gradual emancipation; I would call on the general Government for aid, and, for one, if I should happen to be a member of this body, I will give that aid cordially and freely.

But it is said that Congress by giving this aid would interfere with slavery. The resolution of the President does not say that Congress shall render this aid, but that the United States ought to coöperate. It may be necessary to call upon the States; and I think I can say in advance that, if Kentucky should free her slaves, Ohio would gladly respond to anything that Kentucky would ask. She would gladly pay the debt she owes from the war of 1812 by any aid that Kentucky might ask of her.

The policy and the effect of emancipation in the border States would undoubtedly be to induce the slaves to go southward. They would commence a kind of hegira southward, and free people from the Old World and from the Northern States would go down to the border States. I have no doubt that the tide of emigration, having now met the vast plains and deserts of the West, will gradually seek a home southward. If you will welcome it, avail yourself of it, use that labor to develop your resources, it will make the people of Kentucky and of these border States rich, prosperous, and happy. The owner of seventeen hundred acres of land will be worth three times as much as his lands and his slaves are now worth. Labor makes everything and not the mere possession of land.

I am willing, therefore, to adopt the policy of the President in regard to slavery in the States, to abolish slavery in this District, to promote a system of voluntary colonization. I am also in favor of confiscation; I think such a measure should be passed promptly. We must seize upon the property of these men who have taken up arms against the Government. Our people, when they come to pay taxes, will demand it. These men know it. They themselves are confiscating all the property of their own citizens who will not take up arms. You must in war adopt the laws and policy of war. I am, therefore, in favor of the most rigid law of confiscation against the leaders of this rebellion; but I would, as an act of wisdom, of amnesty, of wise forbear-

ance, and moderation, authorize the President at any time to proclaim an amnesty to the great masses of the rebels. As to those who have led, the captains of companies, the members of Congress, the leaders in the rebellion, all those who have staked their property upon it, men of intelligence and character, I would, without mercy, prosecute the laws of confiscation and war against them to the furthest extent. Let us adopt this policy, guided by wise moderation, controlled by a manly earnestness and a determination to stand by each other, and I believe the Republican party will not only save the country, but will put the country in a march of prosperity of which we have heretofore had no example. If, on the contrary, any useless measures of legislation, looking to extreme means, be adopted, prejudicing the great mass of the people of the Southern States, destroying their rights as citizens of those States, or reducing the States to Territories, it will only exasperate the people of those States more and more, will make conquest impossible, and a reunion of all the States utterly futile. I believe that by a wise system we may, one by one, gather these States again into the folds of the Union; and if the Republican party, through its wisdom and ability, shall carry the country through this revolution, I do not fear for the verdict of the popular will. I have heard some of my friends express a doubt, and say, "let us do this now, because after a while we may not have the power." I will do what I think is right, and I have an abiding confidence in the people of the United States that they will stand by those who follow their convictions of duty with moderation and good sense.

The bill was then passed by a vote of 32 yeas, including Henderson, Garrett Davis [Ky.], and Waitman T. Willey [Va.], to 10 nays, mostly from the border States.

Abolition of Slavery in the Territories

On March 24, 1862, Isaac N. Arnold [Ill.] introduced in the House a bill abolishing slavery without compensation in every existing Territory, and prohibiting it in all which might be formed in the future. It was referred to the Committee on Territories. On May 1 it was reported from the committee by Owen Lovejoy [Ill.]. The bill was bitterly opposed by the Democrats: Samuel

S. Cox [O.] called it a complete justification of the charges of the secessionists that the Republicans had never intended to abide by the pledges of the Chicago platform, and therefore that its title should be "A Bill for the Benefit of Secession and of Jeff. Davis." John W. Crisfield [Md.] characterized the bill as "a palpable violation of the rights of the States, and an unwarrantable interference with private property—a fraud upon those States which have made cessions of land to the Government, and a violation of the Constitution." Judge Benjamin F. Thomas [Mass.] ably opposed the bill because of the lack of compensation to slaveholders in it, and to remove this objection the feature of compensation was added. The bill was then passed by vote of 85 yeas, including all the Republicans and two Democrats, William T. Sheffield [R. I.] and Judge Thomas, to 50 nays.

The bill was reported in the Senate by Orville H. Browning [Ill.] on May 15, and on June 9 it was passed by a strict party vote of 28 yeas to 10 nays. On June 19 it was approved by the President.

Lincoln's Appeal to the Border States

On July 12 President Lincoln read to the border State Representatives in Congress an appeal that their States adopt compensated emancipation.

If the war continues long, as it must if the object be not sooner attained, the institution of slavery in your States will be extinguished by mere friction and abrasion—by the mere incidents of the war. It will be gone, and you will have nothing valuable in lieu of it. Much of its value is gone already.

I am pressed with a difficulty which threatens division among those who, united, are none too strong. An instance of it is known to you. General Hunter is an honest man. He was, and I hope still is, my friend. I valued him none the less for his agreeing with me in the general wish that all men everywhere could be free. He proclaimed all men free within certain States, and I repudiated the proclamation. He expected more good and less harm from the measure than I could believe would follow. Yet, in repudiating it, I gave dissatisfaction, if not

offence, to many whose support the country cannot afford to lose. And this is not the end of it. The pressure in this direction is still upon me, and is increasing. By conceding what I now ask you can relieve me, and, much more, can relieve the country, in this important point.

In his annual message of December 1, 1862, the President was forced to report on his favorite project of colonization that no countries were willing to accept the freedmen as citizens except Liberia and Hayti, and to these the freedmen were unwilling to migrate.

He had, however, a more favorable report to present of State action in regard to compensated emancipation, a number of loyal slave States having initiated legislation looking to this end.

The passage of the Thirteenth Amendment abolishing slavery superseded Federal action in regard to compensation.

CHAPTER VII

Punishment of Treason

Thomas D. Eliot [Mass.] Introduces in the House, and Lyman Trumbull [Ill.] in the Senate, a Bill to Confiscate Property of Rebels—Speeches against the Bill by Sen. Edgar Cowan [Pa.] and Sen. James R. Doolittle [Wis.]—Daniel Clark [N. H.] Introduces in Senate Bill to Emancipate Slaves of Rebels, Garrett Davis [Ky.] Opposes It—Mr. Eliot Introduces Confiscation and Emancipation Bills in the House—Debate: in Favor, Mr. Eliot; Opposed, Benjamin F. Thomas [Mass.], Samuel S. Cox [O.], John Law [Ind.]—Conference of Senate and House Reports Combined Confiscation and Emancipation Bill—It Is Passed—No Punishments Inflicted for Treason.

THE policy of punishing treason by confiscation of the property of rebels, at least their slaves, had been timidly suggested in the extra session of Congress (July-August, 1861), but no action was then taken to this end. Early in the present session it was more definitely proposed: on December 2, 1861, by Thomas D. Eliot [Mass.] in the House; and on December 5, by Lyman Trumbull [Ill.] in the Senate. The proposition with various amendments, sometimes including other property than slaves, was hotly discussed in both Houses throughout the session in intervals of other measures, and in connection with these when they dealt with the question of emancipation. By all the Democrats, and by some of the more conservative Republicans, the proposition was denounced as utterly and glaringly in antagonism to the Constitution and the pledges of the dominant party, and as calculated to extinguish the last vestige of Unionism in the seceded States, and to imperil it in the loyal border States. Thus Edgar Cowan [Rep.], a Senator from Pennsylvania, said, on March 4, 1862:

Against Confiscation of Rebel Property

Senator Cowan

We are standing now squarely face to face with questions of most pregnant significance. Shall we stand or fall by the Constitution, or shall we leave it and adventure ourselves upon the wide sea of revolution? Shall we attempt to liberate the slaves of the people of the rebellious States, or shall we leave them to regulate their domestic institutions the same as before the rebellion? Shall we go back to the doctrine of forfeitures which marked the middle ages, and introduce feuds which intervening centuries have not yet sufficed to quiet? These are great questions, and they are in this bill, every one of them.

This bill proposes, at a single stroke, to strip four millions of people of all their property, real, personal, and mixed, of every kind whatsoever, and reduce them at once to absolute poverty; and that, too, at a time when four hundred thousand of them are in the field opposing us desperately.

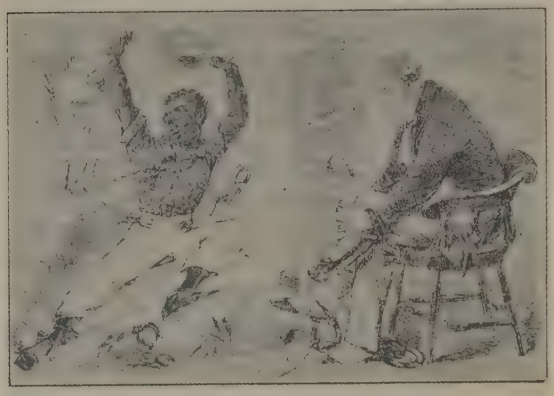
Now, sir, it does seem to me that, if there was anything in the world calculated to make that four millions of people and their four hundred thousand soldiers in the field now and forever hostile to us and our Government, it would be the promulgation of a law such as this. Will they yield to us sooner in view of such a result to them? What would we be likely to do if they were to threaten us with a similar law? Would we ever, under any circumstances, yield on terms like those? I need hardly ask that question to men descended from sires who refused to pay the tax on teas, and from grandsires who rose in rebellion and overturned a monarchy rather than pay twenty shillings ship money—for that, I believe, was the sum demanded from Hampden, and which cost Charles I his head.

The English conquerors of Ireland, in their long series of forfeitures and confiscations, from the time of Strongbow down to the rebellion of 1798, never, at any time, ventured upon such a sweeping measure as this; their attainders exhausted themselves upon the Irish nobility, and they never were rash enough to strip the Irish people.

I do not know the value of the property forfeited by this bill; I cannot even approximate it, except to say that it is enormous—to be computed by billions. But, sir, the bill goes further, and forfeits a vast amount of property of the rebels which, when forfeited, cannot be confiscated or put into the coffers of the conquerors—I mean their property in negro slaves.

This bill would liberate, perhaps, three millions of slaves; surely the most stupendous stroke for universal emancipation ever before attempted in the world; nay, I think it equivalent, if carried out, to a virtual liberation of the whole four millions of slaves in the Union.

Now, I do not mean to stop here to discuss their right to this species of property; it is enough for me to say that all the people of the slave States, loyal and rebellious, seem to agree as



WHAT THE THIRTY-SEVENTH CONGRESS HAS DONE

[Confiscation Act and Bankrupt Act]

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to this with a wonderful unanimity, and to resent with an excessive sensibility any interference with it whatever. And, although in the bitterness of the feuds engendered by the civil war now raging among them, the loyalists there would be glad to join in inflicting upon the rebels even the severest punishments, yet this one they abhor and refuse, because they aver that it would be equally injurious to them as to their enemies.

But what is to be the effect of it upon the war? Will we be stronger after it than before; or will we find we have doubled the number of those in arms against us? They have now no cause of war; will not this measure furnish them one, and one they think more just and holy than any other? Let the loyal

men who know them also answer this question. I will abide their answer.

Those who favor this astounding bill seem determined to bewilder and blind us still more by an additional project of greater magnificence and, if possible, of greater difficulty; and that is, in the duty it imposes upon the President, of procuring a home for these emancipated millions in some tropical country, and of transporting, colonizing, and settling them there, if they desire to go, with guaranties for their rights as freemen! Surely, sir, we must have been recently transported away from the sober domain of practical fact, and set down in the regions of eastern fiction, if we can for a moment entertain this proposition seriously. Do the advocates of the scheme propose to confer upon the President the gold-making touch of Midas? One would think the universal menstruum or the philosophers' stone had been at last discovered. Certainly, nothing short of the ring and lamp of Aladdin, with their attendant genii, would enable us in our present condition to assure the President of his ability to enter upon such a task, unless, indeed, it is conceived the treasury note is of equal potency in this behalf. If so, the sovereign of the tropical country and the transportation companies ought to be consulted in regard to the legal tender clause. I suppose it is not expected that the exodus can be supported on the way by quails and manna; and yet, I am free to say, it will need the miraculous interposition of Heaven quite as much as did that of the Israelites of old.

Then there is a further consideration involved in this bill of still greater moment than even those I have already glanced at; and that is its direct conflict with the Constitution of the United States, requiring us, indeed, should we pass it, to set aside and ignore that instrument in all its most valuable and fundamental provisions; those which guarantee the life, liberty, and property of the citizen, and those which define the boundaries between the powers delegated to the several departments of the Government.

Pass this bill, sir, and all that is left of the Constitution is not worth much. Certainly it is not worth a terrible and destructive war, such as we now wage for it. And it must be remembered that that war is waged solely for the Constitution, and for the ends, aims, and purposes sanctioned by it, and for no others.

I am aware, however, that some think the Constitution is a restraint upon the free action of the nation in the conduct of the war, which they suppose could be carried on a great deal

better without it, etc. Now, sir, I have no hesitation in saying that no greater mistake ever was made in the world than is made by such people, because, under the Constitution, we have full and ample power delegated to the general Government to enable it to do, in war as well as peace, everything which a Government ought to be allowed to do; while, at the same time, it has laid down accurately upon its charts all those rocks upon which other governments have been split and wrecked heretofore, with the proper prohibitions to prevent us from seeking our destruction upon them. And I will venture to say that there is not a restraint it imposes which is not salutary, and which, if thrown off, will not prove most destructive. The real danger consists in the fact that the prohibited measures are all of them at first sight most plausible; they are not roaring breakers, obvious to all, but sunken rocks in a calm sea, where the chart of experience is most necessary to guide the political pilot, if he is prudent enough to take the warning.

Congress cannot forfeit the property of rebels for longer than their lives, by the enactment of any law whatever, for the following reasons:

1. Those persons now in rebellion, having levied war against the United States, are guilty of treason within the exact definition of that crime contained in the third section of the third article of the Constitution, in which it is declared that

> "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

Hence, as soon as the rebels are arrested and brought within the power of any law we may pass, they become *eo instanti*[1] traitors, and obnoxious to the punishment which is imposed by our statute for treason. As long, however, as the rebel is at large, or in the hands of the military, he cares nothing for the law, and is not amenable to it, because the military power cannot try him under the law—that must be done by the courts. But the second clause of that same section provides further, that

> "The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

Therefore any law made for the guidance of the courts must conform to this provision, and no other or greater penalty could

[1] "In that instant."

be imposed than it would warrant. If, therefore, the law was to enact an absolute forfeiture of the estates of the traitor, it would be bad for the excess, and the judges would be obliged to make the sentence constitutional, either by cutting down the statutory penalty to a forfeiture of his estates for life, or by omitting to forfeit them at all. All this seems to me so obvious as not to be doubted.

2. The power assumed in this bill is also obnoxious to the provisions of the Constitution, if it be assumed that Congress can legislate an effectual forfeiture of the estates of rebels, as such, without allowing them an opportunity or means of trial in the courts. Because,

By the fifth amendment to the Constitution, it is provided:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Here it is attempted to deprive a large class of persons of all their estates and property, without any arrest, without any presentment by a grand jury, without any trial by a petit jury, without, indeed, any trial at all in any court. This would be to deprive them of their property in the very face of the provision requiring that it shall only be done "by due process of law," which, all commentators and all lawyers agree, means proceedings according to the course of the common law.

I am aware that this will seem strange to some people who think that, as we are at war with the rebels, we ought of course to be able to enact any law we pleased, inflicting upon them punishment befitting their crimes. Such people, however, will do well to remember that our Government is not one of absolute powers—it is in no respect omnipotent or restrained only by its own sense of propriety or policy. On the contrary, its powers are limited to those expressly delegated to it, and are not to be implied from any supposed necessity that they ought to be there, or that it was intended to confer them. Besides this, the powers actually delegated are also distributed and divided to and among the several departments of the Government which are to exercise them. These, too, must confine themselves severally to their

functions as fixed by the terms of the grant. Congress has its part, the President has his part, and the courts their part. Now Congress, for instance, has no power to punish anybody (except for contempts), and to-day, if we had half a dozen of the worst rebels caged here in this Chamber, we could inflict upon them no punishment. We could not order the sergeant-at-arms to hang or behead them, no matter how certain we might be of their guilt. Nay, more, the President himself and all his army could not lead them away from this hall to execution. The only way they could be punished at all would be to deliver them over to the judges—the proper judges—because no one judge might have a right to try all of them. Nay, it is possible every one of them might have to be tried by his separate judge, in his separate court and district. There, again, the functions of the judges, in such cases, are limited—a jury shares them, and its members are the exclusive judges of the facts, while, after the condemnation and judgment, the sheriff or marshal would be the only person having the right to execute the judgment.

I may also further remark that it is in this limitation of the powers of the Government, and their distribution after the manner of the Constitution, that its great merit consists. On those accounts we love, cherish, and revere it; and because it has such features we are now at war with all our force and treasure to defend and preserve it. Had we no Constitution limiting its powers, defining its agencies, fixing the boundaries of their rights and duties under it, nobody would lift a hand for it; and if you make it usurp powers not granted at all, not granted to the usurping department, then our war for it is a great mistake if not a great wickedness.

Again, this is further guarded against in the ninth section of the first article and third clause, as follows:

"No bill of attainder or *ex post facto* law shall be passed."

A bill of attainder was a mode of proceeding resorted to in England, as well as in some of the United States during the Revolution, to condemn and punish traitors, by Parliament or the legislature, in cases where they were out of the reach of the process of the courts; nay, indeed, in many cases even after they were dead. In such cases the law-making branch of the Government supplied the want of due process of law by blending together in one statute the law and the application of the law to particular persons named therein, or to a class of persons by description. Bills of attainder condemned the accused to death

(if not dead already), forfeited their estates, and corrupted the inheritable blood of their children and heirs, so that no one could take any estate either from or through them. Bills, however, like the one under consideration, which does not propose to inflict capital punishment, or corrupt the blood of the offenders, but imposed other penalties of lesser grade, were called "bills of pains and penalties."

It may be said the latter are not within the prohibition, and therefore allowable here. It is true they are not within the letter of it, but being equally within the mischief, which was that the legislature should in any case attempt to usurp and exercise the functions of the courts; and construing the fifth amendment in connection, I have no doubt they are also prohibited. Indeed, no one can come to any other conclusion but that the convention which framed the Constitution intended to remove every possibility of the usurpation, by Congress, of the power to punish anybody without "due process of law."

Besides, to grant our power of passing bills of pains and penalties is to nullify the whole effect of the clause, inasmuch as it is easy, by passing several of these against the same person, to make their aggregate result precisely the same as a bill of attainder. Such a construction would defeat the provision instead of making it avail, as intended.

We are not left, however, without authority as to this point, if any were needed to give force to the reason adduced for it, because Judge Story, in his "Commentary on the Constitution," at section 1344, says:

"But in the sense of the Constitution, it seems that bills of attainder include bills of pains and penalties; for the Supreme Court have said, 'A bill of attainder may affect the life of an individual, or may confiscate his property, or both.'"

And for this he cites Fletcher *vs.* Peck, 6 Cranch's Reports, 137; 1 Kent's Commentaries, sec. 19, p. 382; and this was well shown by the honorable Senator from California [James A. McDougall].

This, then, being, in the language of the Supreme Court, a bill of attainder, and in the stricter language of the common law a bill of pains and penalties, is clearly within the prohibition contained in the clause read; and nothing which I can say is so apposite as the remainder of the section quoted from Judge Story, and from it all may see the view taken of such laws as this by a jurist so eminent—one, too, sitting calmly in his closet and free from all those exciting influences which, in troubled

times like ours, are so apt to warp our judgments and blind our reason to the truth:

"The injustice and iniquity of such acts, in general, constitute an irresistible argument against the existence of the power. In a free government it would be intolerable; and, in the hands of a reigning faction, it might be, and probably would be, abused, to the ruin and death of the most virtuous citizens. Bills of this sort have been most usually passed, in England, in times of rebellion, or of gross subserviency to the Crown, or of violent political excitements—periods in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others."

I now propose to go further and argue that the exercise of such a power, even if it had been granted, would now be mischievous and impolitic, and that our fathers did wisely and well in refusing it. By their just leniency they showed that they looked beyond the hour of conflict to the better day of reconciliation, and offered a bounty to the heirs of the guilty that they might be loyal. I may say, too, that the civilized world, at least in all christendom, have come to this same conclusion, and have generally purged their statute-books of such a relic of angry barbarism:

"The reasons commonly assigned for these severe punishments, beyond the mere forfeiture of the life of the party attainted, are these: by committing treason the party has broken his original bond of allegiance, and forfeited his social rights. Among these social rights, that of transmitting property to others is deemed one of the chief and most valuable. Moreover, such forfeitures, whereby the posterity of the offender must suffer, as well as himself, will help to restrain a man, not only by the sense of his duty and dread of personal punishment, but also by his passions and natural affections; and will interest every dependent and relation he has to keep from offending. But this view of the subject is wholly unsatisfactory. It looks only to the offender himself, and is regardless of his innocent posterity. It really operates as a posthumous punishment upon them, and compels them to bear, not only the disgrace naturally attendant upon such flagitious crimes, but takes from them the common rights and privileges enjoyed by all other citizens, where they are wholly innocent, and however remote they may be in the lineage from the first offender. It surely is enough for society to take the life of the offender, as a just punishment of his crime, without taking from his offspring and relatives that property which may be the only means of saving them from poverty and ruin. It is bad policy, too; for it cuts off all the attachments which these unfortunate victims might otherwise feel for their own government, and prepares them to engage in any other service, by which their supposed injuries may be redressed, or their hereditary hatred gratified. Upon these and similar grounds it may be presumed that the clause was first introduced into the original draft of the Constitution; and after some amendments it was adopted without any apparent resistance. By the laws since passed by Congress, it is declared that no conviction or judgment, for any

capital or other offences, shall work corruption of blood, or any forfeiture of estate. The history of other countries abundantly proves that one of the strong incentives to prosecute offences as treason has been the chance of sharing in the plunder of the victims. Rapacity has been thus stimulated to exert itself in the service of the most corrupt tyranny; and tyranny has been thus furnished with new opportunities of indulging its malignity and revenge, of gratifying its envy of the rich and good, and of increasing its means to reward favorites, and secure retainers for the worst deeds."—*Story's "Commentaries on the Constitution," Sec. 1300.*

In the light of this exposition let us follow the consequences of this bill into detail, and let us suppose its provisions fully carried out. Our armies have overrun the whole territories of the Confederate States; resistance has entirely ceased; and the President and his officers being masters of the country, they have time to finish the residue of their work by gathering in the balance of the property of the rebels not already taken to supply the "military necessities" of the suppression. The rebels themselves are homeless, houseless, and propertyless; and the question arises, have you made them loyal by your severity? Are you assured their love for the Union will return again after this chastisement? Have you thought how they would shout at the sight of the glorious old banner—"the stars and stripes"—which brought them such deliverance?

Mr. President, these people are to be again our brethren and kinsmen, if such a thing is possible; but it does seem to me that, by such laws as this, you will make that possibility a very remote one. Will not their women and children hate you, and their children's children hate and curse you down to the latest generation; and whenever they get a chance will they not rebel against you? Have you not sown the seeds of many rebellions by this one ill-advised act? All this might make little or no difference if they were of hostile race and alien enemies, and if we were making war upon them for conquest and subjugation. But that is not the fact. We have here in these Halls of Congress solemnly declared that the war was for no such purpose, but that it was for the purpose of compelling obedience to the Constitution and the laws; and I am for standing upon that declaration.

The Constitution and the laws being restored and obedience tendered, is this law one of them? Now, we suppose that a large number of people everywhere in the Confederate States were constrained, even by force, to join in the rebellion—are these to suffer upon the same scaffolds with the willing traitor; and is there no difference to be made between the general who betrayed his country and the soldier he has compelled to march at his

bidding at the head of a rebel column? This bill makes none; and, if it did, it makes no provision to try it and determine its value when it is found; the officers have seized the property, and the victim of force in the beginning ends by being the victim of wrong and injustice. To him the Constitution and laws are not yet restored. Again: thousands of these people have been duped into rebellion by being told that we of the North were all Abolitionists—intent, when we had the power, to wield it for the emancipation of their slaves, and the destruction of their social system. What does your bill do with these—these men, who believed the falsehood because it was first asserted by Southern demagogues and then proved and corroborated by Northern knaves? Is there no difference here, again, between the wily traitor and his simple dupe? This bill makes none, but includes within its terms the whole rebel population, of every state and degree, from the lordly planter down to the negro laborer; and the broad acres of the one, as well as the narrow hovel of the other, are alike forfeit under it.

But the President and his officers are to dispose of these confiscated estates. Who will buy them? What kind of neighborhood will exist between the former owner or his heirs and your alienees or their heirs? How the delights of this society will enhance the value of those estates to the purchasers, especially when they reflect that the forfeiture will never be forgotten in the family of the rebel, and that, if they have no other, they can transmit this inheritance to their descendants unimpaired for centuries! The tradition of it will sit continually by the hearthstone of that family a hideous specter, deathless for ages, prompting to revenge and inciting to rebellion. Sir, your thrifty purchasers will not like incumbrances such as these hanging over your forfeited estates; and you might as well try to attract them and their capital to your vendue by promising they should be entitled, as appurtenant to the land offered for sale, to an Irish feud in perpetuity or a Corsican vendetta in fee to them and their heirs forever. Such titles have never been desirable. In the French Revolution, even when its success seemed well assured the holders of the *assignats* refused to buy the public domain with them, although at that time (August, 1793) the *franc assignat* had so depreciated that the metal franc was worth nine of them. Sir, you might as well expect capital to seek the margin of an extinct volcano before the lava had cooled for investments in real estate. The only purpose forfeitures ever served in ancient times was to furnish a means of payment to the hardy soldier who achieved their conquest; his title was in his sword,

and he could maintain it. That which is taken in war must be kept in war. Every hill must have its castle, and every march its wardens. But surely this is not one of the "dispositions" the President and his officers are to make of this property.

As a Republican, standing upon the Constitution as construed by that party, I protest against this bill as being a total and entire departure from the principles of that instrument, most mischievous at this time, because it uselessly distracts, divides, and weakens the friends of the country when they ought to be united and of one accord in action, if ever such were needed before. In addition to this, it would make us do of all things in the world that which would most gratify and strengthen our enemies everywhere—worth to-day more than a hundred thousand armed men to the traitors of the South, and worth more than five hundred thousand votes to the would-be traitors of the North; thus enabling the latter again to get control of the Government, to wield it as they have wielded it before. No, sir; pass that bill by this Congress and every falsehood uttered and every design charged upon us in six years of desperate struggle is verified by our deliberate act, an act as useless to the country and to the cause in which we are engaged (apart from other objections) as would be a law against serfdom in Russia passed here.

Sir, I hope and trust some other and better way than this will be found to punish those concerned in this rebellion after it shall have been suppressed, and that the method adopted, whatever it may be, will not be one which will furnish cause for future revolts. Those who are to be punished at all ought to be punished effectually under the Constitution, and according to the laws they have violated; and those who are to be forgiven ought to be forgiven fully and freely as it becomes the majesty of a great nation to forgive. Having rescued the revolted States, and restored the dominion over them to the loyal people within them, I would have the traitors dealt with in such way as not to endanger in the future either the happiness or safety of such as have remained faithful through the terrible ordeal to which they have been subjected. In this I should consult their wishes and defer much to their better judgment; but certainly I would not do that which, in their opinion, would leave them worse with the Union restored than they would be with the Confederacy sustained. I would not offer bounties to make them rebels, neither would I impose penalties or conditions having the like effect. I look upon this bill as a measure of the latter kind—the natural consequence of which would be to give to

the rebels the energy of despair, and to take from the loyalists every motive for fidelity. Pass this bill and the same messenger who carries it to the South will come back to us with the news of their complete consolidation as one man. We will then have done that which treason could not do; we, ourselves, will then have dissolved the Union; we shall have rent its sacred charter and extinguished the last vestige of affection for it in the slave States by our blind and passionate folly.

I am well aware, sir, of the object of this second clause—emancipating the slaves of the rebels—and I know there are many who think that ought to be done, because they think slavery the only cause for the rebellion. In considering this it is well to remember that there are now in the world, and always will be, many great evils which God, in His wisdom and for His own purposes, has put out of the reach of remedy except in His own way and at His own time, and then His means are always adequate and very generally apparent. Four millions of negro slaves are now in bondage in the United States. Where are the signs of their emancipation? Have not hundreds of thousands of these everywhere had ample opportunities to throw off their chains within the last few months? Have they done so? And, if they have not done so, can you compel them to exchange voluntary servitude for involuntary freedom? I thought the world was old enough by this time to know that they who are entitled to freedom themselves must strike the blow which is to secure it. What blow has the negro struck for himself in this his fairest opportunity? His rebel master, with a madness to all other men incomprehensible, engaged himself in revolt, broke up the society in which he lived, liberated all its elements, so that they are free to act, and thus tacitly invited him to assert his manhood? How has he availed himself of it? Why, sir, just in the way one might have expected; knowing nothing of liberty, caring nothing for it, he has remained inactive as the domestic animals around him, impelled, perhaps, by the same unconscious instinct of dependence upon the providence of a master wiser and stronger than himself. A child always in the scale of development, he may have had some child's consciousness that the boon of liberty so ostentatiously offered him by his over-zealous friends might prove to him fatal as the shirt of Nessus or the box of Pandora, and he still hesitates and hugs his chains.

I have no hope of the negro yet, though, God knows, I would have him free, free as I am myself, if freedom be his choice, through the strife and agony by which he, as all men, must

purchase it. Eternal vigilance and continual struggle is the price of liberty.

On May 2, 1862, James R. Doolittle [Rep.], of Wisconsin, spoke in the Senate upon the limitations in the Constitution upon the punishment for treason.

Against Confiscation of Real Estate of Traitors

Senator Doolittle

When the Constitution was formed it was a serious question whether there should be any power given to the United States Government to punish treason against it. Under the old Articles of Confederation no such power existed. It, however, is given by the Constitution of the United States, and the same language which gives it puts a limitation upon it. There is the power and there its limitation. There they stand side by side, put into the Constitution in the same clause. We cannot close our eyes to one and open them to the other.

The power to suppress insurrection is a distinct and substantive power, without limitation, except that whatever law shall be passed by Congress and whatever shall be done by the Executive in suppressing insurrection should not go beyond the powers usually exercised according to the modern usage of nations in carrying on civilized warfare—the laws of necessity and of humanity.

Under this Constitution Congress is not prohibited from declaring that personal estate shall be forfeited upon the conviction of a traitor, but that his real estate cannot be forfeited beyond his life upon the attainder for treason. I have received a copy of an able argument written by Joel Parker, who stands at the head of the law school of Harvard University. I find he makes the same distinction. He assumes it to be almost too clear for an argument. He says:

"The attainder spoken of in the clause cited from the Constitution being such attainder as, according to the common law, results from a judgment, it seems clear that the forfeiture, which is limited by the Constitution to an estate for life, relates to the same general kind of property which was forfeited by the attainder at common law; and the language of the constitutional provision indicates that this was *real* and not *personal property*. A forfeiture of a *life estate in personal property*, of which the traitor had the absolute title, would certainly be *an anomaly*. But it is clear that the forfeiture on attainder of treason was of real property only, lands, and

interests in or rights to lands, and could be no other; for the forfeiture of the personal property of the traitor was the result of the conviction which preceded the judgment and the attainder."

I will also read a sentence or two from Chitty's Criminal Law:

"There is this difference between conviction and judgment, that if the traitor die after conviction and before judgment he may pass his real estate, but not his personal property, because the goods and chattels are forfeited on the verdict of guilty, but the lands are not divested until the attainder, which is the pronouncing of the sentence of the court."

See, also, Coke's "Commentaries on Littleton," Vol. 2, Sec. 745.

It is clear, therefore, that, under this clause of the Constitution, giving to Congress the power to declare the punishment of treason, we may declare the absolute forfeiture of every dollar of the traitor's personal estate upon his conviction; but, when we come to touch his real estate, we can forfeit it for his life, and for his life only.

I am aware that Senators here have contended that in other countries of the world, upon a conviction of treason, men have had not only their personal property confiscated absolutely, but their real property also. I agree to that. Such was the law among the Persians, the Macedonians, the Greeks, the Romans, and in England, too, until they passed a law, to take effect after the death of the Pretender, to restrain its effect. The same power was exercised in this country in most if not all of the colonies during the Revolution; but not under this Constitution. That power was exercised before this Constitution was formed, when there was no such limitation upon them, when the common law was in full force, and the judgment of attainder forfeited all his real estate absolutely, as his personal estate was forfeited upon conviction.

It was with all these facts before them that our ancestors who formed the Constitution placed this limitation in it. They had been in rebellion themselves. In their own experience they had learned all there is in the passions which dictate and the consequences which follow attainders, forfeitures, and confiscations. They knew it all. With all the lights of human history before them, under the old and under the new dispensation, before and after Christ, when they met in convention to form this Constitution, to found this new Government to be the light and the example of nations, they determined to limit the power of confiscating real estate to the life of the guilty party, even in

this highest of political crimes. They determined that, to the extent of the homes and lands of the family, the rule should be, *punish the guilty*, but *spare the innocent*.

On May 6 Senator Trumbull's bill was referred to a select committee of seven. The chairman, Daniel Clark [N. H.], duly reported the committee's bill, which merely authorized the President, at his discretion, to proclaim free all slaves of persons who shall be found in arms against the United States thirty days after such proclamation. It came up for discussion on May 16, and Garrett Davis [Ky.] tried to amend it by providing that the confiscated slaves be sold, the proceeds accruing to the Treasury. This amendment failing (only 7 votes being recorded in its favor), he then moved that no slave should be emancipated unless provision had been made for his immediate colonization out of the country; this amendment received only 6 votes. The bill was then put aside in favor of the House [Eliot] bill.

The Confiscation and Emancipation Bills

House of Representatives, April 30-May 26, 1862

This bill had been referred in the House to the Judiciary Committee, and was there reported against by John Hickman [Pa.], the chairman, because the President had already the power that it sought to confer. It was then referred to a select committee of seven, of which Mr. Eliot was made chairman. By this committee it was separated into two bills, one providing for confiscating the property of persistent rebels, and the other providing for emancipating their slaves, and these were reported on April 30. The debate on these measures lasted for several days. Judge Benjamin F. Thomas [Mass.], a conservative Republican, opposed them as a violation both of the Constitution and the law of nations.

"The duty of obedience to that Constitution was never more imperative than now. I am not disposed to deny that I have for it a superstitious reverence. I have 'worshipped it from my

forefathers.' In the school of rigid discipline by which we were prepared for it, in the struggles out of which it was born, the seven years of bitter conflict, and the seven darker years in which that conflict seemed to be fruitless of good; in the wisdom with which it was constructed and first administered and set in motion; in the beneficent government it has secured for more than two generations; in the blessed influences it has exerted upon the cause of freedom and humanity the world over, I cannot fail to recognize the hand of a guiding and loving Providence. But not for the blessed memories of the past only do I cling to it. He must be blinded 'with excess of light,' or with the want of it, who does not see that to this nation, trembling on the verge of dissolution, it is the only possible bond of unity."

Samuel S. Cox [Dem.], of Ohio, asked:

"Must these Northern fanatics be sated with negroes, taxes, and blood, with division North and devastation South, and peril to constitutional liberty everywhere, before relief shall come? They will not halt until their darling schemes are consummated. History tells us that such zealots do not and cannot go backward."

Said John Law [Dem.], of Indiana:

"The man who dreams of closing the present unhappy contest by reconstructing this Union upon any other basis than that prescribed by our fathers, in the compact formed by them, is a madman—aye, worse, a traitor—and should be hung as high as Haman. Sir, pass these acts, confiscate under these bills the property of these men, emancipate their negroes, place arms in the hands of these human gorillas, to murder their masters and violate their wives and daughters, and you will have a war such as was never witnessed in the worst days of the French Revolution, and horrors never exceeded in St. Domingo, for the balance of this century at least."

Mr. Eliot closed the debate on May 26 with a most radical speech in favor of the bills. Of the Confiscation Bill he said:

This bill seeks to condemn the property of the leading rebels, and to place the proceeds in the treasury for the purpose of helping to defray the expenses of the war, and also in aid of those

who have been robbed by the Confederate Government. All laws of this kind, gentlemen must be aware, must be in their terms severe. The rebels began to confiscate a year ago. They passed confiscation laws, and under those laws there is but little property of loyal men left in their States. We are slow in following their example. I am surprised that, after a year's experience of the effects of their confiscation schemes, and after they have used the property taken from loyal citizens against the Government of the United States, gentlemen should come here and speak of this bill as being too severe. There is not a rebel of the classes mentioned in the bill who does not deserve to be hanged by the neck until he is dead.

I believe, Mr. Speaker, that this bill will accomplish good in the border States. It will strengthen the hands and hearts of loyal men. If made effectual, it will deprive the enemy of his means of carrying on the war. It will help to weaken and subdue him. It will increase our strength. It will, in part, indemnify us against the cost of this rebellion. It will give the property of rebels, first, to their creditors in loyal States; and, secondly, it will provide a means of indemnity for loyal men whose property, owned in rebellious States, has been taken from them.

Sir, when it is argued that this bill affects men who are dupes of ambitious leaders, I cannot but be struck with the audacity of such a proposition. Who are the dupes named in the first section of the bill? Are the President and Vice-President of this rebel Confederacy dupes? Are the members of Congress, members of the cabinet, members of the legislatures, members of conventions, high officers of the Confederacy or of different States, dupes? Have they not good sense enough to know what they are doing? Are they not conscious and willful rebels, and enemies against their Government? Are they not at war with us? Does any sane man believe they do not mean what they are doing, and that they do not know what they mean? Are they dupes? Sir, if we are deceived by such arguments against our bills we shall be the dupes, and the enemy, as they wage this war and confiscate our property, will hold us in derision.

The Confiscation Bill was passed by a vote of 82 to 68. The Emancipation Bill was next taken up and defeated by a vote of 74 yeas (all Republican) to 78 nays (15 of which were Republicans). It was then reconsidered, and, after elimination of its harsher features, was passed by a vote of 82 to 54.

The House Confiscation Bill was amended in the Senate on motion of Daniel Clark [N. H.] by the addition of provisions under certain conditions of emancipation of slaves, and, on June 28, passed by a vote of 28 to 13. The House refused by a vote of 8 yeas to 124 nays to concur in this action, whereupon a joint conference of the two Houses was brought about, which presented a combined Confiscation and Emancipation Bill.

This bill passed the House by 82 yeas to 42 nays, and the Senate by 27 yeas to 12 nays, and was approved by the President on July 17. In its final form the bill contained the following provisions:

The slaves of the person convicted of treason performed after the passage of the act should be set free, and he himself should either suffer death, or be imprisoned not less than five years and fined not less than $10,000, at the discretion of the court. A person convicted of assisting rebellion was to have his slaves liberated, and himself be imprisoned not less than ten years, or fined not over $10,000, or suffer both penalties, all at the discretion of the court. Persons convicted under the act were permanently disqualified to hold office under the United States. The President was authorized to confiscate for the support of the army the property of any one of several enumerated classes of persons, namely: (1) rebel military and naval officers; (2) officers of the Confederate government; (3) officers of Confederate State governments; (4) all other citizens of seceded States who do not within sixty days after the President's proclamation of this act return to their allegiance to the United States; and (5) those citizens of loyal States and Territories who assist rebellion. Fugitive and captured slaves of rebels were deemed captives of war by the act, and ordered to be set free. Fugitive slaves of loyal owners were to be returned to them on their taking oath that they had not aided the rebellion; the civil authorities were to return these slaves—in no case the military or naval authorities. The President was authorized at his discretion to employ negroes to suppress the rebellion; and to colonize free negroes in some tropical country beyond the limits of the United States, as well as to proclaim amnesty to rebels.

At the end of the rebellion there were no prosecutions for treason. Says Alexander Johnston, in his "American Political History":

It has been roundly asserted that the reason for this was the consciousness of the Government of the United States that it had been illegally suppressing a misnamed rebellion, that treason could only hold against a State, and that Jefferson Davis and his associates had committed no crime and engaged in no treason, in any sense known to the Constitution or its framers. Those who so argue forget that Mr. Davis, at least, was no prisoner of war; that his surrender was unconditional and in a territory under military occupation; and that, if there had been any such impotent spite against him as this theory assigns to the Government, a drum-head court-martial and a file of men would quickly have made it patent, treason or no treason. The fact seems to be that his escape was due entirely to lack of spite. The collapse of the rebellion had been too complete to allow of spite. The nation stood aghast as it realized the thoroughness of its work; and its controlling impulse was to efface as rapidly as possible all evidences of the conflict. Treason trials would have been a festering sore in the body politic, and they were avoided.

CHAPTER VIII

Emancipation

Union Victory at Antietam [Sharpsburg], Md.—President Lincoln Issues the Emancipation Proclamation—He Forestalls Objections to It in an Address on Colonization to Negro Deputation; in a Letter to Horace Greeley, Replying to His "Prayer of Twenty Millions," and in an Address on Emancipation to a Religious Delegation—The Preliminary Proclamation—Its Reception by the Country and Europe—The Final Proclamation—Second Annual Message of the President; It Treats of Compensated Emancipation and the Relative Advantages of Retaining Freedmen in the Country and Deporting Them; and Pleads That Congress and the Country Aid Him in His Plan for Saving the Union—Reply of William A. Richardson (Dem.), of Illinois, to the Message: "Enslaving the Whites to Free the Blacks."

THE Union victory at Antietam [Sharpsburg], Md., on September 18-19, 1862, precipitated the emancipation proclamation of President Lincoln.

By the advice of William H. Seward, Secretary of State, Lincoln had only been waiting for a Union victory to declare an emancipation proclamation applying to slaves in the disloyal States. Not only did he believe that, as commander-in-chief of the army and navy of the Republic, he had a constitutional right to issue the proclamation as a war measure, but he was fortified by the special authorization of Congress to do so at his discretion. Late in July or early in August he had announced to the Cabinet his determination to issue such a proclamation.

After the President had determined to issue the proclamation he set himself to forestall the objections which he knew the document would call forth, such as: that it was intended to establish negro equality; that it proved the insincerity of the declared purpose of the Administration to save the Union by showing this to

have been from the beginning to free the slave, etc. On August 14, addressing a deputation of negroes on the subject of colonization, he said, in regard to the vexed question of race equality:

Why should the people of your race leave the country? It is because you and we are different races. We have between us a broader physical difference than exists between any other two races. Whether this is right or wrong I need not discuss; but this physical difference is a great disadvantage to us both. Your race suffer greatly, many of them, by living among us, while ours suffer from your presence. This affords a reason why we should be separated. Your race is suffering, in my judgment, the greatest wrong inflicted on any people. But, even when you cease to be slaves, you are yet far remote from being placed on an equality with the white race. You are cut off from many of the advantages which the other race enjoys. The aspiration of men is to enjoy equality with the best when free, but on this broad continent not a single man of your race is made the equal of a single man of ours. Go where you are treated the best, and the ban is still upon you. I do not propose to discuss this—but to present it as a fact with which we have to deal. I cannot alter it if I would. . . . I believe in its general evil effects on the white race. See our present condition—white men cutting one another's throats—none knowing how far it will extend. . . . But for your race among us there could not be war, although many men engaged on either side do not care for you one way or the other. . . . It is better for us both, therefore, to be separated.

On August 19, 1862, Horace Greeley, in his paper, the New York *Tribune*, addressed a letter to the President some weeks after this, entitled "The Prayer of Twenty Millions," exhorting Mr. Lincoln not to proclaim all the slaves in our country free, but to execute the laws of the land which operated to free large classes of the slaves of rebels. It concluded as follows:

"On the face of this wide earth, Mr. President, there is not one disinterested, determined, intelligent champion of the Union cause who does not feel that all attempts to put down the rebellion, and at the same time uphold its inciting cause, are preposterous and futile—that the rebellion, if crushed out to-morrow, would be renewed within a year if slavery were left in full

vigor—that army officers, who remain to this day devoted to slavery, can at best be but halfway loyal to the Union—and that every hour of deference to slavery is an hour of added and deepened peril to the Union. I appeal to the testimony of your embassadors in Europe. It is freely at your service, not mine. Ask them to tell you candidly whether the seeming subserviency of your policy to the slaveholding slavery-upholding interest is not the perplexity, the despair of statesmen of all parties; and be admonished by the general answer!

What an immense majority of the loyal millions of your countrymen require of you is a frank, declared, unqualified, ungrudging execution of the laws of the land, more especially of the Confiscation Act. The rebels are everywhere using the late anti-negro riots in the North—as they have long used your officers' treatment of negroes in the South—to convince the slaves that they have nothing to hope from a Union success—that we mean in that case to sell them into a bitter bondage to defray the cost of the war. Let them impress this as a truth on the great mass of their ignorant and credulous bondmen, and the Union will never be restored—never. We cannot conquer ten millions of people united in solid phalanx against us, powerfully aided by Northern sympathizers and European allies. We must have scouts, guides, spies, cooks, teamsters, diggers, and choppers, from the blacks of the South—whether we allow them to fight for us or not—or we shall be baffled and repelled. As one of the millions who would gladly have avoided this struggle at any sacrifice but that of principle and honor, but who now feel that the triumph of the Union is indispensable not only to the existence of our country but to the well-being of mankind, I entreat you to render a hearty and unequivocal obedience to the law of the land.

The President replied to this appeal by telegraph on August 22, 1862.

As to the policy which I "seem to be pursuing," as you say, I have not meant to leave anyone in doubt. I would have the Union. I would have it in the shortest way under the Constitution.

The sooner the national authority can be restored, the nearer the Union will be the Union as it was.

If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them.

If there be those who would not save the Union unless they

could at the same time destroy slavery, I do not agree with them.

My paramount object is to save the Union, and not either to save or destroy slavery.

If I could save the Union without freeing any slave, I would do it—if I could save it by freeing all the slaves, I would do it—and if I could do it by freeing some and leaving others alone, I would also do that.

LINCOLN CROSSING NIAGARA

[Suggested by a feat of Blondin, the tight-rope walker]

What I do about slavery and the colored race I do because I believe it helps to save this Union; and, what I forbear, I forbear because I do not believe it would help to save the Union.

I shall do less whenever I shall believe what I am doing hurts the cause! and I shall do more whenever I believe doing more will help the cause.

I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my views of official duty; and I intend no modification of my oft-expressed personal wish that all men everywhere could be free.

But the most astute of the President's preparatory statements was his reply, on September 13, to a committee from the religious denominations of Chicago asking him to issue a proclamation of emancipation. In this he reviewed the arguments for the proclamation as if he were an opponent of them, and so, by admitting their cogency, he put himself, when ultimately he did issue the proclamation, in the politically advantageous position of being forced to do so. Also, by bringing expediency as a consideration to the fore, he prepared the country for an indefinite postponement of emancipation, which would be the case if there was delay in achieving the victory upon which its promulgation depended. The President said:

The subject presented in the memorial is one upon which I have thought much for weeks past, and I may even say for months. I am approached with the most opposite opinions and advice, and that by religious men who are equally certain that they represent the Divine will. I am sure that either the one or the other class is mistaken in that belief and perhaps in some respects both. I hope it will not be irreverent for me to say that, if it is probable that God would reveal his will to others on a point so connected with my duty, it might be supposed He would reveal it directly to me; for, unless I am more deceived in myself than I often am, it is my earnest desire to know the will of Providence in this matter. And if I can learn what it is I will do it. These are not, however, the days of miracles, and I suppose it will be granted that I am not to expect a direct revelation. I must study the plain physical facts of the case, ascertain what is possible, and learn what appears to be wise and right. . . .

What good would a proclamation of emancipation from me do, especially as we are now situated? I do not want to issue a document that the whole world will see must necessarily be inoperative, like the Pope's bull against the comet! Would my word free the slaves, when I cannot even enforce the Constitution in the rebel States? Is there a single court, or magistrate, or individual that would be influenced by it there? And what

reason is there to think it would have any greater effect upon the slaves than the late law of Congress, which I approved, and which offers protection and freedom to the slaves of rebel masters who come within our lines? Yet I cannot learn that that law has caused a single slave to come over to us. And suppose they could be induced by a proclamation of freedom from me to throw themselves upon us, what should we do with them? How can we feed and care for such a multitude? General Butler wrote me a few days since that he was issuing more rations to the slaves who have rushed to him than to all the white troops under his command. They eat, and that is all; though it is true General Butler is feeding the whites also by the thousands; for it nearly amounts to a famine there. If, now, the pressure of the war should call off our forces from New Orleans to defend some other point, what is to prevent the masters from reducing the blacks to slavery again; for I am told that whenever the rebels take any black prisoners, free or slave, they immediately auction them off! They did so with those they took from a boat that was aground in the Tennessee River a few days ago. And then I am very ungenerously attacked for it! For instance, when, after the late battles at and near Bull Run, an expedition went out from Washington under a flag of truce to bury the dead and bring in the wounded, and the rebels seized the blacks who went along to help, and sent them into slavery, Horace Greeley said in his paper that the Government would probably do nothing about it. What could I do?

Now, then, tell me, if you please, what possible result of good would follow the issuing of such a proclamation as you desire? Understand, I raise no objections against it on legal or constitutional grounds, for, as commander-in-chief of the army and navy, in time of war I suppose I have a right to take any measure which may best subdue the enemy; nor do I urge objections of a moral nature, in view of possible consequences of insurrection and massacre at the South. I view this matter as a practical war measure, to be decided on according to the advantages or disadvantages it may offer to the suppression of the rebellion.

The committee at this point replied to the President's objection that the measure was inexpedient, by contending that it would secure at once the sympathy, heretofore in suspense, of England and France, and, indeed, of the whole civilized world; further, that, as slavery was clearly the root of the rebellion, it must be eradicated

if the war was to be decisively ended. The President said:

I admit that slavery is at the root of the rebellion, or at least its *sine qua non*. The ambition of politicians may have instigated them to act, but they would have been impotent without slavery as their instrument. I will also concede that emancipation would help us in Europe, and convince them that we are incited by something more than ambition. I grant, further, that it would help somewhat at the North, though not so much, I fear, as you and those you represent imagine. Still, some additional strength would be added in that way to the war, and then, unquestionably, it would weaken the rebels by drawing off their laborers, which is of great importance; but I am not so sure we could do much with the blacks. If we were to arm them, I fear that in a few weeks the arms would be in the hands of the rebels; and, indeed, thus far, we have not had arms enough to equip our white troops. I will mention another thing, though it meet only your scorn and contempt. There are fifty thousand bayonets in the Union army from the border slave States. It would be a serious matter if, in consequence of a proclamation such as you desire, they should go over to the rebels. I do not think they all would—not so many, indeed, as a year ago, or as six months ago—not so many to-day as yesterday. Every day increases their Union feeling. They are also getting their pride enlisted, and want to beat the rebels. Let me say one thing more: I think you should admit that we already have an important principle to rally and unite the people, in the fact that constitutional government is at stake. This is a fundamental idea, going down about as deep as anything.

In dismissing the committee he said assuringly:

Do not misunderstand me because I have mentioned these objections. They indicate the difficulties that have thus far prevented my action in some such way as you desire. I have not decided against a proclamation of liberty to the slaves, but hold the matter under advisement. And I can assure you that the subject is on my mind, by day and night, more than any other. Whatever shall appear to be God's will, I will do. I trust that in the freedom with which I have canvassed your views I have not in any respect injured your feelings.

Already the President had laid the event in the hands

of God by vowing to issue the proclamation if Lee were driven back over the Potomac. This result of the battle of Antietam was not at once apparent. As Lincoln said to George S. Boutwell: "The battle of Antietam was fought Wednesday, and until Saturday I could not find out whether we had gained a victory or lost a battle. It was then too late to issue the proclamation that day, and . . . I fixed it up a little Sunday, and Monday (September 22) I let them have it."

In accordance with the request of Mr. Lincoln Secretary Seward suggested a few minor changes in the document, which were indorsed by his colleagues and accepted by the President. The proclamation then received the unqualified approval of the entire Cabinet except Postmaster-General Blair, who, while personally in favor of it, expressed apprehension of its evil effect on the border States and the army, which contained many opponents of Abolition. He asked leave to file a paper which he had prepared on the subject with the proclamation. This the President readily granted. Secretary Blair, however, changed his mind over night, and next morning withdrew his objections. The proclamation was published in the newspapers of the 23d. As the President said in response to a serenade from approving Washington citizens at the White House that evening: "It [was] now for the country and the world to pass judgment, and, may be, take action upon it."

The Emancipation Proclamation

The proclamation, after solemnly affirming that the purpose of the war was, and should continue to be, the restoration of the Union, and promising measures of compensated emancipation to those slave States which should adhere or return to the Union, and of colonization to the freedmen, declared that on January 1, 1863, "all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free."

The country quickly gave its approval of the proclamation in the most official way possible at the time. When Confederate invasion of Pennsylvania was imminent Governor Andrew G. Curtin of that State had invited the governors of the Northern States to meet at Altoona on September 24 to consult on emergency measures for the common defence. Before this date arrived the defeat of Lee had removed the original purpose of the convocation, and the governors, after spending a day or so at Altoona in a helpful exchange of information upon military methods employed by their several States, proceeded to Washington and presented a written address to the President, pledging their support in suppressing the rebellion, with the recommendation that an army of 100,000 men be held in reserve at home ready for such emergencies as that which had recently occurred. To this was added an indorsement of the new proclamation. All the governors of the loyal States, those who were present, and the absentees to whom it was shortly sent, signed that portion relating to the suppression of rebellion, and all but the governors of New Jersey, Delaware, Maryland, Kentucky, and Missouri signed the indorsement of the proclamation.

The measure was acclaimed by the newspapers in general and by men of prominence all over the country. Nevertheless the President deplored the absence of material results. On September 28 he wrote to Vice-President Hamlin in reply to his congratulation upon the proclamation:

It is six days old, and, while commendation in newspapers and by distinguished individuals is all that a vain man could wish, the stocks have declined and troops come forward more slowly than ever. This, looked soberly in the face, is not very satisfactory. We have fewer troops in the field at the end of the six days than we had at the beginning—the attrition among the old outnumbering the addition by the new. The North responds to the proclamation sufficiently in breath; but breath alone kills no rebels.

The passage of the Emancipation and Confiscation

Acts of Congress, followed as these were by the Emancipation Proclamation of the President, converted the Opposition, which had hitherto with few exceptions supported every other measure for the suppression of the rebellion, into a peace party. A number of Democrats continued to support the Administration in the vigorous prosecution of the war, and, in order to admit these into their ranks without committing them to other than the war issues, the Republicans assumed temporarily the character and designation of a "Union" party. "Union League" clubs for the support of the Administration began to spring up in the large cities of the country. By strenuous appeals to patriotism the Union party, in the congressional elections of the fall of 1862, retained its majority of Representatives, although with greatly decreased pluralities.

Abroad the proclamation secured immediately and enduringly the sympathy of the common people and their representative statesmen for the Northern cause, and so sounded the knell of Southern expectations of foreign aid and intervention.

Lincoln's Proposed Emancipation Amendments to the Constitution

In his annual message of December 1, 1862, the President proposed amendments to the Constitution which would provide compensation in the form of United States bonds to those States or loyal individuals which should free the slaves under their control at any time before January 1, 1900, and which would authorize Congress to colonize freedmen abroad. The articles he discussed at length, advocating them as embodying a plan of mutual concession between loyal and honest slaveholders and loyal and honest Abolitionists.

Doubtless some of those who are to pay, and not to receive, will object. Yet the measure is both just and economical. In a certain sense the liberation of slaves is the destruction of property—property acquired by descent or by purchase, the same as any other property. It is no less true for having been

often said that the people of the South are not more responsible than are the people of the North; and when it is remembered how unhesitatingly we all use cotton and sugar and share the profits of dealing in them, it may not be quite safe to say that the South has been more responsible than the North for its continuance. If, then, for a common object this property is to be sacrificed, is it not just that it be done at a common charge?

Of the economic advantage of this plan the President said, prophesying a population at the end of the century of 100,000,000:

The proposed emancipation would shorten the war, perpetuate peace, insure this increase of population, and proportionately of the wealth of the country. With these we should pay all the emancipation would cost, together with our other debt, easier than we should pay our other debt without it.

On the subject of the competition of the freedmen with white laborers the President remarked at length, presenting economic arguments as to the relative advantages of retaining the freedmen in the country and of deporting them.

I cannot make it better known than it already is that I strongly favor colonization. And yet I wish to say there is an objection urged against free colored persons remaining in the country which is largely imaginary if not sometimes malicious.

It is insisted that their presence would injure and displace white labor and white laborers. If there ever could be a proper time for mere catch arguments, that time surely is not now. In times like the present men should utter nothing for which they would not willingly be responsible through time and in eternity. Is it true, then, that colored people can displace any more white labor by being free than by remaining slaves? If they stay in their old places, they jostle no white laborers; if they leave their old places, they leave them open to white laborers. Logically, there is neither more nor less of it. Emancipation, even without deportation, would probably enhance the wages of white labor, and very surely would not reduce them. Thus, the customary amount of labor would still have to be performed; the freed people would surely not do more than their old proportion of it, and very probably for a time would do less, leav-

ing an increased part to white laborers, bringing their labor into greater demand, and consequently enhancing the wages of it. With deportation, even to a limited extent, enhanced wages to white labor is mathematically certain. Labor is like any other commodity in the market—increase the demand for it and you increase the price of it. Reduce the supply of black labor by colonizing the black laborer out of the country, and by precisely so much you increase the demand for, and wages of, white labor.

But it is dreaded that the freed people will swarm forth and cover the whole land? Are they not already in the land? Will liberation make them any more numerous? Equally distributed among the whites of the whole country, and there would be but one colored to seven whites. Could the one in any way greatly disturb the seven? There are many communities now having more than one free colored person to seven whites, and this without any apparent consciousness of evil from it. The District of Columbia and the States of Maryland and Delaware are all in this condition. The District has more than one free colored to six whites; and yet in its frequent petitions to Congress I believe it has never presented the presence of free colored persons as one of its grievances. But why should emancipation south send the free people north? People of any color seldom run unless there be something to run from. Heretofore colored people, to some extent, have fled north from bondage; and now, perhaps, from both bondage and destitution. But, if gradual emancipation and deportation be adopted, they will have neither to flee from. Their old masters will give them wages at least until new laborers can be procured; and the freedmen, in turn, will gladly give their labor for the wages till new homes can be found for them in congenial climes and with people of their own blood and race. This proposition can be trusted on the mutual interests involved. And, in any event, cannot the North decide for itself whether to receive them?

He said in conclusion:

It is doubted, then, that the plan I propose, if adopted, would shorten the war, and thus lessen its expenditure of money and of blood? Is it doubted that it would restore the national authority and national prosperity, and perpetuate both indefinitely? Is it doubted that we here—Congress and Executive—can secure its adoption? Will not the good people respond to a united and earnest appeal from us? Can we, can

they, by any other means so certainly or so speedily assure these vital objects? We can succeed only by concert. It is not "Can any of us imagine better?" but "Can we all do better?" Object whatsoever is possible, still the question occurs, "Can we do better?" The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves, and then we shall save our country.

Fellow citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down, in honor or dishonor, to the latest generation. We say we are for the Union. The world will not forget that we say this. We know how to save the Union. The world knows we do know how to save it. We—even we here—hold the power and bear the responsibility. In giving freedom to the slave we assure freedom to the free—honorable alike in what we give and what we preserve. We shall nobly save or meanly lose the last, best hope of earth. Other means may succeed; this could not fail. The way is plain, peaceful, generous, just—a way which, if followed, the world will forever applaud, and God must forever bless.

Acts of Congress

Congress failed to legislate upon the subject of compensated emancipation; the Senators and Representatives from the border States holding that Congress under the Constitution had no authority to appropriate public money for such a purpose.

In other respects Congress loyally upheld the hands of the President. It ratified his suspension of the writ of *habeas corpus* in the cases of persons suspected of treason, and broadly authorized him to suspend the writ in the future "at such times, and in such places, and with regard to such persons, as in his judgment the public safety may require." An act was passed to enroll and draft in the national service the militia of the whole country, each State contributing its quota in the ratio of its population. By this the nation's power to

compel the military services of its citizens was for the first time declared and maintained.

Of the attacks made by the opposition upon the President's message the following, delivered in the House on December 8 by William A. Richardson [Ill.], is typical:

Enslaving the Whites to Free the Blacks

Attack on the President's Message

By William A. Richardson, M. C.

Sir, it is a remarkable document. It is an extraordinary message, when we come to think of its sum and substance. To feed, clothe, buy, and colonize the negro we are to tax and mortgage the white man and his children. The white race is to be burdened to the earth for the benefit of the black race.

A friend of mine from New England the other day made a mathematical analysis of the message. He said, one from one and naught remains. Naught from naught and the message is the result. [Laughter.]

So far as it relates to the white race, that mathematical calculation is right. So far as it relates to the negro, or, in the court language of the President, the "free American of African descent," rivers of blood and countless millions of treasure are not enough for his benefit and advantage.

Now, sir, when our people have anxiously looked to the message from the President of the United States to learn what they have to hope of a restored Union, and a return of the blessings of peace once more to their firesides, by inference we learn, if not directly, that, if we will carry out all of the President's plans, if we will carry out his schemes, thirty-seven years from now the people may again behold the restoration of the Union and the return of peace. True, the message states that at the end of those thirty-seven years but few of us will then be living to enjoy the blessings we once enjoyed in this now distracted and divided country.

But, Mr. Chairman, there are a few passages in the message so extraordinary, so wonderful, that they require at least a passing notice. There has been, and still is, a great anxiety felt and expressed by our people that this negro population shall not interfere with them; that it shall not jostle them in the occupations they have heretofore pursued in the various industrial pursuits of life in the great fertile regions of the West. The President tells our people, those who supported him because they believed he and his party intended to keep the non-slaveholding States and all the Territories of the Union for the sole occupation of the white race, if you do not like my plan of disposing of this black race; if you fear from their introduction among you that their labor will be brought into competition with that of your own, all you have to do to avoid this competition is to quietly leave your present fields of labor, homes to which, perhaps, you may be attached, and the graves of your kindred, and emigrate southward, and occupy the places made vacant by the exodus of what His Excellency terms the "free Americans of African descent." That is the sum and substance of it.

But, for sake of argument, admit, if you choose, that all the plans of the President touching emancipation and colonization of the negro were to-day successfully carried out, what would it accomplish in the great work of restoring the Union? Nothing—worse than nothing.

The President recommends in his annual message three propositions to amend the Constitution of the United States. The first, second, and third are for the benefit of the negro. The people are sick and tired of this eternal talk upon the negro, and they have expressed that disgust unmistakably in the recent elections. The President's proposed amendments as a whole, or either of them, could not receive the suffrages of a majority of the people of more than two States of this Union.

While upon this subject I desire to call the attention of the committee to a single feature in relation to these amendments. In the message he recommends an amendment to the Constitution as follows:

> "Art. —. Congress may appropriate money, and otherwise provide for colonizing free colored persons, with their own consent, at any place or places without the United States."

In this recommendation he seeks to give power to do what he claims he has the power to do without it; and by this recommendation he admits he has been exercising unauthorized and illegal authority. Is not this in itself an admission that the Constitution, unamended, grants no power to Congress or the Executive to appropriate or use the money of the people for any purposes contemplated in this amendment? He calls upon us to compromise. What compromise is that? For whom does he propose a compromise? What for? In order that you may

have more power to advance the negro. That is all there is to it, and there is nothing less of it. He tells us there are differences of opinion among the friends of the Union "in regard to slavery and the African race among us." He says, to all of those who differ with him, surrender your convictions and come to my plan—and he calls that compromise! Compromise! Yes, I trust in God the day is not far distant when the people of this country will compromise and save the Constitution and the Union for the white people, and not for the black people. Our people are for no other compromise than that.

There are other portions of the message upon which I should like to bestow some attention, but I will forbear to do so now, for I desire to call the attention of the committee to another proposition of the President which is connected with this subject.

The proclamation of the 22d of September last, issued by the President, took the country by surprise, and no one of the citizens more than myself. I had fondly hoped and been anxious that the President of the United States should so conduct himself in his high office as Chief Magistrate that I could lend him my support. I have been driven, with thousands of others, into opposition to the policy contained in that proclamation, for reasons which must commend themselves to every reflecting man sincerely desirous of terminating this war and suppressing the rebellion.

Mr. Lincoln, on the 4th of March, 1861, on the east portico of this Capitol, took a vow, which he said was registered in Heaven, to support the Constitution of the United States. In his inaugural address delivered on that occasion he said he had no lawful authority or inclination to interfere with the institution of slavery in the States where it exists. In his proclamation of the 22d of September last he assumes that he has power to forever free "all persons held as slaves within any State, or designated part of a State, the people whereof shall be in rebellion against the United States," thus violating the pledge so solemnly made in his inaugural address.

If the object of the proclamation was not to aid the rebellion, its effect was. It has strengthened the rebellion by driving into their army every person in the South that it was possible to drive there. Was its intent to affect those alone in rebellion? Certainly not. The slaves of every man in a rebellious State were to be free. The loyal man owning twenty slaves and the man in the rebel army owning a like number were by that proclamation to be affected precisely the same. The object of

the proclamation was to benefit the negro, not to restore the Government or preserve the Constitution. It was nothing more, nothing less. It goes a bow-shot beyond anything done by this House at the last session of Congress.

But again. If the proclamation is to be carried into effect, the war must continue until every slave is free. If every rebel should lay down his arms on the 2d day of January next, or any subsequent day, and submit himself to the laws and Constitution of the United States, the war would still have to go on, unless the slaves were all free, for the proclamation declares that "the executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of such persons." It strengthens the arm of the rebellion, and postpones the time of restoring peace to this country, by the declaration of the purpose for which the executive power shall be used. In what respect has our cause —the cause of the Union—been advanced? Up to that time, throughout the great Northwest, you had but to call for volunteers and they rushed to the army. Since then you have had no volunteering. Prior to that time it was not necessary, as the Secretary of War—as I am told, for I have not read his report—now declares it is necessary, to have provost marshals in every county to arrest deserters from the army.

We are informed that but a few days before the issuing of this proclamation the President himself declared, in a conference with some gentlemen who were urging him to this step, that it would not only be wholly inoperative in the object sought, but would directly weaken us in the border States, but significantly added that it might increase our strength in the North. I pause here to inquire where that additional strength in the North was to be obtained; not certainly from the Democratic element in the North. If additional vigor was infused into the service, it must come from some other quarter which until then had not heartily sustained the policy of the Administration. I need not particularize what class of individuals were to be thus induced to lend their support—the country well knows the baleful influences of this class, and the ends they seek to accomplish.

But this is not all. The record of the military operations shows to-day almost conclusively what the country had for some considerable time suspected: that success in a military point of view was not so much the object sought as the bringing about a condition of things when a proclamation of this sort could be urged as the only means of securing to us success.

Here the speaker went on to prove that on two occasions General McClellan could have captured Richmond had he not been interfered with by the Administration, and that finally McClellan had been removed from command because, in his orders to the army, he had failed to indorse the President's Emancipation Proclamation, intended as it was to enslave the white man by freeing the black.

"THE TRUE ISSUE"

[McClellan stopping the division of the country by Lincoln and Davis]

From the collection of the New York Historical Society

The speaker then adverted to the despotic acts of the Administration.

Arrests of thousands of men in loyal States, without due process of law, by the order of the executive officers of this Government, at the times and places where, in all cases, courts of justice were entirely open and the execution of the laws wholly unobstructed. The most remarkable page in the history of our race is the fact that, while these outrages have been committed upon the rights of our people, no resistance has been offered, no violence done, and no life has been taken as the

penalty for the wrong. The desire of the people to preserve the peace in their own midst has restrained them thus far from the commission of violence.

But they are in earnest. They mean to preserve their liberties and their rights. The results of the last elections were of no temporary character. Such a triumph has never before been witnessed in this country. There is not a man who voted the Democratic ticket last fall throughout the country who is not prepared, when the proper time comes, to lay down his life rather than sacrifice his liberty. Do not misunderstand us. We are for union. We are for liberty—constitutional liberty. Our ancestors, in all times past, have vindicated it; and their descendants, after long suffering, will, if need be, vindicate it before God and the world. They do not wish to be slaves, and do not mean to be made slaves.

Perhaps I should not anticipate the course of the President of the United States in regard to his proclamation. I trust that he will reconsider it; that he will pause and not go forward with it. This Government cannot be restored by the sword alone. You must carry with it the olive branch. The President says we are making history. I trust we are not making such history as the incendiary[1] who swung his lighted torch in the air to burn the temple of Diana at Ephesus, and who has left his name behind, while the name of him who reared that temple has perished from our memories. I think we may expect that, under a change of policy, the blessings of the Union may yet be restored and made perpetual.

[1] Herostratus.

CHAPTER IX

Negro Soldiers

Negro Soldiers in the Revolution—In the War of 1812—Organization of Negro Companies by Union Generals in 1862—Jefferson Davis Orders Execution for Felony of Union Officers Engaged in Such Organization—Congress Passes Act of July 17, 1862, Accepting Negroes for General Service in the Army—Thaddeus Stevens [Pa.] Introduces Bill in the House Specifically Employing Negroes as Soldiers—Debate: in Favor, Mr. Stevens, John Hickman [Pa.], Thomas M. Edwards [N. H.], Alexander S. Diven [N. Y.]; Opposed, John J. Crittenden [Ky.], Samuel S. Cox [O.]—Bill Is Passed by the House, and Rejected by the Senate as Conferring Power Already Granted—History of Negro Troops in the War—Employment of Negroes by the Rebels—Retaliation.

CRISPUS ATTUCKS, a mulatto and a fugitive slave, led the patriot mob at the Boston massacre. It was Peter Salem, one of the enfranchised negroes who fought at Bunker Hill, that shot dead Major Pitcairn, leader of the British marines, as he leaped over the breastworks crying, "The day is our own."

The Revolutionary Committee of Safety, feeling that it was inconsistent with the principles of the conflict and reflecting dishonor on the colonies to employ slaves as soldiers, decreed, on May 20, 1775, that only those negroes who were free should be admitted into the army. Many patriots thereupon freed their slaves that these might be permitted to fight.

In the Continental Congress Mr. Edward Rutledge, of South Carolina, moved, on September 26, 1775, that all negroes be dismissed from the patriot armies, but the opposition was so formidable and so determined that the motion did not prevail. Negroes, instead of being expelled from the service, continued to be received, often as substitutes for ex-masters or their sons; and, in Vir-

ginia especially, it gradually became a custom to give a slave his freedom on condition of his taking his master's place at the front.

The Congressional Committee of Conference with General Washington before Boston, headed by Benjamin Franklin, ordered on October 23, 1775, that negroes, "especially such as are slaves," should no longer be enlisted; but, on Washington's representation that the negro soldiers whose time had expired were much dissatisfied with the order, and that he feared some might show their resentment by deserting to the enemy, Congress, on January 16, 1776, permitted these to reënlist.

Already (in November, 1775) Lord Dunmore, Royal Governor of Virginia, in order to "reduce" the colonists "to a proper sense of their duty to His Majesty's crown and dignity," had invited slaves to enter the British army, offering them freedom if they would do so.

The Virginia patriots, to offset the effect of this proclamation, called the attention of the slaves to the fact that enlistment in the British army would leave their families at the mercy of "an enraged and injured people." Many enlisted, however, though almost all were destroyed by a malignant fever contracted in the camps.

On August 24, 1778, 775 negroes were enrolled in the Continental army. On August 29 a black regiment, all of whose members had been freed by the Rhode Island legislature on condition they enter the State militia, fought with notable gallantry at the battle of Rhode Island. The legislatures of other Northern States followed the example of that of Rhode Island, and in the South this policy was urged by leading patriots. It is highly probable, says Horace Greeley in his "American Conflict," that had the Revolutionary War lasted a few years longer slavery would have been abolished throughout the country.

So great was the fear of the British commanders that negroes would be set free and enrolled in the patriot army, that Sir Henry Clinton, on June 30, 1779, issued a proclamation offering protection and employ-

ment to all slaves who should enter the British lines. Lord Cornwallis, in his Southern campaign, proclaimed freedom to all slaves who should join him. Thomas Jefferson, in a letter to Dr. Gordon, from Paris, on July 16, 1788, estimated that this policy in one year cost Virginia 30,000 slaves, most of whom died of small-pox and camp-fever. Thirty of these were his own, and he characteristically said: "Had this been to give them freedom he (Lord Cornwallis) would have done right."

In the beginning of the War of 1812 the policy was generally adopted of not enlisting negroes, but toward its close, under the stress of military necessity, the restriction was abandoned. Thus the New York legislature, on October 24, 1814, authorized in several quarters the raising of two regiments of negroes, freeing those who were slaves, and compensating their owners with the negroes' pay. On September 21, 1814, Gen. Andrew Jackson, in a proclamation from Mobile, Ala., vigorously denounced the "mistaken policy" of excluding negroes from the army, and gave high praise to the bravery of those who had fought under him, which was shortly afterward confirmed in the defence of New Orleans (January 8, 1815), where a number of negroes fought side by side with the white soldiers, repelling from behind the breastworks the advance of the trained British soldiers under Pakenham with the same ardor which Peter Salem and his black companions had displayed at Bunker Hill.

In the Civil War, before Gen. David Hunter's proclamation of military emancipation had been revoked [see page 130], he had organized some of the slaves of his department into companies.

In his report to the Secretary of War [Edwin M. Stanton], on June 23, 1862, General Hunter gave this testimony to their efficiency:

> The experiment of arming the blacks, so far as I have made it, has been a complete and even marvelous success. They are sober, docile, attentive, and enthusiastic; displaying great natural capacities for acquiring the duties of the soldier. They are eager beyond all things to take the field and be led into action; and it is the unanimous opinion of the officers who have had charge of them that, in the peculiarities of this climate and country, they will prove invaluable auxiliaries—fully equal to the similar regiments so long and successfully used by the British authorities in the West India Islands.

On July 16, 1862, Congress passed an act authorizing the President to accept negroes for "any war service for which they may be found competent," though not specifying fighting as one of these services. The act was approved by the President on July 17.

On August 25, 1862, Secretary Stanton issued a special order to Gen. Rufus Saxton, military governor of the sea islands off the coast of South Carolina, to enlist and drill not over 5,000 negroes and to give them the pay of white soldiers. Saxton was ordered to cultivate the plantations with other negroes, and in every way to "withdraw from the enemy their laboring force and population."

Brigadier-General J. W. Phelps, a Vermont Abolitionist serving under Benjamin F. Butler at New Orleans during the summer of 1862, organized five companies of negroes, who, he announced to his chief, were "all willing and ready to show their devotion to our cause in any way it may be put to the test." He recommended that they be used as soldiers under the command of recent graduates of West Point and the more promising non-commissioned officers and privates.

General Butler, in response, instructed General Phelps to employ his "contrabands" upon the fortifications instead of organizing them as soldiers. This General Phelps peremptorily declined to do, saying, "I am not willing to become the mere slave-driver you propose, having no qualifications that way," and thereupon he threw up his commission.

Later (on July 31, 1862) General Butler felt constrained by the necessities and perils of his position to appeal to the free colored men of New Orleans to take up arms in the national service, which appeal was responded to with alacrity and enthusiasm, and a first regiment, 1,000 strong, was filled within 14 days—all its

line officers being colored, as well as the rank and file. His next regiment, filled soon afterward, had its two highest officers white, all the rest colored. His third was officered by the best men that could be had, regardless of color. His two batteries were officered by whites only; for the simple reason that there were no others who had any knowledge of artillery.

On the reception at Richmond of tidings of General Hunter's and General Phelps's proceedings with reference to the enlistment of negro soldiers for the Union armies, President Jefferson Davis issued an order directing that said generals be no longer regarded as public enemies of the Confederacy, but as outlaws; and that, in the event of the capture of either of them, or of any other commissioned officer employed in organizing, drilling, or instructing slaves, he should not be treated as a prisoner of war, but held in close confinement for execution as a felon, at such time and place as he should order. It is not recorded that anyone was ever actually hung under this order.

Employment of Negro Soldiers

House of Representatives, January 29-February 2, 1863

On January 27, 1863, Thaddeus Stevens [Pa.] introduced in the House a bill authorizing the President to raise and equip 150,000 negro soldiers, and as many more as he deemed it expedient; to receive the same pay and treatment as white soldiers; to serve for five years, if necessary; the officers to be white or black; commissioned by the President; recruiting stations to be established in both free and slave States; all the slaves among the negroes to become free at discharge, the Government purchasing those belonging to loyal citizens.

The bill was hotly opposed by Representatives from the border States, and by the "Peace" Democrats of the North. Of the speeches of the former class that by John J. Crittenden, made on January 29, is representative.

> You propose by this bill to raise a force of one hundred and fifty thousand slaves as soldiers. You include, to be sure, and permit to be enlisted, free men of color. How can you approve of it? You say the war is a contest for freedom, a contest for liberty; and shall we, sir, stigmatize our constituents, our brothers, the white free-born men of this land, as being so degenerate as to shrink from this contest, and compel you to appeal to your own black men to defend the liberties of the white man?
>
> The bill proposes to raise one hundred and fifty thousand Americans of African descent. You stigmatize them, while you invite them into the field. You employ them as soldiers to fight your battle, but give them only one-half pay and exclude them from command to a great extent.
>
> This distinction which the white race makes in its own favor against the negro may be an unjust one. It is not necessary for me to enter into that question or to define exactly the degree of superiority on the one side or of inferiority on the part of the other race. We know that it exists; it exists North, it exists South, and it exists everywhere. The feelings of our people in reference to it are founded upon instincts that have come down from one generation to another. There is not one of you here who would admit a black man to social equality or to any species of equality. Yet what are you striving to do? You propose to enlist the negro for five years. We are engaged in a mighty war now, a war caused by revolution and pregnant with revolution. What will be the result if we do not conquer a peace shortly? Before long the term of service of your white troops will have expired. Is the nation to be left to a standing black army, with the President at its head, clothed with almost illimitable war powers? Would anyone dare to propose such a policy as that to the American people—to leave the defence of the country and the lives and liberties of its people in the guardianship of any President with one hundred and fifty thousand myrmidons like these, without a knowledge of the simplest principles upon which our Government depends, and without any possibility of their being able to appreciate that liberty for which you are willing to fight and to send your sons to fight? The janizaries are safer depositaries of the liberties of the Ottoman than would be this army of slaves to protect our liberties.
>
> All nations which have held slaves have been found to reject their services for military purposes in time of war. My learned friend from Ohio [Samuel Shellabarger], who the other

day was comparing these rebels to Catiline, is well enough acquainted with his history, and can bear testimony that he, that bold conspirator, had Roman pride enough left in the midst of his vices to reject the assistance, even in his extremest hour of peril, of slaves and gladiators, although they were white slaves, men who had been born free, men who had been made captives in war, and reduced by the inhuman policy of that age to the condition of slavery; they had been tainted and marked with that degradation, and that was enough; even Catiline would not be their leader, and preferred to face the perils of the battle alone. And what a spectacle is here presented! The representatives of a nation which has ever boasted of its readiness to shed the last drop of its blood in defence of the liberties of its people are calling upon slaves to defend it and to defend them! Sir, it is a mockery—a mockery of the American people. It is a policy unlike that of any other nation. It is an insult to your army. It is a crime against the civilization of the age. It is a crime against the Constitution. It is an act of hostility against the Union. These are the sentiments with which I am compelled to regard this measure.

I say it is a crime against the Constitution. You send out your recruiting officer, and you authorize him to go into the State of Maryland, for instance, and to any gentleman's house and seduce away his slave and persuade him to enlist by the promise of his freedom, or, perhaps, the promise of a captaincy, and that slave the property of the master! Mr. Lincoln says the owner has property in his slave; that, he says, is plain and cannot be contested. And yet your recruiting officer is authorized to enlist the slave; to take from the lawful ownership of a loyal man his slave and put him in the army. Did injustice ever go further than this?

John Hutchins [Pa.].—I would like to ask the gentleman from Kentucky a question. Do not the Government of the United States take minors and apprentices, whose services by law belong to the father or master, and put them into the army of the United States?

Mr. Crittenden.—Sir, if the gentleman can mislead himself by any such ideas as those that his question suggests, I cannot help him. I tell him now that the free-born boy owes no obligation of slavery to anyone. His father is his guardian; the owner of the slave is his master. To those who cannot understand that distinction I can make no explanation that will enable them to understand it.

Mr. Speaker, your law is impracticable. My friends, just

think of what you are doing! One hundred and fifty thousand negroes are to be enlisted. I say your army will consider it an insult and a degradation.

I remember that the distinguished gentleman from Pennsylvania, last session of Congress, was in favor of this same measure. The topics of our conversation then were the battles near Richmond, and there was much sympathy over the great slaughter there. It was then that he introduced this idea of a negro army; they would have saved so many of our dear sons. It seems to me that the gentleman's idea, fairly translated, amounted to this: that he wanted a negro to march before every white man in the field of battle. What a shame it is that proud Republicans, who talk so much about their liberties, should require to have poor negroes held before them in battle as a sort of shield! Do you want this negro army for such a purpose? Sooner advise your sons and brothers to desert. That may escape the attention of history. But, if you want to make the cowardice of our army memorable and historical, bring out your one hundred and fifty thousand black men, put them in the front of the battle, and shelter your white soldiers behind them.

Whenever the American sinks so low; whenever that pusillanimous policy is adopted by him, the liberties of such men are not worth much. The pride and heroism of the American name will have all gone. Let not the man who wants such a defence as that go forth to battle. Let him stay at home. That is not the way to train up a great people. Sparta had her slaves. So had Athens. Did they ever send these slaves into the battle? They were small republics, and were often greatly harassed by war, but they never used their slaves as soldiers. Shall we alone voluntarily degrade ourselves below the condition of other nations? Have not our citizens the courage and strength to defend the country? Have they not the public virtue that is absolutely necessary for the defence of their national existence and of their public liberties? When we shall abandon that defence to slaves we ought to give up our country.

Sir, you cannot execute such a law, and you know it. If you want to make war directly in Kentucky, I assure you, much as I deprecate and deplore it, that this will produce it. It is not in the power of the Government, State or Federal, to prevent actual hostilities there on the very day this sort of recruiting shall be entered on. Your recruiting officers will be driven pell-mell out of the State, or they will be hung, just as the

temper of the people may happen to be. I tell you that this is a fact, and that the passage of this measure, instead of assisting to restore the Union, will enlarge and embitter the war. I do not believe that you can, by any measure, drive Kentucky to go out of the Union, and to make alliance with the secessionists and rebels of the South; but the people of Kentucky will resist oppression, come from where it will. They are for the Constitution and are against the rebels, because the rebels are the enemies of the Constitution; and they will be against you, too, whenever you resort to unconstitutional measures. We are fighting so that when peace comes our Constitution and liberties will be restored to us with it. But for that hope there would be no heart for the fight. But if, while we are carrying on a war against the rebellion, the Constitution of our country is to be destroyed piece by piece behind us, and we are to have nothing but the ruins of it left, why should we not be hostile to those who have done this work of destruction?

Sir, this plan of bringing black men into your military service will prove an act of cruelty to the slaves, but of profit to no one. Can they sympathize with us in the motives that actuate us in carrying on this war? That Constitution for which we are fighting makes them slaves; and yet you now call upon them to assist you in restoring its supremacy. What claim have you upon their services in any such cause? What do you bring them to the field for? Do you believe in your hearts you can ever make soldiers of them? There may have been brave seamen in the Pacific Ocean of the African race, and there may have been a brave company of black men which General Jackson saw fit to compliment after the battle of New Orleans; but do you expect your army of one hundred and fifty thousand blacks will prove to be of that class? Let me tell you that if you do you will be disappointed. You will gain no strength to your army by such means. For every black soldier you may muster into the service, you will disarm more brave soldiers who will think you have degraded them by this sort of military association. You cannot carry into the field, I repeat, an army made up of the African race. The slave is not a soldier, and he cannot be a soldier. It is not in the nature of things.

I protest, then, against the President, Mr. Lincoln, undertaking to garrison our important posts with negro soldiers. They are not safe, and never will be safe. I care not though the forts are in New York or Massachusetts; they are as much mine as they are yours. They belong to the United States, and I

protest against their being placed in the hands of such defenders.

But, sir, I do not care so much about the employment of these men in respect to their inefficiency as soldiers as I do in respect to the character their employment will give to the war itself. You put one white man to command a thousand negroes at the South, and will he restrain them? Will it not result in servile war? It will be a servile war led by white men.

The speech of Samuel S. Cox [O.] is representative of the views of the Northern Democrats. On January 30 he spoke against the bill. He declared that those who promoted it were, in so doing, not the true friends of the negro, but rather his enemies.

The Confederate States will not treat our black soldiers as the equals of their white soldiers or of our white soldiers; and the result will be, as many negroes at the North are shrewd enough to foresee, that they will, if captured, receive none of the advantages of the laws of war, but all the terrible consequences of being outlawed from the international code, slavery, imprisonment, and perhaps death. And how, sir, can we retaliate for any such injuries or outrages? As the gentleman from Kansas argued the other day, and as Vattel argued before him, a rebellion, when formidable, demands, in the name of humanity, the observance of the laws of civilized warfare, the laws of moderation and honor. There is a distinct society, organized *de facto,* in the South; and the laws of war obtain the same as between two nations with regard to prisoners of war. These men in the South have the power, and, although it may have been obtained wrongfully and outrageously, we must legislate on the facts as they exist. We must not shut our eyes to the fact that they are a power so formidable that we cannot, as an act of humanity to our soldiers, refuse to observe the laws of war, not as we would interpret them, but as they also may interpret them. No genuine friend of the negro would try to persuade him to take the position of a soldier in our army, knowing how the Confederate Government has determined to treat negro soldiers. The men who would try to dragoon him into that position are not his friends. The poor negro, if he survive this conflict, will bitterly curse the very men who seem most to champion him, but whose championship has in it more of political consideration than of generous feeling.

Thomas M. Edwards [N. H.].—I understand the gentleman

to say that, if these black soldiers in our army should be captured by the enemy and be handed over to the civil authorities to be treated as felons and their lives taken, or any other consequence visited them not known to the rules of civilized warfare, the United States Government would have no remedy.

MR. COX.—What is your remedy?

MR. EDWARDS.—Retaliation.

MR. COX.—Retaliation—that is a rule which will soon turn this into a barbarous war. It has no limit—no law. It has but one end—bloody extermination.

MR. EDWARDS.—I would hang or shoot one of their soldiers every time they hung or shot one of ours.

MR. COX.—Would you have the President retaliate upon white rebels because they abuse the captured negroes? You will answer yes. Then what? Retaliation again from them upon our white soldiers, and so on, until the war becomes unbearable to the Christian world and an outrage upon all civilized codes.

Furthermore, the measure is inadvisable because many white soldiers will not serve when black soldiers are enlisted. We can never eradicate from the great body of the white people of America that prejudice against the black race which has been carried from private life into the public service, and which, if you run counter to it, will destroy the vigor and *esprit* of the army.

Why, Mr. Speaker, perhaps one-third of our present army is made up of Irishmen. I tell you, sir, these Irishmen will not fight side by side with the negro. You would listen to such warnings if indeed you wished the army to succeed and the Union restored.

The bill was stoutly defended by Republicans, the most typical speech being by Mr. Stevens, mover of the bill, made on February 2.

It is said that we have already so large an army that we have no need of more soldiers, and that this bill will cause a needless expense. Let us look at this. It will require some three or four months to raise one hundred and fifty thousand. By that time, about June, the time of the two years' men of New York and of the nine months' men will expire. They will take from the army, I think, at least three hundred thousand men. How are you to supply their place except by colored soldiers? It is said by our opponents that in the present temper of the country you could not raise in the whole North fifty thousand men by voluntary enlistment, and that to enforce conscription is out of the question. It may be so; and, if it be, it is useless, perhaps, to inquire what has produced this condition of the public mind. No doubt the unhappy management of the war, and want of successful battles, have done something toward it. An unsuccessful war is always unpopular.

Another great cause is the conduct of partisan demagogues. The Democratic leaders—and when I speak of Democrats in these remarks I beg to be understood as not including those true Democrats who support the war and give their aid to the Administration—the Democratic leaders, I say, have been busy for the last year in denouncing the war and the Administration. They tell the people that this is an Abolition war, a war for the negro and not for the Union; that our Southern brethren have been injured and that we ought to lay down our arms and compromise. During the last electioneering campaign throughout Pennsylvania, and I suppose the whole North, when the new volunteers were called for, Democratic leaders traveled everywhere and advised that no Democrat should volunteer, but stay at home and carry the election and regain power. The masses followed their advice; scarcely any Democrats joined the volunteers.

Another thing that has cooled the ardor of the people is the rivalry among the officers and the evident sympathy of a large portion of them with the rebels. Our armies have been in the hands of men who had no heart in the cause and who have demoralized the army; and such demoralization has been transferred to their friends at home. Hence, if we are to continue this war, we must call in the aid of Africans, slaves as well as freemen.

But gentlemen speak boastfully of the power of the white men of the North, and that we have a million men in the field, and need no other aid. Sir, I have as high an opinion of the valor of Northern men as any man can have; but, instead of having a million, I do not believe we have now half that number of effective soldiers. Sickness, the sword, and absenteeism have taken half our troops; and in four months one-fourth more will be taken by the expiration of their time.

But suppose we could recruit our armies by white volunteers, is that any argument against employing blacks? Why should our race be exposed to suffering and disease when the African might endure his equal share of it? Is it wise, is it humane, to send your kindred to battle and to death, when you might put the colored man in the ranks and let him bear a

part of the conflict between the rebel and his enfranchised slave? Why should these bloody graves be filled with our relatives rather than with the property of traitors slain by their own masters, who, in their turn, would fall by the hands of the oppressed? I have but little respect for the Northern man who would save the rebels' property at the expense of the life of white men.

We have heard repeated the usual slang of Democrats, so freely and falsely used by them to prejudice the minds of the people, that Republicans are trying to make the black man equal in all things to the white. The distinguished gentleman from Kentucky [Charles A. Wickliffe] and his allies from Ohio have talked of Sambo's commanding white men. Sir, the bill contains no such provisions. They are to be employed only as soldiers or non-commissioned officers as is provided by the original bill and by the amendments as now proposed. I do not expect to live to see the day when, in this Christian land, merit shall counterbalance the crime of color. True, we propose to give them an equal chance to meet death on the battlefield. But even then their great achievements, if equal to those of Dessalines, would give them no hope of honor. The only place where they can find equality is in the grave. There all God's children are equal.

But it is said that our soldiers would object to their employment in arms. It would be a strange taste that would prefer themselves to face the death-bearing heights of Fredericksburg, and be buried in trenches at the foot of them, than to see it done by colored soldiers. I do not believe it. My colleague [Hendrick B. Wright] said that he had heard some of our officers say that if we thus used them they would lay down their arms and retire from the army. In God's name let them go. They are rebels in heart, and ought to be in the Confederate army rather than in ours, to demoralize our soldiers. My colleague ought to report their names to the proper department, that they may be tried and inexorably shot.

The gentleman from Kentucky [Mr. Crittenden] objects to their employment lest it should lead to the freedom of the blacks. He says that he fights *only* for the freedom of his own white race. That sentiment is unworthy the high reputation of the friend and compeer of the great statesman of the West [Henry Clay]. That patriotism that is wholly absorbed by one's own country is narrow and selfish. That philanthropy which embraces only one's own race, and leaves the other numerous races of mankind to bondage and to

misery, is cruel and detestable. But we are not fighting for the freedom of the slaves; we are fighting for the life of the nation; and, if in the heat of such strife the chains of the bondman are melted off, I shall thank God all the more. The distinguished, and, I would fain believe, the learned, gentleman from Kentucky exclaimed, "when before did any civilized country call on slaves to fight their battles? When did Sparta, or Athens, or Rome?" I must attribute this interrogative assertion to lack of memory.

I ask when did any civilized nation refuse to use their slaves in the defence of their country when its exigencies required it? Never! All have used them, and uniformly given them their freedom for their services. Sparta and Athens on many occasions armed their Helots. They were always their armor-bearers. That I may not be suspected of speaking without authority I will read a few passages from Roman history. In Arnold's "Rome" it is said:

> "But there is no reason to doubt that Gracchus gained an important victory; and it was rendered famous by his giving liberty to the volunteer slaves, by whose valor it had mainly been won. The soldiers marched back to Beneventum in triumph, and the people poured out to meet them, and entreated Gracchus that they might invite them all to a public entertainment. Tables were set out in the streets, and the freed slaves attracted every one's notice by their white caps, the well-known sign of their enfranchisement. The whole delighted the generous and kind nature of Gracchus; to set free the slave and to relieve the poor, appear to have been hereditary virtues in his family."—Page 205.

How different was the heart of the pagan Gracchus from the heart of the Christian Kentuckian!

But we are told that Kentucky will resist; that our recruiting officers will be driven pell-mell from the State; that the proclamation is unconstitutional; and that we and the President are doing mischief and aggravating the South. Sir, that sounds so exactly like what I was accustomed to hear from that side of the House some years ago, when those seats were occupied by those who are now officers in the rebel army, that I am fain to inquire whether their spirit has not been left behind them.

Two years ago, when I had occasion to address this House, I declared my conviction that neither Congress, nor the Administration, nor the people, realized the magnitude of the war in which we were engaged, and the difficulty of its suppression; that the rebels were as brave as we, and had better generals, who were more in earnest than our own; that men who, after a deliberation of thirty years, had entered upon so perilous an

enterprise, involving property, wife and children, and their own lives, would never submit until they were totally exhausted and unable to continue the war; and that that would never be done until you took from them their support—the slaves. I have seen no reason to change my opinion. I have seen two years of bloody war elapse with balanced success. I have seen our debt accumulate to a grievous amount. I have seen many a bleeding heart, many a mother weeping for her slaughtered son, tens of thousands of our neighbors gone to an untimely grave, and the rebels are not yet subdued. And yet we are told that we must not stop the further effusion of white blood by the employment of the oppressed slave against his oppressor. Sir, to which side do such men belong? Are they with the Republic or are they like Cethegus and Lentulus, sitting in the Roman senate, while their associate, Catiline, was with the rebel army outside the walls?

But they say this tends to excite servile war. I believe no such thing. Disciplined troops under the articles of war do not engage in insurrection. But suppose it were so: which is the most cruel, which the most to be deprecated—an exterminating war between the oppressed and his oppressor or a murderous warfare by uninjured citizens against the unoffending Government which had protected them and was the hope of the freedom of the world? Can servile war produce more inhuman scenes than are now enacted by the rebels?

Here the speaker cited murders of innocent negroes committed in cold blood by rebel soldiers.

If a servile war were the only means to save this Republic, I should welcome it as a measure of humanity.

It is said that colored soldiers are cowardly and unfit for battle. But all history contradicts it, from the time of Juba and Syphan and the terrible Numidian cavalry down through our Revolution and the armies of General Jackson to the present time. I send you living evidence in the letter of General Saxton, which the Clerk will please read.

The Clerk read as follows:

BEAUFORT, SOUTH CAROLINA, January 25, 1863.

DEAR SIR: I have the honor to report that the organization of the first regiment of South Carolina volunteers is now completed. In no regiment have I ever seen duty performed with so much cheerfulness and alacrity; and as sentinels they are peculiarly vigilant. I have never seen, in any body of men, such enthusiasm and deep-seated devotion to their officers as

exist in this; they will surely go wherever they are led. Every man is a volunteer, and seems fully persuaded of the importance of his service to his race.

ALEXANDER S. DIVEN [N. Y.].—Mr. Speaker, in connection with the testimony furnished in favor of the employment of the slave I desire to supply the testimony of the most remarkable man of modern Italy, who, while an exile from his beloved country, with all the ardor of his nature, entered the service of the republicans of Brazil, who were seeking to extricate themselves from the tyranny of the Brazilian emperor. In the description of one of the battles between the republican and imperial parties I find this passage:

"The terrible lancers of Canabarro had already made a movement forward, confusing the right flank of the enemy, which was therefore obliged to change front in confusion. The brave freedmen, proud of their force, became more firm and resolute, and that incomparable corps presented to view a forest of lances, being composed entirely of slaves liberated by the republic and chosen from the best horse tamers in the province, and all of them blacks, even the superior officers. The enemy had never seen the backs of those true sons of liberty. Their lances, which were longer than the common measure, their ebony faces and robust limbs, strengthened by perennial and laborious exercise, and their perfect discipline, struck terror into the enemy."

A MEMBER.—What do you read from?

MR. DIVEN.—From the "Life of Garibaldi," by himself, page 63.

MR. STEVENS.—I believe that if the course which we now propose had been adopted eighteen months ago we should now have peace and universal liberty on this continent. But the timidity of conservatives, the clamor of Democratic demagogues, and the insidious counsels of Kentucky prevented our excellent and kind-hearted President from making stern resolves and using every legitimate means to crush the rebels. Sir, I would not have on my conscience the blood of the tens of thousands who have thus been sacrificed, and which must rest on the souls of its authors, for all the spoils of office, for all the allurements of the presidential chair, nor for all the diamonds that ever glittered in Golconda.

The bill was passed on February 2 by a vote of 83 to 54. The bill then went to the Senate, where it was referred to the Committee on Military Affairs. On February 12 Henry Wilson [Mass.] stated that the committee

reported it back to the Senate with the recommendation that it do not pass, because the authority intended to be given by it to the President was already conferred on him by the act of July 17, 1862.

BRAVERY OF NEGRO SOLDIERS

President Lincoln from this time on devoted a large part of his energy to enlisting negro troops, his old fear that the former slaves would make inefficient soldiers having been outweighed by consideration of the great moral force of the policy. To Governor Andrew Johnson of Tennessee, who was contemplating the raising in his State of a negro military force, he wrote on March 26, 1863:

In my opinion the country now needs no specific thing so much as some man of your ability and position to go to this work. When I speak of your position I mean that of an eminent citizen of a slave State and himself a slaveholder. The colored population is the great available and yet unavailed of force for restoring the Union. The bare sight of fifty thousand armed and drilled black soldiers upon the banks of the Mississippi would end the rebellion at once; and who doubts that we can present that sight if we but take hold in earnest? If you have been thinking of it, please do not dismiss the thought.

As we have seen, General David Hunter had already organized negro troops in his department. From the beginning the experiment was an unqualified success. It was a pleasure to the President that he could now write a letter of congratulation to the Abolitionist general whom less than a year before he had been compelled to reprimand for his premature act of emancipation.

I am glad to see the accounts of your colored force at Jacksonville, Fla. I see the enemy are driving at them fiercely, as is to be expected. It is important to the enemy that such a force shall not take shape and grow and thrive in the South, and in precisely the same proportion it is important to us that it shall. Hence the utmost caution and vigilance are necessary on our part. The enemy will make extra efforts to destroy them, and we should do the same to preserve and increase them.

In all their subsequent battles the negro soldiers acquitted themselves with such valor that in the war reports the sentence, "the colored troops fought bravely," became a stock expression.

On the occasion of their soldierly conduct at the assault of Port Hudson late in May, 1863, George Henry Boker wrote a poem called "The Black Regiment," in which he extolled their patriotism and pleaded for their recognition as comrades by the white soldiers.

"Freedom!" their battlecry,—
"Freedom! or leave to die!"
Ah! and they meant the word,
Not as with us 'tis heard,
Not a mere party shout;
They gave their spirits out,
. . . . .
Hundreds on hundreds fell;
. . . . .
Oh, to the living few,
Soldiers, be just and true,
Hail them as comrades tried;
Fight with them side by side;
Never, in field or tent,
Scorn the black regiment!

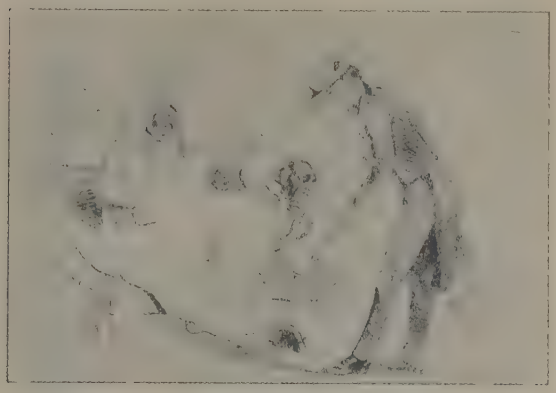
On June 1, 1863, through Senator Charles Sumner of Massachusetts, the President made a tentative offer to General Frémont to place him in command of all the negro troops to be raised. The offer was not accepted. Had it been, Frémont at the close of the war would have commanded an army of almost 200,000 men, second in number only to Grant's.

EMPLOYMENT OF NEGROES BY THE CONFEDERATES

As early as June 1, 1861, negroes were employed by the secessionists in constructing fortifications at Charleston, S. C. As soon as Virginia went out of the Union free negro volunteers were accepted in that State.

On June 28, 1861, after the legislature of Tennessee had formed a military alliance with the Confederacy, it

authorized the governor, Isham G. Harris, "to receive into the military service of the State all male free persons of color, between the ages of 15 and 50," paying each $8 per month, with clothing and rations. It was further enacted that, if sufficient volunteers did not present themselves the sheriffs should *press* enough of such persons to make up the required number. Early in September it was announced in the Memphis *Ava-*



"O MASSA JEFF, DIS SECESH FEVER WILL KILL DE NIGGER!"
From the collection of the New York Historical Society

lanche that many negroes had volunteered for such service, and, armed and equipped with shovels, axes, blankets, etc., and under the leadership of white officers, were marching through the streets shouting for Jeff. Davis and singing war songs. In very sinister fashion the paper added: "Their destination is unknown, but it is supposed that they are on their way to the 'other side of Jordan.'"

About this time Alabama organized free negro volunteers, one regiment consisting of as many as 1,400.

In February, 1862, the Confederate legislature of

Virginia passed a bill to enroll in the military service all the free negroes in the State.

Retaliation

In despite of these acts, when President Lincoln's preliminary emancipation proclamation appeared on September 22, 1862, the Confederate authorities exhibited great indignation over what they charged to be a deliberate purpose of the Union Government to incite a servile insurrection in the South. On October 13 General Pierre G. T. Beauregard wrote to a Confederate congressman at Richmond:

> Has the bill for the execution of abolition prisoners, after January next, been passed? Do it, and England will be stirred into action. It is high time to proclaim the black flag after that period. Let the execution be with the garrote.

On December 23 Jefferson Davis, President of the Confederacy, proclaimed the outlawry of the Union generals who had enlisted negroes as soldiers, and decreed that all slaves and their white officers captured in arms be turned over to the State governors to be dealt with according to law. In his third annual message to his Congress on January 12, 1863, he stigmatized the final proclamation as a violation of President Lincoln's inaugural pledge and the platform on which he had been elected. He added:

> It has established a state of things which can lead to but one of three possible consequences—the extermination of the slaves, the exile of the whole white population of the Confederacy, or absolute and total separation of these States from the United States. This proclamation is also an authentic statement by the Government of the United States of its inability to subjugate the South by force of arms, and, as such, must be accepted by neutral nations, which can no longer find any justification in withholding our just claims to formal recognition. It is also, in effect, an intimation to the people of the North that they must prepare to submit to a separation, now become inevitable; for that people are too acute not to understand that a restitution

> of the Union has been rendered forever impossible by the adoption of a measure which, from its very nature, neither admits of retraction nor can coexist with union.

But the passage which more especially concerns negro soldiers is the following:

> We may well leave it to the instincts of that common humanity which a beneficent Creator has implanted in the breasts of our fellowmen of all countries to pass judgment on a measure by which several millions of human beings of an inferior race—peaceful and contented laborers in their sphere—are doomed to extermination, while at the same time they are encouraged to a general assassination of their masters by the insidious recommendation to abstain from violence unless in necessary self-defence. Our own detestation of those who have attempted the most execrable measures recorded in the history of guilty man is tempered by profound contempt for the impotent rage which it discloses. So far as regards the action of this government on such criminals as may attempt its execution, I confine myself to informing you that I shall—unless in your wisdom you deem some other course more expedient—deliver to the several State authorities all commissioned officers of the United States that may hereafter be captured by our forces in any of the States embraced in the proclamation, that they may be dealt with in accordance with the laws of those States providing for the punishment of criminals engaged in exciting servile insurrection. The enlisted soldiers I shall continue to treat as unwilling instruments in the commission of these crimes, and shall direct their discharge and return to their homes on the proper and usual parole.

The Confederate Congress took up the subject soon afterward, and, after protracted consideration, ultimately disposed of it by passing the following resolution:

> Sec. 1. That, in the opinion of Congress, the commissioned officers of the enemy ought *not* to be delivered to the authorities of the respective States, as suggested in the said message, but all captives taken by the Confederate forces ought to be dealt with and disposed of by the Confederate Government.
>
> Sec. 2. That, in the judgment of Congress, the proclamations of the President of the United States and the other measures of

the Government of the United States and of its authorities, commanders, and forces, designed or tending to emancipate slaves in the Confederate States, or to abduct such slaves, or to incite them to insurrection, or to employ negroes in war against the Confederate States, or to overthrow the institution of African slavery, and bring on a servile war in these States, would, if successful, produce atrocious consequences, and that they are inconsistent with the spirit of those usages which, in modern warfare, prevail among civilized nations; they may, therefore, be properly and lawfully repressed by retaliation.

By Section 3 President Davis was authorized to "cause full and ample retaliation to be made for every such violation, in such manner and to such extent as he may think proper."

By Sections 4, 5, and 6 white officers of negro troops in the service of the Union, or those inciting the slaves to rise against their masters, were, if captured, to be put to death, or be otherwise punished at the discretion of the court.

SEC. 7. All negroes taken in arms against the Confederate States or who shall give aid or comfort to the enemies of the Confederate States shall, when captured, be delivered to the State authorities, to be dealt with according to the present or future laws of such State.

Some of the leading rebel journals, says Horace Greeley in his "American Conflict," on reflection admitted that this was unjustifiable—that the Confederacy could not prescribe the color of citizens of the free States, never in bondage at the South, whom our Government might justifiably employ as soldiers. But the resolve nevertheless stood for years, if not to the last, unrepealed and unmodified, and was the primary, fundamental impediment whereby the exchange of prisoners between the belligerents was first interrupted; so that tens of thousands languished for weary months in prison-camps, where many thousands died of exposure and starvation.

Secretary Stanton, having learned that three Union black soldiers captured with the gunboat *Isaac Smith* at Stone River had been placed in close confinement, ordered three South Carolinian prisoners to be treated likewise, and the fact to be communicated to the Con-

federate leaders. The Richmond *Examiner,* commenting on this resolution, said:

It is not merely the pretention of a regular government affecting to deal with rebels, but it is a deadly stab which they are aiming at our institutions themselves—because they know that, if we were insane enough to yield this point, to treat black men as the equals of white, and insurgent slaves as equivalent to our brave soldiers, the very foundation of slavery would be fatally wounded.

After one of the conflicts before Charleston an immediate exchange of prisoners was agreed on, but when the Union prisoners came to be received only whites made their appearance. A remonstrance against this breach of faith was met by a plea of want of power to surrender blacks taken in arms because of the resolve of the Confederate Congress just quoted. This caused President Lincoln, on July 30, 1863, to issue a general order:

"It is the duty of every government to give protection to its citizens, of whatever class, color, or condition, and especially to those who are duly organized as soldiers in the public service. The law of nations and the usages and customs of war, as carried on by civilized powers, permit no distinction as to color in the treatment of prisoners of war as public enemies. To sell or enslave any captured person on account of his color, and for no offence against the laws of war, is a relapse into barbarism, and a crime against the civilization of the age.

"The Government of the United States will give the same protection to all its soldiers; and, if the enemy shall sell or enslave anyone because of his color, the offence shall be punished by retaliation upon the enemy's prisoners in our possession.

"It is therefore ordered that, for every soldier of the United States killed in violation of the laws of war, a rebel soldier shall be executed; and for every one enslaved by the enemy or sold into slavery, a rebel soldier shall be placed at hard labor on public works, and continued at such labor until the other shall be released and receive the treatment due to a prisoner of war."

Either the threat of the Confederates was an idle one, or Lincoln's order deterred them from putting it

into execution, for with but one important exception they gave negroes captured in battle the same treatment that was accorded white prisoners. At the storming of Fort Pillow, Tennessee, on April 12, 1863, the Confederate General Forrest massacred at least three hundred of the garrison, most of them negroes and their white officers, after these soldiers had thrown down their arms.

A rumor of this act came to the President just before he delivered an address at a sanitary fair in Baltimore on April 18, 1864, and in his speech he solemnly promised that if the charge against Forrest proved upon investigation to be true retribution would be surely executed. He said:

There seems to be some anxiety in the public mind whether the Government is doing its duty to the colored soldier, and to the service, at this point. At the beginning of the war and for some time the use of colored troops was not contemplated; and how the change of purpose was wrought I will not now take time to explain. Upon a clear conviction of duty I resolved to turn that element of strength to account; and I am responsible for it to the American people, to the Christian world, to history, and in my final account to God. Having determined to use the negro as a soldier, there is no way but to give him all the protection given to any other soldier. . . . If, after all that has been said it shall turn out that there has been no massacre at Fort Pillow, it will be almost safe to say there has been none, and will be none, elsewhere. If there has been the massacre of three hundred there, or even the tenth part of three hundred, it will be conclusively proved; and, being so proved, the retribution shall as surely come. It will be a matter of grave consideration in what exact course to apply the retribution; but in the supposed case it must come.

A congressional investigation found that the rumor was true, and had not been exaggerated. Yet the brutality revealed was so monstrous that the tender-hearted President refrained, in spite of his promise, from a retribution which, to be effective, would have to be coextensive with the offence, and, because visited in cold blood upon innocent prisoners, would be even

more brutal than the massacre, which was perpetrated in the blood-lust of conquest.

Accordingly, the public interest being concentrated at the time on the bloody Wilderness campaign of Grant in Virginia, the Fort Pillow incident was allowed by the Government to pass without action upon it.

Toward the end of the war, when the collapse of the rebellion was in plain sight, the Confederate Government debated the question of arming the slaves; the measure failed by one vote. Mr. Lincoln expressed his sentiments upon this unique phase of the conflict begun in defence of slavery in a speech on the occasion of a presentation of a captured rebel flag to Governor Morton of Indiana.

While I have often said that all men ought to be free, yet would I allow those colored persons to be slaves who want to be, and next to them those white people who argue in favor of making other people slaves. I am in favor of giving an appointment to such white men to try it on for these slaves. I will say one thing in regard to the negro being employed to fight for them. I do know he cannot fight and stay at home and make bread too. And, as one is about as important as the other to them, I don't care which they do. I am rather in favor of having them try them as soldiers. They lack one vote of doing that, and I wish I could send my vote over the river so that I might cast it in favor of allowing the negro to fight. But they cannot fight and work both. We now see the bottom of the enemy's resources.

CHAPTER X

"The War Is a Failure"

Clement L. Vallandigham [O.] Speaks in the House on the Failure of the War, and Demands Armistice with the Confederacy to Arrange Terms of Peace—Reply by John A. Bingham [O.] Declaring the Union Is Worth the Costliest Sacrifice of Blood and Treasure to Maintain It—Lincoln's Gettysburg Speech: "These Dead Shall Not Have Died in Vain"—Second Election of Lincoln—His Inaugural Address on the Prosecution of the War: "The Almighty Has His Purposes."

THE Union disaster at Fredericksburg (December 11-12, 1862) and the strong resistance of the Confederates at Vicksburg, overweighing in popular opinion the costly Union victory at Stone River (December 30, 1862–January 4, 1863), caused the Opposition in Congress to inaugurate its peace policy—the view that the "war is a failure," "the South cannot be conquered," and therefore that the Government should speedily make the best terms it could with the enemy.

On January 14, 1863, Clement L. Vallandigham [O.] spoke as follows in the House:

Peace and Reunion

Clement L. Vallandigham, M. C.

Sir, twenty months have elapsed, but the rebellion is not crushed out; its military power has not been broken; the insurgents have not dispersed. The Union is not restored; nor the Constitution maintained; nor the laws enforced. A thousand millions have been expended and three hundred thousand lives lost or bodies mangled; and to-day the Confederate flag is still near the Potomac and the Ohio, and the Confederate Government stronger, many times, than at the beginning. Not a State has been restored, not any part of any State has voluntarily re-

direct and indirect, has been inaugurated, the most onerous and unjust ever imposed upon any but a conquered people.

Money and credit, then, you have had in prodigal profusion. And were men wanted? More than a million rushed to arms! Seventy-five thousand first (and the country stood aghast at the multitude), then eighty-three thousand more were demanded; and three hundred and ten thousand responded to the call. The President next asked for four hundred thousand, and Congress, in its generous confidence, gave him five hundred thousand; and, not to be outdone, he took six hundred and thirty-seven thousand. Half of these melted away in their first campaign; and the President demanded three hundred thousand more for the war, and then drafted yet another three hundred thousand for nine months. The fabled hosts of Xerxes have been outnumbered. And yet victory strangely follows the standards of the foe. From Great Bethel to Vicksburg, the battle has not been to the strong. Yet every disaster, except the last, has been followed by a call for more troops, and every time so far they have been promptly furnished. From the beginning the war has been conducted like a political campaign, and it has been the folly of the party in power that they have assumed that numbers alone would win the field in a contest not with ballots but with musket and sword. Yet after nearly two years of more vigorous prosecution of war than ever recorded in history; after more skirmishes, combats, and battles than Alexander, Cæsar, or the first Napoleon ever fought in any five years of their military career, you have utterly, signally, disastrously—I will not say ignominiously—failed to subdue ten millions of "rebels," whom you had taught the people of the North and West not only to hate but to despise. Rebels, did I say? Yes, your fathers were rebels, or your grandfathers. He who now before me on canvas looks down so sadly upon us, the false, degenerate, and imbecile guardians of the great Republic which he founded, was a rebel. And yet we, cradled ourselves in rebellion, and who have fostered and fraternized with every insurrection in the nineteenth century everywhere throughout the globe, would now, forsooth, make the word "rebel" a reproach. Rebels certainly they are; but all the persistent and stupendous efforts of the most gigantic warfare of modern times have, through your incompetency and folly, availed nothing to crush them out, cut off though they have been by your blockade from all the world, and dependent only upon their own courage and resources. And yet they were to be utterly conquered and subdued in six weeks or three months! Sir, my judgment was

turned to the Union. And has anything been wanting that Congress, or the States, or the people in their most generous enthusiasm, their most impassioned patriotism, could bestow? Was it power? And did not the party of the Executive control the entire Federal Government, every State government, every county, every city, town, and village in the North and West? Was it patronage? All belonged to it. Was it influence? What more? Did not the school, the college, the church, the press, the secret orders, the municipality, the corporation (railroads, telegraphs, express companies), the voluntary association, all, all yield it to the utmost? Was it unanimity? Never was an Administration so supported in England or America. Five men and half a score of newspapers made up the opposition. Was it enthusiasm? The enthusiasm was fanatical. There has been nothing like it since the Crusades. Was it confidence? Sir, the faith of the people exceeded that of the patriarch. They gave up Constitution, law, right, liberty, all at your demand for arbitrary power that the rebellion might, as you promised, be crushed out in three months and the Union restored. Was credit needed? You took control of a country, young, vigorous, and inexhaustible in wealth and resources, and a Government almost free from public debt, and whose good faith had never been tarnished. Your great national loan bubble failed miserably, as it deserved to fail; but the bankers and merchants of Philadelphia, New York, and Boston lent you more than their entire banking capital. And when that failed, too, you forced credit by declaring your paper promises to pay a legal tender for all debts. Was money wanted? You had all the revenues of the United States, diminished, indeed, but still in gold. The whole wealth of the country, to the last dollar, lay at your feet. Private individuals, municipal corporations, the State governments, all in their frenzy gave you money or means with reckless prodigality. The great Eastern cities lent you $150,000,000. Congress voted first $250,000,000 and next $500,000,000 more in loans; and then first $50,000,000, then $10,000,000; next $90,000,000, and in July last $150,000,000 in treasury notes; and the Secretary has issued also a paper "postage currency," in sums as low as five cents, limited in amount only by his discretion. Nay, more: already since the 4th of July, 1861, this House has appropriated $2,017,864,000, almost every dollar without debate and without a recorded vote. A thousand millions have been expended since the 15th of April, 1861; and a public debt or liability of $1,500,000,000 already incurred. And to support all this stupendous outlay and indebtedness a system of taxation,

made up and expressed from the first. I learned it from Chatham: "My lords, you cannot conquer America." And you have not conquered the South. You never will. It is not in the nature of things possible; much less under your auspices. But money you have expended without limit, and blood poured out like water. Defeat, debt, taxation, sepulchers, these are your trophies. In vain the people gave you treasure and the soldier yielded up his life. "Fight, tax, emancipate, let these," said the gentleman from Maine [Frederick A. Pike] at the last session, "be the trinity of our salvation." Sir, they have become the trinity of your deep damnation. The war for the Union is, in your hands, a most bloody and costly failure. The President confessed it on the 22d of September, solemnly, officially, and under the broad seal of the United States. And he has now repeated the confession. The priests and rabbis of abolition taught him that God would not prosper such a cause. War for the Union was abandoned; war for the negro openly begun, and with stronger battalions than before. With what success? Let the dead at Fredericksburg and Vicksburg answer.

And now, sir, can this war continue? Whence the money to carry it on? Where the men? Can you borrow? From whom? Can you tax more? Will the people bear it? Wait till you have collected what is already levied. How many millions more of "legal tender"—to-day forty-seven per cent. below the par of gold—can you float? Will men enlist now at any price? Ah, sir, it is easier to die at home. I beg pardon; but I trust I am not "discouraging enlistments." If I am, then first arrest Lincoln, Stanton, and Halleck, and some of your other generals; and I will retract; yes, I will recant. But can you draft again? Ask New England—New York. Ask Massachusetts. Where are the nine hundred thousand? Ask not Ohio—the Northwest. She thought you were in earnest, and gave you all, all—more than you demanded.

> "The wife whose babe first smiled that day,
> The fair, fond bride of yester eve,
> And aged sire and matron gray,
> Saw the loved warriors haste away,
> And deemed it sin to grieve."

Sir, in blood she has atoned for her credulity; and now there is mourning in every house and distress and sadness in every heart. Shall she give you any more?

But ought this war to continue? I answer, no—not a day, not an hour. What then? Shall we separate? Again I answer,

no, no, no! What then? And now, sir, I come to the grandest and most solemn problem of statesmanship from the beginning of time; and to the God of Heaven, Illuminer of hearts and minds, I would humbly appeal for some measure, at least, of light and wisdom and strength to explore and reveal the dark but possible future of this land.

CAN THE UNION OF THESE STATES BE RESTORED? HOW SHALL IT BE DONE?

And why not? Is it historically impossible? Sir, the frequent civil wars and conflicts between the states of Greece did not prevent their cordial union to resist the Persian invasion; nor did even the thirty years' Peloponnesian war, springing in part, from the abduction of slaves, and embittered and disastrous as it was—let Thucydides speak—wholly destroy the fellowship of those states. The wise Romans ended the three years' social war after many bloody battles and much atrocity by admitting the states of Italy to all the rights and privileges of Roman citizenship—the very object to secure which these States had taken up arms. The border wars between Scotland and England, running through centuries, did not prevent the final union, in peace and by adjustment, of the two kingdoms under one monarch. Compromise did at last what ages of coercion and attempted conquest had failed to effect. England kept the crown, while Scotland gave the king to wear it; and the memories of Wallace and the Bruce of Bannockburn became part of the glories of British history. I pass by the union of Ireland with England—a union of force, which God and just men abhor; and yet precisely "the Union as it should be" of the abolitionists of America. Sir, the rivalries of the houses of York and Lancaster filled all England with cruelty and slaughter; yet compromise and intermarriage ended the strife at last, and the white rose and the red were blended in one. Who dreamed a month before the death of Cromwell that in two years the people of England, after twenty years of civil war and usurpation, would, with great unanimity, restore the house of Stuart in the person of its most worthless prince, whose father but eleven years before they had beheaded? And who could have foretold in the beginning of 1812 that within some three years Napoleon would be in exile upon a desert island and the Bourbons restored? Armed foreign intervention did it; but it is a strange history. Or who, then, expected to see a nephew of Napoleon, thirty-five years later, with the consent of the people, supplant the Bourbon and reign Emperor of France? Sir, many states and people, once separate, have become united in the course of ages through natural causes and without conquest, but I remember a single instance only in history of states or people once united, and speaking the same language, who have been forced permanently asunder by civil strife or war, unless they were separated by distance or vast natural boundaries. The secession of the Ten Tribes is the exception: these parted without actual war; and their subsequent history is not encouraging to secession. But when Moses, the greatest of all statesmen, would secure a distinct nationality and government to the Hebrews, he left Egypt and established his people in a distant country. In modern times the Netherlands, three centuries ago, won their independence by the sword; but France and the English Channel separated them from Spain. So did our Thirteen Colonies; but the Atlantic Ocean divorced us from England. So did Mexico and other Spanish colonies in America; but the same ocean divided them from Spain. Cuba and the Canadas still adhere to the parent government. And who now, North or South, in Europe or America, looking into history, shall presumptiously say that because of civil war the reunion of these States is impossible? War, indeed, while it lasts, is disunion, and, if it lasts long enough, will be final, eternal separation first and anarchy and despotism afterward. Hence I would hasten peace now, to-day, by every honorable appliance.

Are there physical causes which render reunion impracticable? None. Where other causes do not control, rivers unite; but mountains, deserts, and great bodies of water—*oceani dissociabiles*[1]—separate a people. Vast forests originally and the lakes now also divide us—not very widely or wholly—from the Canadas, though we speak the same language and are similar in manners, laws, and institutions. Our chief navigable rivers run from north to south. Most of our bays and arms of the sea take the same direction. So do our ranges of mountains. Natural causes all tend to Union, except as between the Pacific Coast and the country east of the Rocky Mountains to the Atlantic. It is "manifest destiny." Union is empire. Hence, hitherto we have continually extended our territory, and the Union with it, south and west. The Louisiana purchase, Florida, and Texas all attest it. We passed desert and forest, and scaled even the Rocky Mountains, to extend the Union to the Pacific. Sir, there is no natural boundary between the North and the South, and no line of latitude upon which to separate; and if ever a line

[1] "Friendship-barring oceans."

of longititude shall be established it will be east of the Mississippi valley. The Alleghanies are no longer a barrier. Highways ascend them everywhere, and the railroad now climbs their summits and spans their chasms, or penetrates their rockiest sides. The electric telegraph follows, and, stretching its connecting wires along the clouds, there mingles its vocal lightnings with the fires of heaven.

And now, sir, is there any difference of race here so radical as to forbid reunion? I do not refer to the negro race, styled now, in unctuous official phrase by the President, "Americans of African descent." Certainly, sir, there are two white races in the United States, both from the same common stock, and yet so distinct—one of them so peculiar—that they develop different forms of civilization, and might belong, almost, to different types of mankind. But the boundary of these two races is not at all marked by the line which divides the slaveholding from the non-slaveholding States. If race is to be the geographical limit of disunion, then Mason and Dixon's can never be the line.

Speaking of the natural causes which had formed the Union, Mr. Vallandigham said:

And now, sir, what one of them is wanting? What one diminished? On the contrary, many of them are stronger today than in the beginning. Migration and intermarriage have strengthened the ties of consanguinity. Commerce, trade, and production have immensely multiplied. Cotton, almost unknown here in 1787, is now the chief product and export of the country. It has set in motion three-fourths of the spindles of New England, and given employment, directly or remotely, to full half the shipping, trade, and commerce of the United States. More than that: cotton has kept the peace between England and America for thirty years; and, had the people of the North been as wise and practical as the statesmen of Great Britain, it would have maintained Union and peace here. But we are being taught in our first century and at our own cost the lessons which England learned through the long and bloody experience of eight hundred years. We shall be wiser next time. Let not cotton be king, but peacemaker, and inherit the blessing.

A common interest, then, still remains to us. And union for the common defence, at the end of this war, taxed, indebted, impoverished, exhausted, as both sections must be, and with foreign fleets and armies around us, will be fifty-fold more essen-

tial than ever before. And finally, sir, without union, our domestic tranquility must forever remain unsettled. If it cannot be maintained within the Union, how, then, outside of it, without an exodus or colonization of the people of the one section or the other to a distant country? Sir, I repeat that two governments so interlinked and bound together every way by physical and social ligaments cannot exist in peace without a common arbiter. Will treaties bind us? What better treaty than the Constitution? What more solemn, more durable? Shall we settle our disputes, then, by arbitration and compromise? Sir, let us arbitrate and compromise now, inside of the Union. Certainly it will be quite as easy.

And now, sir, to all these original causes and motives which impelled to union at first must be added certain artificial ligaments which eighty years of association under a common Government have most fully developed. Chief among these are canals, steam navigation, railroads, express companies, the post-office, the newspaper press, and that terrible agent of good and evil mixed—"spirit of health, and yet goblin damned"—if free, the gentlest minister of truth and liberty; when enslaved, the supplest instrument of falsehood and tyranny—the magnetic telegraph. All these have multiplied the speed or the quantity of trade, travel, communication, migration, and intercourse of all kinds between the different States and sections; and thus, so long as a healthy condition of the body-politic continued, they became powerful cementing agencies of union. The numerous voluntary associations, artistic, literary, charitable, social, and scientific, until corrupted and made fanatical; the various ecclesiastical organizations, until they divided; and the political parties, so long as they remained all national and not sectional, were also among the strong ties which bound us together. And yet all of these, perverted and abused for some years in the hands of bad or fanatical men, became still more powerful instrumentalities in the fatal work of disunion; just as the veins and arteries of the human body, designed to convey the vitalizing fluid through every part of it, will carry also, and with increased rapidity, it may be, the subtle poison which takes life away.

Nor is this all. It was through their agency that the imprisoned winds of civil war were all let loose at first with such sudden and appalling fury; and, kept in motion by political power, they have ministered to that fury ever since. But, potent alike for good and evil, they may yet, under the control of the people, and in the hands of wise, good, and patriotic men, be

made the most effective agencies, under Providence, in the reunion of these States.

Other ties also, less material in their nature, but hardly less persuasive in their influence, have grown up under the Union. Long association, a common history, national reputation, treaties and diplomatic intercourse abroad, admission of new States, a common jurisprudence, great men whose names and fame are the patrimony of the whole country, patriotic music and songs, common battlefields, and glory won under the same flag. These make up the poetry of union; and yet, as in the marriage relation and the family with similar influences, they are stronger than hooks of steel. He was a wise statesman, though he may never have held an office, who said, "Let me write the songs of a people and I care not who makes their laws." Why is the "Marseillaise" prohibited in France? Sir, "Hail Columbia" and the "Star Spangled Banner"—Pennsylvania gave us one and Maryland the other—have done more for the Union than all the legislation and all the debates in this Capitol for forty years; and they will do more yet again than all your armies, though you call out another million men into the field. Sir, I would add "Yankee Doodle"; but first let me be assured that Yankee Doodle loves the Union more than he hates the slaveholder.[1]

What, then, I ask, is the immediate, direct cause of disunion and this civil war? Slavery, it is answered. Sir, that is the philosophy of the rustic in the play—"that a great cause of the night is lack of the sun." Certainly slavery was in one sense—very obscure indeed—the cause of the war. Had there been no slavery here, this particular war about slavery would never have been waged. But far better say that the negro is the cause of the war; for, had there been no negro here, there would be no war just now. What then? Exterminate him? Who demands it? Colonize him? How? Where? When? At whose cost? Sir, let us have an end of this folly.

But slavery is the cause of the war. Why? Because the South obstinately and wickedly refused to restrict or abolish it at the demand of the philosophers or fanatics and demagogues of the North and West. Then, sir, it was abolition, the purpose to abolish or interfere with and hem in slavery, which caused disunion and war. Slavery is only the *subject*, but abolition the *cause*, of this civil war. I will not be stopped by that cry of mingled fanaticism and hypocrisy about the sin and barbarism

[1] In truth, the song was written in derision, by a British officer, and not by an American.

of African slavery. Sir, I see more of barbarism and sin, a thousand times, in the continuance of this war, the dissolution of the Union, the breaking up of this Government, and the enslavement of the white race by debt and taxes and arbitrary power. The day of fanatics and sophists and enthusiasts, thank God, is gone at last; and though the age of chivalry may not, the age of practical statesmanship is about to return. Sir, there is fifty-fold less of anti-slavery sentiment to-day in the West than there was two years ago; and, if this war be continued, there will be still less a year hence. The people there begin, at last, to comprehend that domestic slavery in the South is a question, not of morals, or religion, or humanity, but a form of labor, perfectly compatible with the dignity of free white labor in the same community, and with national vigor, power, and prosperity, and especially with military strength. They have learned, or begin to learn, that the evils of the system affect the master alone, or the community and State in which it exists; and that we of the free States partake of all the material benefits of the institution, unmixed with any part of its mischiefs. They believe also in the subordination of the negro race to the white where they both exist together, and that the condition of subordination, as established in the South, is far better every way for the negro than the hard servitude of poverty, degradation, and crime to which he is subjected in the free States. All this, sir, may be "pro-slaveryism," if there be such a word. Perhaps it is; but the people of the West begin now to think it wisdom and good sense. We will not establish slavery in our own midst; neither will we abolish or interfere with it outside of our own limits.

Sir, you cannot abolish slavery by the sword; still less by proclamations, though the President were to "proclaim" every month. Of what possible avail was his proclamation of September? Did the South submit? Was she even alarmed? And yet he has now fulmined another "bull against the comet"—*brutum fulmen*—and, threatening servile insurrection with all its horrors, has yet coolly appealed to the judgment of mankind, and invoked the blessing of the God of peace and love! But declaring it a military necessity, an essential measure of war to subdue the rebels, yet, with admirable wisdom, he expressly exempts from its operation the only States and parts of States in the South where he has the military power to execute it.

Neither, sir, can you abolish slavery by argument. As well attempt to abolish marriage or the relation of paternity. The South is resolved to maintain it at every hazard and by every

sacrifice; and if "this Union cannot endure part slave and part free," then it is already and finally dissolved. Talk not to me of "West Virginia." Tell me not of Missouri, trampled under the feet of your soldiery. As well talk to me of Ireland. Sir, the destiny of those States must abide the issue of the war. But Kentucky you may find tougher. And Maryland—

"E'en in her ashes live their wonted fires."

Nor will Delaware be found wanting in the day of trial.

But I deny the doctrine. It is full of disunion and civil war. It is disunion itself. Whoever first taught it ought to be dealt with as not only hostile to the Union, but an enemy of the human race. Sir, the fundamental idea of the Constitution is the perfect and eternal compatibility of a union of States "part slave and part free"; else the Constitution never would have been framed nor the Union founded; and seventy years of successful experiment have approved the wisdom of the plan. In my deliberate judgment a confederacy made up of slaveholding and non-slaveholding States is, in the nature of things, the strongest of all popular governments. African slavery has been, and is, eminently conservative. It makes the absolute political equality of the white race everywhere practicable. It dispenses with the English order of nobility, and leaves every white man, North and South, owning slaves or owning none, the equal of every other white man. It has reconciled universal suffrage throughout the free States with the stability of government.

What, then, sir, with so many causes impelling to reunion, keeps us apart to-day? Hate, passion, antagonism, revenge, all heated seven times hotter by war. Sir, these, while they last, are the most powerful of all motives with a people, and with the individual man; but fortunately they are least durable. They hold a divided sway in the same bosoms with the nobler qualities of love, justice, reason, placability; and, except when at their height, are weaker than the sense of interest, and always, in States at least, give way to it at last. No statesman who yields himself up to them can govern wisely or well; and no State whose policy is controlled by them can either prosper or endure. But war is both their offspring and their ailment, and while it lasts all other motives are subordinate. The virtues of peace cannot flourish, cannot even find development in the midst of fighting; and this civil war keeps in motion the centrifugal forces of the Union, and gives to them increased strength and

activity every day. But such, and so many and powerful, in my judgment, are the cementing or centripetal agencies impelling us together that nothing but perpetual war and strife can keep us always divided.

And now, sir, if it be the will of all sections to unite, then upon what terms? Sir, between the South and most of the States of the North, and all of the West, there is but one subject in controversy—slavery. It is the only question, said Mr. Calhoun twenty-five years ago, of sufficient magnitude and potency to divide this Union; and divide it it will, he added, or drench the country in blood if not arrested. It has done both. But settle it on the original basis of the Constitution, and give to each section the power to protect itself within the Union, and now, after the terrible lessons of the past two years, the Union will be stronger than before, and, indeed, endure for ages. Woe to the man, North or South, who, to the third or fourth generation, should teach men disunion.

And now the way to reunion: what so easy? Behold to-day two separate governments in one country, and without a natural dividing line; with two presidents and cabinets, and a double congress; and yet each under a constitution so exactly similar, the one to the other, that a stranger could scarce discern the difference. Was ever folly and madness like this? Sir, it is not in the nature of things that it should so continue long.

But why speak of ways or terms of reunion now? The will is yet wanting in both sections. Union is consent and good will and fraternal affection. War is force, hate, revenge. Is the country tired at last of war? Has the experiment been tried long enough? Has sufficient blood been shed, treasure expended, and misery inflicted in both the North and the South? What then? Stop fighting. Make an armistice—no formal treaty. Withdraw your army from the seceded States. Reduce both armies to a fair and sufficient peace establishment. Declare absolute free trade between the North and South. Buy and sell. Agree upon a *zollverein*. Recall your fleets. Break up your blockade. Reduce your navy. Restore travel. Open up railroads. Reëstablish the telegraph. Reunite your express companies. No more *Monitors* and ironclads, but set your friendly steamers and steam ships again in motion. Visit the North and West. Visit the South. Exchange newspapers. Migrate. Intermarry. Let slavery alone. Hold elections at the appointed times. Let us choose a new President in sixty-four. And when the gospel of peace shall have descended again from

Heaven into their hearts, and the gospel of abolition and of hate been expelled, let your clergy and the churches meet again in Christian intercourse, North and South. Let the secret orders and voluntary associations everywhere reunite as brethren once more. In short, give to all the natural and all the artificial causes which impel us together their fullest sway. Let time do his office—drying tears, dispelling sorrows, mellowing passion, and making herb and grass and tree to grow again upon the hundred battlefields of this terrible war.

"But this is recognition." It is not formal recognition, to which I will not consent. Recognition now, and attempted permanent treaties about boundary, travel, and trade, and partition of Territories, would end in a war fiercer and more disastrous than before. Recognition is absolute disunion; and not between the slave and the free States, but with Delaware and Maryland as part of the North and Kentucky and Missouri part of the West. But wherever the actual line, every evil and mischief of disunion is implied in it. And for similar reasons, sir, I would not at this time press hastily a convention of the States. The men who now would hold seats in such a convention would, upon both sides, if both agreed to attend, come together full of the hate and bitterness inseparable from a civil war. No, sir; let passion have time to cool and reason to resume its sway. It cost thirty years of desperate and most wicked patience and industry to destroy or impair the magnificent temple of this Union. Let us be content if within three years we shall be able to restore it.

But certainly what I propose is informal, practical recognition. And that is precisely what exists to-day, and has existed, more or less defined, from the first. Flags of truce, exchange of prisoners, and all your other observances of the laws, forms, and courtesies of war are acts of recognition. Sir, does any man doubt to-day that there is a Confederate Government at Richmond, and that it is a "belligerent"? Even the Secretary of State has discovered it at last, though he has written ponderous folios of polished rhetoric to prove that it is not. Will continual war, then, without extended and substantial success, make the Confederate States any the less a government in fact?

"But it confesses disunion." Yes, just as the surgeon who sets your fractured limb in splints, in order that it may be healed, admits that it is broken. "But the Government will have failed to 'crush out the rebellion.'" Sir, it has failed. You went to war to prove that we had a Government. With what

result? To the people of the loyal States it has, in your hands, been the Government of King Stork, but to the Confederate States, of King Log. "But the rebellion will have triumphed." Better triumph to-day than ten years hence. But I deny it. The rebellion will at last be crushed out in the only way in which it ever was possible. "But no one will be hung at the end of war." Neither will there be, though the war should last half a century, except by the mob or the hand of arbitrary power. But really, sir, if there is to be no hanging, let this Administration, and all who have done its bidding everywhere, rejoice and be exceeding glad.

And now, sir, allow me a word upon a subject of very great interest at this moment, and most important it may be in its influence upon the future—FOREIGN MEDIATION. I speak not of armed and hostile intervention, which I would resist as long as but one man was left to strike a blow at the invader. But friendly mediation—the kindly offer of an impartial power to stand as a daysman between the contending parties in this most bloody and exhausting strife—ought to be met in a spirit as cordial and ready as that in which it is proffered. It would be churlish to refuse. Certainly it is not consistent with the former dignity of this Government to ask for mediation; neither, sir, would it befit its ancient magnanimity to reject it. As proposed by the Emperor of France,[1] I would accept it at once. Now is the auspicious moment. It is the speediest, easiest, most graceful mode of suspending hostilities. Let us hear no more of the mediation of cannon and the sword. The day for all that has gone by. Let us be statesmen at last.

Very grand, indeed, would be the tribunal before which the great question of the union of these States and the final destiny of this continent for ages should be heard, and historic through all time the embassadors who should argue it. And, if both belligerents consent, let the subjects in controversy be referred to Switzerland, or Russia, or any other impartial and incorruptible power or state in Europe. But at last, sir, the people of these several States here, at home, must be the final arbiter of this great quarrel in America; and the people and States of the Northwest, the mediators who shall stand, like the prophet, betwixt the living and the dead, that the plague of disunion may be stayed.

The speech of Mr. Vallandigham was replied to by John A. Bingham [O.].

[1] Napoleon III.

THE UNION WORTH THE COSTLIEST SACRIFICE

JOHN A. BINGHAM, M. C.

My colleague tells us that the war ought to stop; that it should not continue a day nor an hour. He is for the Union, he tells us, and against the employment of the only means by which the Union can be this day maintained, the armed power of the people themselves. There can be no Union as it was, unless by arms you sustain, over all the Republic, the Constitution as the supreme law of the land; and yet the gentleman says the war ought to stop; that it should not continue a day nor an hour. Half of his speech is devoted to the task of satisfying the people that he is for the Constitution as it is and the Union as it was. Let us see. He tells us frankly that he voted neither men nor money to carry on the war. Suppose all the representatives in this hall had followed his example, had acted as he declares he has acted in the cause of the Union, what would have been the result? No bill authorizing the enlistment of volunteers in defence of your flag, no appropriation of money for arming, equipping, and keeping in the field six hundred thousand defenders of the Union, no arm lifted to support the tottering pillars of the Republic, shaking in this wild storm of rebellion. All would have been abandoned. The gentleman who says he is for the Union as it was would have abandoned all to the tender mercies of this armed rebellion, which has multiplied those graves all over the land to which the gentleman refers with so much tenderness, and so much regret for those who fill them; fallen, as he says, by reason of this unconstitutional war. The gentleman could not find it in his heart to denounce the rebellion as unconstitutional, but only the war on the part of the Government for the suppression of that rebellion is unconstitutional.

This is the last phase of that democracy which has brought this ruin upon the country. I do not say that everybody of the party to which the gentleman belongs was of his mind; but I do say, and I challenge contradiction in saying it, that, but for the aid and comfort which that gentleman and his party have given to this rebellion from its inception to this hour, this ruin, to which he points so significantly to-day, wrought by this terrible conflict of arms, and which has reached almost every hearthstone in the land, never had been. In my judgment, the gentleman, and those of his party who have agreed and coöperated with him, are not clear of the blood shed in this war. I am as tolerant of conflicting opinions as the gentleman or any other man; but I cannot be expected to be tolerant of the charge made by the gentleman this day, that those who stand by the country and by the Constitution, by reason of their fidelity to duty, violate the Constitution; nor can I be tolerant of the demand that the only means by which the Government can be maintained shall be withdrawn from its support, and the country left naked to its enemies. That is the point I make with the gentleman to-day. He seems to assume that there is no difficulty in the way to a restoration, a speedy restoration of peace and of the Union, if your armies are disbanded, if the war for the Union only ceases, and ceases at once. There is not a word of denunciation from the gentleman's lips against this rebellion, and he assumes and takes it for granted that secession is a constitutional right; and by way of glorifying these infernal architects of our country's ruin inquires, were not our fathers rebels like unto them? I thank him for his candor in so plainly announcing his opinion, though constrained to differ with him in his opinions and his conclusions.

My colleague, who talks to-day about the Union as it was, is the same gentleman who introduced, in February, 1861, in aid of this rebellion, the proposition to "divide the United States into four sections," and to arm, by an amendment to the Constitution, the rebellious section of country—the fifteen slave States—with the power to legalize secession, in utter disregard of every free State in the Union, and without the consent of any of them. I do not think that a gentleman occupying that position upon the records of the country has a right to denounce anybody as opponents of the Constitution and the Union; much less do I suppose it becomes him to assume that he is the special guardian of the "Constitution as it is and the Union as it was."

The gentleman was very correct in remarking that it would be a most singular spectacle, indeed, to have two separate governments within the limits of territory which God and nature had designed should be under one government, and be the common heritage of one people. I agree with him; and yet the gentleman managed and contrived a device by which the American people, if they had accepted the proposition, would have consented that that very result might be accomplished.

And yet the gentleman is for "the Union as it was." The gentleman seems to be horrified by the thought of two separate governments existing upon this common heritage of one people, which God, by its mountains, and its lakes, and its magnificent

rivers, has declared shall never be partitioned. His premises and his conclusions are strangely at fault with each other. The gentleman is for the Union, and at the same moment for disunion. Disband your armies, and let the war for the Union cease, says the gentleman.

What then? The South would be independent of the North, and the South would be triumphant over your violated Constitution and shattered Union. The gentleman so assumed, and hence his resolutions of this session contemplate and speak of "a final treaty of peace" with these rebels as a foreign and independent power. The gentleman further assumes—and I would like to know by what authority—that if we withdraw our armies, if we lay down our arms, if we cease to make war upon the rebels, they will come back into the Union under a treaty of peace. I would like to know by what authority he says so. If he knows it, he ought to give the House the benefit of his information. If it is a mere matter of speculation with him, why, of course, he has a right to indulge in his speculations, but we may be pardoned if we question the correctness of them. Has he any definite information? The gentleman is silent upon that subject.

MR. VALLANDIGHAM.—Will you allow me time to finish my speech?

MR. BINGHAM.—That is an unreasonable request.

MR. VALLANDIGHAM.—Then I have said all I desire to say to the gentleman.

MR. BINGHAM.—I supposed the gentleman had. I have this to say in reply to the gentleman, that I doubt very much whether the gentleman is authorized to speak for these rebels to that extent. To whatever extent he may be their mouthpiece, I venture to doubt his authority to say for them that if we lay down our arms and surrender to them, and allow them to proclaim their independence and their triumph over us and over our common Government, they will then consent to come back and be governed by the Constitution and the laws. I have no doubt that the gentleman may say many things by their authority, but that is one thing I do not think he is allowed to say by his master, Jefferson Davis, yet.

Here the speaker discussed the conduct of President Buchanan's Administration as based on the policy proposed by Mr. Vallandigham, and charged that this conduct had brought on the war.

And with such a rôle as was thus played in the capital of the nation by that Democratic cabinet council, this gentleman who helped to put them there has the effrontery to come here and arraign men for making war on these innocent, unoffending rebels. According to his logic we should have sat silent, and allowed those gentlemen to plunder the people of the money in their treasury on the one hand, and to rob them of the means of self-defence and self-preservation on the other. The suggestion of the gentleman is in perfect keeping with the conduct of that Cabinet. Disband your army, he says. Leave the field to these rebels. Allow them to proclaim themselves to all the world independent of your authority. Allow the Union to be dissevered, and thereupon go to work and settle the difficulty, in the language of the gentleman's resolution, by "a final treaty of peace." That would be a spectacle for gods and men to look on with wonder—the Government of the United States engaged in a final treaty of peace with Robert Toombs and Jefferson Davis, and John B. Floyd and John Letcher of Virginia, and John Slidell and James Mason, with the gentleman from Ohio chief in their counsel.

But the gentleman, not content with simply making this suggestion, comes here to-day to discredit the Government in the face of the world, and says, with an air of triumph, "how can you carry on the war? Can it continue? Can you borrow more money? Can you obtain any more revenue by taxation?" And he undertakes to answer, for all the loyal people of this great country, "no." I ask him again for his authority. I deny the correctness of his conclusion. I would despair of the Republic if I thought that the millions who people all this broad land of ours, from the rock-bound coast of New England to the golden gates of the Pacific, were, like the gentleman from Ohio, ready to lay their hands upon their mouths, and their mouths in the dust,[1] crying before these armed rebels and thieves, "unclean, unclean, unclean." The people, sir, occupy no such position, thank God, and I trust they never will; because I believe that the spirit of the Puritans, at which the gentleman affects to sneer to-day, runs through their veins. "Ah," says my colleague, "you can borrow no more money; you can raise no more revenue by taxation." I take it that, in this instance, the wish of my colleague is father to the thought. He would, if he could, have those who hold the purse-strings in this land withhold from the Government the means of support. I have the right to infer, from his words, that he would, if he

[1] See speech of Geo. E. Pugh, Vol. V, page 242.

could, induce the loyal people of the land to withhold the payment of taxes in support of their own Government. And yet he is for the Union as it was and for the Constitution as it is!

The gentleman refers to Washington, whose bones, he says, are disturbed by this unconstitutional war for the Union. Has the gentleman, when he talks thus—suggesting to the people a disregard of law, a withholding of taxes, a refusal to support their Government—forgotten those grand words of Washington, which ought to be written to-day over the lintel of every door in the land: "the Constitution which at any time exists is sacredly obligatory on all until changed by the act of the whole people"? I think that admonition of Washington a sufficient response to the suggestions of the gentleman to the good people of this land to pay no more taxes, not to submit to their own laws, to allow the Union to be dismembered, and the heritage, which God himself has declared should be the common heritage of one people, to be divided. And for what purpose? Why, that it may be united again. I suppose the gentleman's philosophy is that the best way to preserve a man's life is to kill him, in the first place, merely for the purpose of showing his skill in restoring him to life again. He would destroy the Union to-day by disbanding the army; he would destroy the Union to-day by destroying the public confidence in the Government; he would destroy it by withholding from the Government the revenues necessary to carry on the war. And after that is done, he would restore it by some strange machinery, by some curious power of enchantment which he possesses. I warn the gentleman to lay no such flattering unction to his soul. He who would put out the light now burning on your altars had better be careful, before he does that work, to inquire what earthly power shall that light relume.

My colleague would consent that the pillars of the temple of our liberties should be shaken down, in the vain belief that he has the power to rear them again in all their just and beautiful proportions. I trust in God that my colleague's day-dream is not to be realized. I feel the conviction that those who reared the proportions of this beautiful fabric of American empire were mighty men, whom God taught to build for glory and for beauty. They were men who are not seen in every generation, or in every century. They were men of that large discourse that looks before and after. They were men fitted of God to accomplish the great work of laying the foundations of a great and free commonwealth.

In this hour of peril my colleague tells us to follow the ex-

ample of Moses. He said he was one of the greatest statesmen that ever lived. I think it most likely. He wants us to follow the example of Moses; but what he meant by the suggestion I am not sure that I fully comprehend.

OWEN LOVEJOY [Ill.].—To lead the slaves out of the house of bondage.

MR. BINGHAM.—He informed us that Moses, when he wanted to do justice to his people, when he wanted to restore the authority of good government, took care to leave the land of Egypt, and lead them out of that country. Does the gentleman mean by that suggestion that we ought to follow the lead of some Moses—himself for example—get up and leave this goodly heritage of ours to be occupied exclusively by those rebels in arms, who have sworn that they will not have this Government of the people to rule over them? I cannot infer anything else. And if that be what he means, then I have this to say to him: that the right of expatriation is a right secured under the Constitution and laws of the United States to all its citizens; and if it be according to his mind to gather up his bundle under his arm, and to go into distant parts in order to accommodate these rebels, he has a perfect right to exercise his privilege. But I beg leave to suggest that those of us who think otherwise shall be permitted to stand by the old flag, and to remain on our native heath undisturbed, so long as it shall please God to let us live.

If he meant anything else than this bright suggestion, I would like to know what he did mean? My friend on my left suggests that he meant to lead the people out of their bondage into the land of their liberty. [Laughter.]

I hope the gentleman will not repudiate the law of his great law-giver—and he is also my great law-giver and model statesman. If we have any respect for Moses's law, in my belief the first act to be done by the nation should be to proclaim to these rebels, in the words uttered by this great law-giver, which he received from the Almighty himself in the midst of the darkness and earthquake of the mountain: "Thou shalt not steal." [Laughter.] They are attempting to steal your country and mine; they are attempting to steal your property and mine; they are attempting to steal the heritage of your children and mine. I ask my colleague whether he will consent that they shall steal any portion of this common territory of our country or not?

MR. VALLANDIGHAM.—I will consent that my colleague may volunteer to prevent it, if he wishes.

Mr. Bingham.—Will my colleague really consent that I may volunteer? [Laughter.]

Mr. Vallandigham.—Yes, sir. My colleague and myself will be in the same category, at leisure after the 4th of March, and perhaps we may volunteer together.

Mr. Bingham.—I take courage from that, for the inference to be drawn, both from the spoken arguments of my colleague and his official conduct in this House, is that he would permit nobody to volunteer. [Applause in the gallery.]

The gentleman would disband your army, withhold all supplies, and permit me alone to volunteer against all these rebels in arms. That is magnanimity. Talk about volunteering, sneeringly, when you, who have sworn to support the Constitution of the United States, stand by and see it torn and rent in tatters, and deny the right to maintain it by arms. When violent hands are laid upon the old flag of the Union, stained, as it is, all over with the blood of its defenders, shed by their assassins and murderers, you deny the right to uphold it, and refuse to vote supplies to your citizen soldiery, who peril all things earthly for the majesty of the law and in defence of their own institutions. You talk about volunteering! [Applause in the galleries.]

My colleague said that you cannot maintain this Union, or the authority of this Government, by force of arms; that you must do it by compromise; and he undertakes to make this good by some carefully considered references to history. There is one thing in the history of the world which he has overlooked, and that is this great fact, that there is not a single well-authenticated instance upon record of a great government, assailed by internal dissensions and armed rebellion, which submitted and surrendered to the rebellion and survived—not one. Yet the gentleman would have us, in the light of that great warning, lay down our arms, disband our armies, submit to the rebellion for the time being, and undertake to settle this great controversy afterward in favor of republican institutions by compromise! No government can survive a base surrender of its own authority to armed rebels. The rebels in that event become the government.

Mr. Speaker, I know the effect of such an appeal to the people of the country. I know that the good people of this land, who have given the first born of their homes for the defence of the Union and the Constitution and the suppression of the rebellion, love their noble sons and cherish them as they do the apple of their eye. I know that after their day's work is done,

in the quiet twilight of the evening they mourn over their absence and the broken circle of their homes. I beg them to remember that, though by disbanding your army they may for the moment make whole again the golden circle of their homes, they may thereby lose to themselves and their children a country. I ask them to remember that beautiful utterance, than which none more beautiful ever fell from human lips, of one of the dying Fathers of the Republic, "I commit my spirit to God and my daughter to my country." How could he, how could any man, die in peace while leaving his child without a country and a government to shelter and protect it when he was gone?

No, sir, there is something more important to be considered here to-day than the question whether this life or that life, even though it be the noblest and the most promising in the land, shall survive this war, and that question is, shall the Republic live immortal among the nations, and cover with the ægis of its protection your children and mine, and all the children of this land, when we ourselves shall be no more upon the earth? Yes, sir, the great question of to-day is, shall the Republic live? Any sacrifice of blood, any present loss to us of "this intellectual being," is not too great to be made, if thereby we may maintain intact that Constitution which our fathers gave us.

The theme of Mr. Bingham's speech received simpler and briefer but even more effective treatment by the President a few months later.

On November 19, 1863, the National Cemetery of soldiers killed at the battle of Gettysburg was dedicated in the presence of a vast array of people assembled from all parts of the Union upon the battlefield. The orator of the day was Edward Everett. At the close of his long address, composed in the finished periods of that "classic" order of American oratory of which he was the greatest living master, when the thunder of applause that it evoked had ceased, President Lincoln rose and spoke a few heart-felt words which so moved the deeps of emotion in his hearers that many sat spell-bound and silent after the speaker had finished. As the President's letter to Mr. Everett, written on the following day, indicates Mr. Lincoln inferred from this

reception that the speech was a "failure," but he was quickly disabused of that idea by evidences coming from every part of the Union of the deep impression it had made on the hearts of his countrymen.

"These Dead Shall Not Have Died in Vain"

Speech of President Lincoln at Gettysburg

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate—we cannot consecrate—we cannot hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.

The declaration that "the war is a failure" was embodied in the next national platform of the Democracy [1864], but the party's candidate for President, General George B. McClellan, virtually repudiated it. Lincoln was triumphantly reëlected, and in his second inaugural address, on March 4, 1865, justified the prosecution of the war until slavery, the curse from which it sprang, should forever be abolished.

"The Almighty Has His Purposes"

Second Inaugural of President Lincoln

Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the

LITTLE MAC. IN HIS GREAT TWO-HORSE ACT, IN THE PRESIDENTIAL CANVASS OF 1864

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same Bible, and pray to the same God; and each invokes his aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not, that we may be not judged. The prayers of both could not be answered—that of neither has been answered fully.

The Almighty has his own purposes. "Woe unto the world because of offences! for it must needs be that offences come, but woe to that man by whom the offence cometh." If we shall suppose that American slavery is one of those offences which, in the providence of God, must needs come, but which, having continued through his appointed time, he now wills to remove,

and that he gives to both North and South this terrible war, as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to him? Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, "The judgments of the Lord are true and righteous altogether."

With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations.

CHAPTER XI

Conscription

Henry Wilson [Mass.] Proposes in the Senate Bill to Draft Soldiers—His Speech on the Bill—It Is Passed—Debate in the House on the Bill: in Favor, William M. Davis [Pa.], James H. Campbell [Pa.], John H. Bingham [O.]; Opposed, Charles J. Biddle [Pa.], Chilton A. White [O.], Clement L. Vallandigham [O.], James C. Robinson [Ill.], Samuel S. Cox [O.], Daniel W. Voorhees [Ind.]—Bill Is Passed—Conscription by the South.

ON February 16, 1863, Henry Wilson [Mass.] brought before the Senate a bill for a draft of soldiers between the ages of twenty and forty-five to prosecute the war.

It was passed upon the same day after considerable debate and amendment. After a long and heated discussion in the House it was passed by that body, with various amendments, on February 25. The House amendments were accepted by the Senate on March 2, and the bill was approved by President Lincoln on March 3.

In its final form its preamble read as follows:

Whereas there now exist in the United States an insurrection and rebellion against the authority thereof, and it is, under the Constitution of the United States, the duty of the Government to suppress insurrection and rebellion, to guarantee to each State a republican form of government, and to preserve the public tranquillity; and, whereas, for these high purposes, a military force is indispensable, to raise and support which all persons ought willingly to contribute; and, whereas, no service can be more praiseworthy and honorable than that which is rendered for the maintenance of the Constitution and Union, and the consequent preservation of free government; be it enacted, etc.

The Conscription Act

Congress, February 16-25, 1863

Senator Wilson.—The needs of the nation demand that we should fill the regiments now in the field, worn and wasted by disease and death, by enrolling and drafting the population of the country under the constitutional authority "to raise and support armies."

That grant of power carries with it, in the language of "The Federalist," "all the powers requisite to the complete execution of its trust."

Sir, this grant to Congress of power "to raise and support armies" carries with it the right to do it by voluntary enlistment or by compulsory process. If men cannot be raised by voluntary enlistment then the Government must raise men by involuntary means, or the power to raise and support armies for the public defence is a nullity. James Monroe said, in a letter to the chairman of the Military Committee of the House of Representatives, in 1814, that—

"It would be absurd to suppose that Congress could not carry this power into effect otherwise than by accepting the voluntary service of individuals. It might happen that an army could not be raised in that mode, whence the power would have been granted in vain."

It is a high and sacred duty, resting alike upon all the citizens of the Republic, upon the sons of toil and misfortune and the more favored few, to labor, to suffer, ay, to die, if need be, for their country. Never since the dawn of creation have the men of any age been summoned to the performance of a higher or nobler duty than are the men of this generation in America. The passage of this great measure will clothe the President with ample authority to summon forth the sons of the Republic to the performance of the high and sacred duty of saving their country, now menaced, and the periled cause of civilization and freedom in America, and of winning the lasting gratitude of coming ages, and that enduring renown which follows every duty nobly and bravely done. The enactment of this bill will give confidence to the Government, strength to the country, and joy to the worn and weary soldiers of the Republic around their camp fires in the land of the rebellion.

There was unanimous acceptance by the Senate of the principles of the bill, the discussion being upon its

details. In the House, however, the principle was strenuously opposed, chiefly by the Northern "Peace" Democrats, when the bill came up for discussion on February 23. A provision to punish by fine or imprisonment any one who should violently resist the draft or who should counsel or aid any person to resist it was the particular object of attack.

Charles J. Biddle [Pa.] objected to the bill. He said the effect of it was to turn the militia, the constitutional defence of the people against any aggression of their rights, into a regular army, the unquestioning instrument of the Government.

The Executive, empowered, as the very word shows, only to execute known laws, establishes "martial law," that is, "the will of a conqueror," over all the people of the North. I feel a personal interest, an interest as a citizen, that things should not go on thus; for I believe it is at the constant risk of lighting up the flame of social revolution around your hearthstones and mine. Let us be warned in time. Have you noted the significant circumstance of men fresh from unjust imprisonment in Federal dungeons being received with high public honors and elevated to high positions?

William M. Davis [Pa.].—Will the gentleman inform the House who it is that will inaugurate a revolution in the North—the Republican party or the party with which the gentleman acts?

Mr. Biddle.—I think, sir, it will be an outraged people, without respect to party. I believe that the spirit which animated Hampden and the men of the English Revolution is not extinct in the age in which we live. That flame was brightened by the great example of the men of our own Revolution.

James H. Campbell [Pa.] replied to his colleague (Mr. Biddle).

Mr. Speaker, in the early stages of this rebellion it became necessary to exercise an extreme power to arrest the traitors who were circulating through the Northern States hatching treason and poisoning the minds of the people, because at that time the life of this nation was in daily and hourly peril; no man knew the extent of the conspiracy against the Union; we were surrounded by spies and traitors everywhere. They were in the

legislative bodies of the country; they were with the armies in the field; they were in every town, village, and hamlet of the North; and I commend the President and War Department for the vigor with which they caused traitors to be arrested and incarcerated, until it could be ascertained where the country stood, and proper measures could be perfected for their trial and conviction.

Sir, in all ages and under all civilized governments there have been instances of the exercise of extreme power whenever the life of the nation has been in peril. Extreme peril makes extreme necessity; and nations, like individuals, must act accordingly. When the assassin enters your house at night you do not pause to take the ordinary measures that might be resorted to in broad daylight and under ordinary circumstances. You first defend the life of your family, and afterward take the necessary measures to convict and punish the culprit.

Let me tell gentlemen on the other side that, so far from condemning these arrests, it would be better for them if they could read the writing on the wall, and make their peace with liberty and their country while there is yet time. If they cannot see the evidence of a healthy reaction among the masses they are blind to the signs of the times. The error of the Government has been *leniency*. If it had given to traitors a drum-head court-martial and hempen cord, it would better have pleased the loyal men in the United States. [Applause in the galleries.] If I mistake not, the day is not far distant when the people will be so aroused against rebellion that traitors, their aiders and abettors, will call upon the rocks and mountains to cover them.

Now, sir, there was an intimation thrown out by my colleague —often repeated from that side of the House—that if we proceed with proper measures—measures which they are pleased to call unconstitutional—to make arrests and put down the rebellion, we will stir up revolution at the North. I am not afraid of any social or political revolution in the free States. If gentlemen see proper to inaugurate social or political armed revolution at the North, I hope they will do it at once; the sooner the traitorous effort is made the better. There is loyalty enough in the North to take care of any treason that can be found among the free States. Our soldiers in the army can take care of the rebels in front, and loyal men enough will rise up in the free States to dispose of the rebels within their limits. [Applause in the galleries.]

Until the last traitor is compelled to submit to lawful authority, to the Constitution and laws, we can have no peace; till

that is done peace is infamy, peace is anarchy, peace is destruction, and no loyal and judicious man will advocate it. The rebels scout and scorn all propositions of peace, even if we were disposed to listen to them. There is no alternative but to conquer or be conquered; to live freemen or die slaves. And I am one of those who are ready to vote the last man and the last dollar for the accomplishment of the great object before us. I am ready to fight it out by land and by sea, as long as may be necessary to crush out the rebels themselves, and all their sympathizers at home and abroad. [Applause in the galleries.]

Chilton A. White [O.] followed Mr. Campbell in a speech against the bill.

This bill provides for the appointment of a provost marshal in every congressional district in the United States. It provides for the appointment of persons for taking the census of those who are subject to military duty. It provides for the appointment of draft commissioners. All these officers will be appointed by the executive officer of the United States, and they will be violent political partisans, holding the personal liberty and the personal security of every citizen within the congressional districts of the United States, as it were, in the hollow of their hands. These provost marshals are armed with the power to arrest for treasonable practices. In God's name, what does that mean? This is the most singular definition of crime I have ever seen embodied into any statutory enactment of this or any other country. What are treasonable practices? Who are to determine what they are? Are these provost marshals, many of them unskilled in the law, to determine that question? Why, it will have as many definitions and as many meanings as there are provost marshals to construe the statute. If a man gets up and argues upon the stump against this wicked, this corrupt, and this usurping Administration, he will be denounced as engaged in treasonable practices, according to the view of these political partisans, who are made the judges of the loyalty of every man in this country.

Why, sir, if the devil himself were to tax his ingenuity he could not invent a more complete device for destroying the liberty and happiness of the people than this bill, as illustrated in the light of the history of this country for the past eighteen months.

Treasonable practices! Why, sir, in the opinion of many of those gentlemen upon this floor who assume to be the especial

guardians of the loyalty of the country, I have no doubt I would be considered as engaged in treasonable practices while denouncing this measure and this scheme, as I do denounce it here and now.

Oh, but it is said that these men are only to be arrested and detained for a short period of time, and for a temporary purpose, which will pass away with the occasion, and that after the draft is all over they are to be delivered over to the judicial tribunals of the country. Delivered over! what for? Is there any man here who ever expects that anybody will ever be tried for treasonable practices? No, sir; it is a device; it is a catch; it is an excuse; it is an apology, to afford some justification for this monstrous and outrageous provision. No trial is intended, and no judicial tribunal will ever hear of any of these treasonable practices. This clause is incorporated here to afford an apology for illegal arrests. Men will be arrested without oath, and without show of probable cause. They will be detained without the benefit of a speedy and public trial by an impartial jury of the country. It is but the renewal of that reign of terror which we passed through but a few days before our election last fall.

But another new kind of trial is established and invented by this bill. If any person shall dissuade another from the performance of military duty he is to be considered as guilty of crime and subject to summary arrest and trial. What does that mean? Does it mean that if a man denounces the policy of this Administration as wicked, corrupt, and dangerous to the liberties of the people; if he denounces the acts of usurpation of which it has been guilty; if he denounces the monstrous policy upon which it at present conducts the war in open and flagrant violation of the Constitution, and in derogation of the rights and established institutions of the States, is he to be taken and held as discouraging persons from the performance of military duty? If so, then I suppose he would be held guilty, and would be subject to military arrest.

We all know what construction will be placed upon this provision. They are unjust and ingenious devices by which the people are to be deprived of this last vestige of liberty. All this might be borne if the injured citizen could appeal to the local State judicial tribunals for the redress of injuries thus inflicted upon him; but by your indemnity bill provision is made for taking all this class of cases, by a novel and unusual mode of appeal, to the United States courts; and when thus appealed you have provided that under the plea of the general issue evidence

may be offered to show that the wrong was committed upon probable cause, or under color of authority derived from the President or a law of Congress, and such proof shall constitute a good and valid defence to the action, and the court shall so charge the jury, and the jury shall so find. Thus you declare by law what shall be a defence; you put the charge to the jury in the mouth of the court, and compel the jury to find accordingly. What more effectual immunity could be granted for the commission of these wrongs upon the rights and the liberties of the citizen than are here given? Not only the independence, but the very existence of the local State judicial tribunals is struck down so far as this class of cases is concerned, and it is sought to dog him into submission to these wrongs by compelling him to seek redress in distant courts, under circumstances of great inconvenience and at great cost; and as a further penalty for seeking redress it is provided that if he is non-suited, or fails in the action, he shall pay double costs.

When you have overthrown the constitutions of the States; when you have overthrown the judicial authorities of the States; when you have removed from the citizens every possible means for the protection of their personal liberty and property; when you have done all this, the only refuge which is left, the only appeal which the injured and outraged citizen can make, is to the God of justice and the God of right. And if these outrages are carried to the extent I apprehend they will be, that appeal, as God reigns in heaven, will be made. I tell you that in my section of the State of Ohio the spirit of our citizens will no longer tolerate these things. They will defend the rights of the citizen; and, if you close all the judicial tribunals and every mode of legal redress to them, they will plant themselves upon the constitution of their States and of the United States, and defend themselves in the possession of the rights and liberties guaranteed to them by those instruments, with and by all the means which God and nature have placed in their possession. They have already borne too much, and I tell you they will not bear more.

Why, gentlemen upon the other side of the House say there has not been enough of this thing; that there have not been as many political arrests as should have been made. And they talk about liberty, about free government, and about republican institutions. My God! what ideas of republican institutions, of free government, and of liberty must such men have! What do they mean by these words? Is it that kind of license which permits one party, because they have the power, to seize, with-

out authority of law, condemn without trial, and imprison without process the partisans of another party? Is that the kind of free government they want? Is that the kind of republican institutions which it is desired to perpetuate in this country? Is that the liberty of which you boast so much? Sir, I want liberty, but I want it regulated by law, not by license, not subject to the capricious will of any one man. This bill strikes at the very roots of every immunity that belongs to the citizen. It not only affects his personal liberty, but it even affects the freedom of his speech; it puts a gag in his mouth and will subject him to arrest and imprisonment for words spoken. Why, sir, the theory of our Government is that even error of opinion may be tolerated so long as reason is left free to combat it, or until it seeks to perpetuate itself by force.

We are willing to extend to you, without let or hindrance on our part, all the rights we claim for ourselves. We invite you into the arena before the people, to a full, fair, and unrestrained discussion of the questions at issue between us. Bring to your aid every argument and every reason you can to support your sinking cause; and let it be understood that these same rights which we concede to you we claim and intend to exercise for ourselves, and no earthly power shall prevent us from doing so. God, by a law of His own making, made thought free and left each individual free to select his own form and mode for its expression; and it is not for you, gentlemen, to ascend the throne of the Almighty and attempt to set boundaries to the range of opinion or prescribe the forms of speech in which it shall be expressed, and to denounce your judgments upon men who do not think and speak according to prescribed forms. When God made man in His own image, the noblest of all sublunary beings, a creature endowed with reason and free will, an intellectual being, it became his high prerogative, each one for himself and not one for another, to exercise these faculties; not as he must answer to you, but as he must answer to his Creator, for himself, so he must use and improve his talents for himself; and it is only when opinion seeks to perpetuate itself by force, and not by argument and consent, that it may be met with force. In these respects our Government is but a reflex of the divine mind, and while we on our side support our cause by the persuasive influences of truth, reason, and argument, you on your side have no right to resort to coercive measures against us. If you do, I warn you that an eye for an eye and tooth for tooth will be the law. We intend to walk in the light of our own reason, forming our own judgments and pursuing our own conclusions, support-

ing them by the inherent power of truth, illustrated by such reason and argument as we can bring to bear. Were we, on all fitting and proper occasions, to refuse to do so, we would violate a trust reposed in us by God himself, and prove ourselves unworthy of our divine Master, fit subjects for degradation and slavery.

Now, sir, I wish to say that I believe this to be a bill that would strike down the rights of the States and the liberties of the citizen, and that, if attempted to be enforced and executed, it will lead to results and calamities in this country which will sadden all our hearts and the hearts of right-minded men everywhere. The time has passed when the people of this country will submit longer to the state of things which has been inaugurated by the party now in power. They know their rights, and, knowing them, they are bent and determined upon maintaining them at all costs and at all hazards. Gentlemen on the other side may take all the comfort they can from any apparent reaction they see going on in the country. We have suffered imprisonment; we have suffered wrongs, and insults, and indignities; our motives of patriotism have been impugned; thousands of our citizens are to-day languishing in your prisons and bastiles, snuffing the damp vapors of solitary dungeons, separated from their families, their business, and all the associations and endearments that cluster around home; and all, sir, for no other crime or offence than that their views and opinions do not exactly correspond with your own; men whose ruling passions are an uncompromising devotion to the Constitution and the Union, but differ with you as to the best means to be employed for their maintenance and support.

Clement L. Vallandigham [O.] followed his colleague in opposing the bill.

Mr. Speaker, I do not propose to discuss this bill at any great length in this House. I am satisfied that there is a settled purpose to enact it into a law, so far as it is possible for the action of the Senate and House and the President to make it such. I appeal, therefore, from you, from them, directly to the country; to a forum where there is no military committee, no previous question, no hour rule, and where the people themselves are the masters. I commend the spirit in which this discussion was commenced by the chairman of the Military Committee [Abraham B. Olin, of New York]. Only let me caution him that he cannot dictate to the minority here what course

they shall pursue. But, sir, I regret that I cannot extend the commendation to the gentleman from Pennsylvania [Mr. Campbell] who addressed the House a little while ago. If he or any other gentleman of the majority imagines that any one here is to be deterred by threats from the expression of his opinions, or from giving such votes as he may see fit to give, he has utterly misapprehended the temper and determination of those who sit on this side of the chamber. His threat I hurl back with defiance into his teeth. I spurn it. I spit upon it. That is not the argument to be addressed to equals here; and I therefore most respectfully suggest that hereafter we shall be spared personal denunciation and insinuations against the loyalty of men who sit with me here; men whose devotion to the Constitution and attachment to the Union of these States are as ardent and immovable as yours, and who only differ from you as to the mode of securing the great object nearest their hearts.

Mr. Campbell.—The gentleman will allow me——

Mr. Vallandigham.—I yield for explanation.

Mr. Campbell.—Mr. Speaker, it is a significant fact that the gentleman from Ohio has applied my remarks to himself and others on his side of the House. Why was this done? I was denouncing *traitors* here, and I will denounce them while I have a place upon this floor. It is my duty and my privilege to do so. And, if the gentleman from Ohio chooses to give my remarks a personal application, he can so apply them.

Mr. Vallandigham.—That is enough.

Mr. Campbell.—One moment.

Mr. Vallandigham.—Not another moment after that. I yielded the floor in the spirit of a gentleman, and not to be met in the manner of a blackguard. [Applause and hisses in the galleries.]

Mr. Campbell.—The member from Ohio is a blackguard. [Renewed hisses and applause in the galleries.]

James C. Robinson. [Ill.].—I rise to a question of order. I demand that the galleries be cleared. We have been insulted time and again by contractors and plunderers of the Government in these galleries, and I ask that they be now cleared.

Samuel S. Cox [O.].—I hope my friend from Illinois will not insist on that. Only a very small portion of those in the galleries take part in these disturbances. The fool-killer will take care of them.

Mr. Vallandigham.—I have already said that it is not my purpose to debate the general merits of this bill at large, and for the reason that I am satisfied that argument is of no avail

here. I appeal, therefore, to the people. Before them I propose to try this great question—the question of constitutional power, and of the unwise and injudicious exercise of it in this bill. We have been compelled, repeatedly, since the 4th of March, 1861, to appeal to the same tribunal. We appealed to it at the recent election. And the people did pronounce judgment upon our appeal.

Talk to me, indeed, of the leniency of the Executive! too few arrests! too much forbearance by those in power! Sir, it is the people who have been too lenient. They have submitted to your oppressions and wrongs as no free people ought ever to submit. But the day of patient endurance has gone by at last. Mistake them not. They will be lenient no longer. Abide by the Constitution, stand by the laws, restore the Union if *you* can restore it—not by force; you have tried that and failed—Try some other method now—the ancient, the approved, the reasonable way—the way in which the Union was first made. Surrender it not now—not yet—never. But unity is not union; and attempt not, at your peril—I warn you—to coerce unity by the utter destruction of the Constitution and of the rights of the States and the liberties of the people. Union is liberty and consent: unity is despotism and force. For what was the Union ordained? As a splendid edifice to attract the gaze and admiration of the world? As a magnificent temple—a stupendous superstructure of marble and iron, like this Capitol, upon whose lofty dome the bronzed image—hollow and inanimate—of freedom is soon to stand erect in colossal mockery, while the true spirit, the living goddess of liberty, veils her eyes and turns away her face in sorrow, because, upon the altar established here and dedicated by our fathers to her worship, you, a false and most disloyal priesthood, offer up, night and morning, the mingled sacrifices of servitude and despotism? No, sir. It was for the sake of the altar, the service, the religion, the devotees that the temple of the Union was first erected; and, when these are all gone, let the edifice itself perish. Never—never—never will the people consent to lose their own personal and political rights and liberties to the end that you may delude and mock them with the splendid unity of despotism.

Sir, what are the bills which have passed, or are still before, the House? The bill to give the President entire control of the currency—the purse—of the country. A tax bill to clothe him with power over the whole property of the country. A bill to put all power in his hands over the personal liberties of the people. A bill to indemnify him, and all under him, for every act

of oppression and outrage already consummated. A bill to enable him to suspend the writ of *habeas corpus* in order to justify or protect him, and every minion of his, in the arrests which he or they may choose to make—arrests, too, for mere opinions' sake. Sir, some two hundred years ago men were burned at the stake, subjected to the horrors of the Inquisition, to all the tortures that the devilish ingenuity of man could invent—for what? For opinions on questions of religion—of man's duty and relation to his God. And now, to-day, for opinions on questions political, under a free Government, in a country whose liberties were purchased by our fathers by seven years' outpouring of blood and expenditure of treasure—we have lived to see men, the born heirs of this precious inheritance, subjected to arrest and cruel imprisonment at the caprice of a President, or a Secretary, or a constable. And, as if that were not enough, a bill is introduced here to-day, and pressed forward to a vote, with the right of debate, indeed—extorted from you by the minority—but without the right to amend, with no more than the mere privilege of protest—a bill which enables the President to bring under his power, as Commander-in-Chief, every man in the United States between the ages of twenty and forty-five—three millions of men. And, as if not satisfied with that, this bill provides, further, that every other citizen, man, woman, and child, under twenty years of age and over forty-five, including those that may be exempt between these ages, shall be also at the mercy—so far as his personal liberty is concerned—of some miserable "provost marshal" with the rank of a captain of cavalry who is never to see service in the field; and every congressional district in the United States is to be governed—yes, governed—by this petty satrap—this military eunuch—this Baba—and he even may be black—who is to do the bidding of your Sultan, of his Grand Vizier. Sir, you have but one step further to go—give him the symbols of his office—the Turkish bow-string and the sack.

What is it, sir, but a bill to abrogate the Constitution, to repeal all existing laws, to destroy all rights, to strike down the judiciary and erect upon the ruins of civil and political liberty a stupendous superstructure of despotism. And for what? To enforce law? No, sir. It is admitted now by the legislation of Congress, and by the two proclamations of the President, it is admitted by common consent that the war is for the abolition of negro slavery, to secure freedom to the black man. You tell me, some of you, I know, that it is so prosecuted because this is the only way to restore the Union; but others openly and candidly confess that the purpose of the prosecution of the war is to abolish slavery. And thus, sir, it is that the freedom of the negro is to be purchased, under this bill, at the sacrifice of every right of the white men of the United States.

Sir, I am opposed, earnestly, inexorably opposed, to this measure. If there were not another man in this House to vote against it, if there were none to raise his voice against it, I, at least, dare stand here alone in my place, as a Representative, undismayed, unseduced, unterrified, and heedless of the miserable cry of "disloyalty," of sympathy with the rebellion and with rebels, to denounce it as the very consummation of the conspiracy against the Constitution and the liberties of my country.

Where, now, are your taunts and denunciations, heaped upon the Confederate Government for its conscription, when you, yourselves, become the humble imitators of that government and bring in here a conscription act more odious even than that passed by the Confederate Congress at Richmond? What is this bill? A confession that the people are no longer ready to enlist; that they are not willing to carry on this war longer, until some effort has been made to settle this great controversy in some other way than by the sword. And yet, in addition to the one million two hundred and thirty-seven thousand men who have voluntarily enlisted, you propose now to force the entire body of the people, between the ages of twenty and forty-five, under military law and within the control of the President as Commander-in-Chief of the army for three years, or during the war—which is to say "for life"; aye, sir, for life, and half your army has already found, or will yet find, that their enlistment was for life, too.

Sir, what does all this mean? You were a majority at first; the people were almost unanimously with you, and they were generous and enthusiastic in your support. You abused your power and your trust, and you failed to do the work which you promised. You have lost the confidence, lost the hearts of the people. You are now in a minority at home. And yet what a spectacle is exhibited here to-night! You, an accidental, temporary majority, condemned and repudiated by the people, are exhausting the few remaining hours of your political life in attempting to defeat the popular will, and to compel, by the most desperate and despotic of expedients ever resorted to, the submission of the majority of the people, at home, to the minority, their servants here. Sir, this experiment has been tried before in other ages and countries and its issue always, among

a people born free or fit to be free, has been expulsion or death to the conspirators and tyrants.

Have a care, have a care, I entreat you, that you do not press these measures too far. I shall do nothing to stir up an already excited people—not because of any fear of your contemptible petty provost marshals, but because I desire to see no violence or revolution in the North or West. But I warn you now, that whenever, against the will of the people, and to perpetuate power and office in a popular Government which they have taken from you, you undertake to enforce this bill, and, like the destroying angel in Egypt, enter every house for the first-born sons of the people—remember Poland. You cannot and will not be permitted to establish a military despotism.

What do you propose to make the duty of each provost marshal in carrying out the draft? Among other things, that he shall "inquire into and report to the provost marshal-general"—what? Treason No. Felony? No. Breach of the peace, or violation of law of any kind? No; but "treasonable practices"; yes, *treasonable practices*. What mean you by these strange, ominous words? Whence come they? Sir, they are no more new or original than any other of the cast-off rags filched by this Administration from the lumber-house of other and more antiquated despotisms. The history of European tyranny has taught us somewhat of this doctrine of constructive treason. Treasonable practices! Sir, the very language is borrowed from the old proclamations of the British monarchs some hundreds of years ago. It was this that called forth that English act of Parliament of twenty-fifth Edward III, from which we have borrowed the noble provision against constructive treason in the Constitution of the United States. Arbitrary arrests for no crime known, defined, or limited by law, but for pretended offences, herded together under the general and most comprehensive name of "treasonable practices," had been so frequent in the worst periods of English history, that in the language of the act of Henry IV, "no man knew how to behave himself or what to do or say for doubt of the pains of treason." The statute of Edward III had cut all these fungous, toadstool treasons up by the root; and yet, so prompt is arbitrary power to denounce all opposition to it as treasonable that, as Lord Hale observes—

"Things were so carried by parties and factions in the succeeding reign of Richard II, that this statute was but little observed but as this or that party got the better. So . . . it came to pass that almost every offence that was *or seemed to be* a breach of the faith and allegiance due

to the king was, by *construction, consequence, and interpretation,* raised into the offence of high treason."

But steadily, in better times, the people and the Parliament of England returned to the spirit and letter of the act of Edward III, passed by a Parliament which now, for five hundred years, has been known and honored as *Parliamentum benedictum,* the "blessed Parliament"—just as this Congress will be known, for ages to come, as "the accursed Congress." Among many other acts, it was declared by a statute, in the first year of the fourth Henry's reign, that "*in no time to come* any treason be judged, otherwise than as ordained by the statute of King Edward III." And for nearly two hundred years it has been the aim of the lawyers and judges of England to adhere to the plain letter, spirit, and intent of that act, "to be extended," in the language of Erskine in his noble defence of Hardy, "by no new or occasional constructions—to be strained by no fancied analogies—to be measured by no rules of political expediency—to be judged of by no theory—to be determined by the wisdom of no individual, however wise—but to be expounded by the simple, genuine letter of the law."

Such, sir, is the law of treason in England to-day; and so much of the just and admirable statute of Edward as is applicable to our form of government was embodied in the Constitution of the United States. And yet what have we lived to hear in America daily, not in political harangues or the press only, but in official proclamations and in bills in Congress! Yes, your high officials talk now of "treasonable practices" as glibly "as girls of thirteen do of puppy dogs." Treasonable practices! Disloyalty! Who imported these precious phrases and gave them a legal settlement here? Your Secretary of War. He it was who by command of our most noble President authorized every marshal, every sheriff, every township constable, or city policeman in every State in the Union to fix, in his own imagination, what he might choose to call a treasonable or disloyal practice, and then to arrest any citizen at his discretion, without any accusing oath and without due process or any process of law. And now, sir, all this monstrous tyranny, against the whole spirit and the very letter of the Constitution, is to be deliberately embodied in an act of Congress! Your petty provost marshals are to determine what treasonable practices are and "inquire into," detect, spy out, eavesdrop, insnare, and then inform, report to the chief spy at Washington. These, sir, are now to be our American liberties under your Administration. There is not a crowned head in Europe who dare venture on such an

experiment. How long, think you, this people will submit? But words, too—conservation or public speech—are to be adjudged "treasonable practices." Men, women, and children are to be haled to prison for free speech. Whoever shall denounce or oppose this Administration; whoever may affirm that war will not restore the Union, and teach men the gospel of peace, may be reported and arrested upon some old grudge, and by some ancient enemy, it may be, and imprisoned as guilty of a treasonable practice.

Sir, there can be but one treasonable practice under the Constitution in the United States. "Treason against the United States," says the Constitution, "shall consist *only* in levying war against them, or in adhering to their enemies, giving them aid and comfort." [Here a Republican member nodded several times and smiled.] Ah, sir, I understand you. But was Lord Chatham guilty of legal treason, treasonable aid and comfort, when he denounced the war against the colonies and rejoiced that America had resisted? Was Burke, or Fox, or Barré guilty when defending the Americans in the British Parliament and demanding conciliation and peace? Were even the Federalists guilty of treason, as defined in the Constitution, for "giving aid and comfort" to the enemy in the war of 1812? Were the Whigs in 1846? Was the Ohio Senator liable to punishment, under the Constitution, and by law, who said, sixteen years ago, in the Senate chamber, when we were at war in Mexico: "If I were a Mexican as I am an American, I would greet your volunteers with bloody hands and welcome them to hospitable graves?" Was Abraham Lincoln guilty because he denounced that same war while a Representative on the floor of this House? Was all this "adhering to the enemy, giving him aid and comfort" within the meaning of this provision?

A MEMBER.—The Democratic papers said so.

MR. VALLANDIGHAM.—Sir, I am speaking now as a lawyer and as a legislator to legislators and lawyers acting under oath and the other special and solemn sanctions of this chamber, and not in the loose language of the political canvass.

The speaker here denounced the treatment accorded those who had been arrested by the Government.

Newspapers, the Bible, letters from home, except under surveillance, a breath of air, a sight of the waves of the sea, or of the mild blue sky, the song of birds, whatever was denied to the prisoner of Chillon, and more, too; yes, even a solitary

lamp in the casemate, where a dying prisoner struggled with death, all have been refused to the American citizen accused of disloyal speech or opinions by this most just and merciful Administration.

Says the Constitution:

"The accused shall enjoy the right to have the assistance of counsel for his defence."

And yet your Secretary of State, the "conservative" Seward—the confederate of Thurlow Weed, that treacherous, dissembling foe to constitutional liberty and the true interests of his country—forbade his prisoners to employ counsel, under penalty of prolonged imprisonment.

And here is another order to the same effect, signed by William H. Seward himself, and read to the prisoners at Fort Warren on the 29th of November, 1861:

"Discountenancing and repudiating all such practices"—

The disloyal practice, forsooth, of employing counsel—

"the Secretary of State desires that all the State prisoners may understand *that they are expected to revoke all such engagements now existing and avoid any hereafter*, as they can only lead to new complications and embarrassments to the cases of prisoners on whose behalf *the Government might be disposed to act with liberality.*"

Most magnanimous Secretary! Liberality toward men guilty of no crime, but who, though they had been murderers or pirates, were entitled by the plain letter of the Constitution to have "the assistance of counsel for their defence." Sir, there was but one step further possible, and that short step was taken some months later when the prisoners of state were required to make oath, as the condition of their discharge, that they would not seek their constitutional and legal remedy in court for the wrongs and outrages inflicted upon them.

Sir, incredible as all this will seem some years hence, it has happened, all of it, and more yet untold, within the last twenty months in the United States. Under executive usurpation and by virtue of presidential proclamations and cabinet orders it has been done without law and against Constitution; and now it is proposed to sanction and authorize it all by an equally unconstitutional and void act of Congress. It is a vain thing to seek to cloak all this under the false semblance of law. Liberty is no more guarded or secured and arbitrary power no more

hedged in and limited here than under the executive orders of last summer. We know what has already been done, and we will submit to it no longer. Away, then, with your vain clamor about disloyalty, your miserable mockery of treasonable practices. We have read with virtuous indignation in history ages ago of an Englishman whose favorite buck the king had killed and who suffered death as a traitor for wishing, in a fit of vexation, that the buck, horns and all, were emboweled in the body of the king. But what have we not lived to see in our own time? Sir, not many months ago this Administration, in its great and tender mercy toward the six hundred and forty prisoners of state, confined for treasonable practices at Camp Chase near the capital of Ohio, appointed a commissioner, an extra-judicial functionary, unknown to the Constitution and laws, to hear and determine the cases of the several parties accused and with power to discharge at his discretion or to banish to Bull's Island in Lake Erie. Among the political prisoners called before him was a lad of fifteen, a newsboy upon the Ohio River, whose only offence proved, upon inquiry, to be that he owed fifteen cents—the unpaid balance of a debt due to his washer-woman—possibly a woman of color—who had him arrested by the provost marshal as guilty of "disloyal practices." For four weary months the lad had lain in that foul and most loathsome prison, under military charge, lest, peradventure, he should overturn the Government of the United States; or, at least, the administration of Abraham Lincoln!

And yet, Senators and Representatives, catching up the brutal cry of a bloodthirsty but infatuated partisan press, exclaim "the Government has been too lenient, there ought to have been more arrests!"

Well did Hamilton remark that "arbitrary imprisonments have been in all ages the favorite and most formidable instruments of tyranny"; and, not less truly, Blackstone declares that they are "a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government" than executions upon the scaffold. And yet, to-night, you seek here, under the cloak of an act of Congress, to authorize these arrests and imprisonments, and thus to renew again that reign of terror which smote the hearts of the stoutest among us, last summer, as "the pestilence which walketh in darkness."

Sir, if your objects are constitutional, you have power abundantly under the Constitution, without infraction or usurpation. The men who framed that instrument made it both for war and peace. Nay, more, they expressly provide for the cases of

insurrection and rebellion. You have ample power to do all that of right you ought to do—all that the people, your masters, permit under their supreme will—the Constitution. Confine, then, yourselves within these limits, and the rising storm of popular discontent will be hushed.

Here the speaker denounced arbitrary arrests as illegal even under the suspension of *habeas corpus*.

The gentleman from Rhode Island [William P. Sheffield] said, very justly, that the suspension of the writ of *habeas corpus* does not authorize arrests except upon sworn warrant, charging some offence known to the law and dangerous to the public safety. He is right. It does not; and this was so admitted in the bill which passed the Senate in 1807. The suspension only denies release upon bail, or a discharge without trial, to parties thus arrested. It suspends no other right or privilege under the Constitution—certainly not the right to a speedy public trial by jury in a civil court. It dispenses with no "due process of law," except only that particular writ. It does not take away the claim for damages to which a party illegally arrested, or legally arrested, but without probable cause, is entitled.

And yet it has been assumed by the party in power that a suspension of the writ of *habeas corpus* is a suspension of the entire Constitution and of all laws, so far as the personal rights of the citizen are concerned. Why, then, sir, stop with arbitrary arrests and imprisonments? Does any man believe that it will end here? Not so have I learned history. The guillotine! the guillotine! the guillotine follows next.

Sir, when one of those earliest confined in Fort La Fayette—I had it from his own lips—made complaint to the Secretary of State of the injustice of his arrest and the severity of the treatment to which he had been subjected in the exercise of arbitrary power, no offence being alleged against him, "why," said the Secretary, with a smile of most significant complacency, "my dear sir, you ought not to complain; *we might have gone further.*" Light flashed upon the mind of the gentleman and he replied: "Ah! that is true, sir; you had just the same right to behead as to arrest and imprison me."

Sir, it is this which makes revolutions. A gentleman upon the other side asked this afternoon which party was to rise now in revolution. The answer of the able and gallant gentleman from Pennsylvania [Mr. Biddle] was pertinent and just—

"No party, but an outraged people." It is not, let me tell you, the leaders of parties who begin revolutions. Never. Did any one of the distinguished characters of the Revolution of 1776 participate in the throwing of the tea into Boston Harbor? Who was it? Who, to-day, can name the actors in that now historic scene? Good men agitate; obscure men begin real revolutions; great men finally direct and control them. And if, indeed, we are about to pass through the usual stages of revolution, it will not be the leaders of the Democratic party—not I, not the men with me here to-night—but some man among the people, now unknown and unnoted, who will hurl your tea into the harbor; and it may even be in Boston once again; for the love of liberty, I would fain believe, lingers still under the shadow of the monument on Bunker Hill. But, sir, we seek no revolution—except through the ballot-box. The conflict to which we challenge you is not of arms but of argument. Do you believe in the virtue and intelligence of the people? Do you admit their capacity for self-government? Have they not intelligence enough to understand the right, and virtue enough to pursue it? Come then: meet us through the press, and with free speech and before the assemblages of the people and we will argue these questions, as we and our fathers have done from the beginning of the Government—"Are we right or you right, we wrong or you wrong?" And by the judgment of the people we will, one and all, abide. We have a Constitution yet, and laws yet. To them I appeal. Give us our rights; give us known and fixed laws; give us the judiciary; arrest us only upon due process of law; give us presentment or indictment by grand juries; speedy and public trial; trial by jury and at home; tell us the nature and cause of the accusation; confront us with witnesses; allow us witnesses in our behalf, and the assistance of counsel for our defence; secure us in our persons, our houses, our papers, and our effects; leave us arms, not for resistance to law or against rightful authority, but to defend ourselves from outrage and violence; give us free speech and a free press; the right peaceably to assemble; and, above all, free and undisturbed elections and the ballot; take our sons, take our money, our property, take all else; and we will wait a little, till, at the time and in the manner appointed by Constitution and law, we shall eject you from the trusts you have abused and the seats of power you have dishonored, and other and better men shall reign in your stead.

John A. Bingham [O.] replied to his colleague.

The argument to which we have listened to-night, with what degree of patience we could, has been characterized by two most remarkable assumptions. The one is that the gentleman from Ohio, who addressed the House [Mr. Vallandigham], and those whom he is supposed to represent, are the sole guardians of the Constitution of the United States of America. And the other is that, when he and his especial associates will it, that great instrument will perish in the fierce breath of revolution. In my judgment, sir, these assumptions are unworthy of my colleague, as they are unworthy of any man who has grown to man's estate under the shelter of the Constitution of the United States. The care of that Constitution is in the hands of the people, the whole people, who ordained it for the establishment of justice and the security of liberty. That great people the gentleman no more represents than I do. When they choose basely to surrender the sacred trust of the Constitution it will fall; but, so long as it pleases them to stand by it, it will be maintained.

If this be so, how comes it that the gentleman should assume that he is sole interpreter and protector of the Constitution, and that, by a breath of his mouth, it may be destroyed? Why, sir, it is but a few days ago that, upon this floor, in the very spirit of the speech which he has made to-night, my colleague undertook to demonstrate, by mutilating a letter of the Secretary of State, that the Constitution of the United States does not allow the American people to protect and maintain by force of arms their Government and their nationality against armed treason.

Mr. Vallandigham.—I have spoken many times here; I have never referred to the gentleman; yet, since the beginning of this session, he has felt himself called upon not only to attempt to reply to what I have said, but to draw me into a wrangle upon this floor, a thing for which he is eminently qualified but for which I have the most sovereign contempt and of which I shall take no notice whatever.

Mr. Bingham.—As the gentleman interrupted me for no purpose of denial or explanation he has no right to interrupt me either to question my motives or announce his contempt for all who choose to dissent from his arrogant assumptions. I suppose, from the tone and temper of my colleague's interruption, that he deems me guilty of the great *crimen læsæ majestatis*,[1] if I dare to lisp when his majesty rises in his place here and assumes to speak the law of the land.

He is not clothed, sir, with any such power over either my

[1] Crime of contemning majesty.

person as a citizen or my right as a Representative. The gentleman makes a virtue of necessity and, after rambling through half an hour of his speech to show that we were breaking through the intrenchments of the Constitution, that we were trampling upon the right of *habeas corpus*, of freedom of speech, of freedom of the press, and of the right of trial by jury; after denouncing us in set phrases for all this, he now rises and complains that I should venture to strike back, and says that I seek to draw him into a wrangle. Why, the gentleman is the last man on this footstool that I would want to have any wrangle with. [Laughter.] Now, that expression may be a little ambiguous, and the gentleman may have the benefit of it. [Laughter.] Perhaps the gentleman felt that the world would understand, when he calls attention to the fact that I once before in my life, and I believe only once, ventured to reply to a speech of his, I thereby sought to immortalize myself by coupling my name with so distinguished a person as himself! If that is the gentleman's idea, I beg him to count me out. [Laughter.] But, sir, whatever false motives the gentleman may attribute to me, I wish him to understand that I shall not sit silent here when I see a deliberate attempt made on this floor to convince this House, on the one hand, and the people of this country, on the other, that we have no right by law to authorize, and compel, if you please, the employment of all the able-bodied men of the country to crush out rebellion against the supremacy of the Government, the Constitution, and the laws. Go read those words that the gentleman dwelt upon with such emphasis the other day, and feel the blush of shame mount to your cheek that any American citizen of this Republic should utter such a sentiment.

Talk about freedom of speech, talk about the right of trial by jury, talk about personal liberty, talk about the privilege of the writ of *habeas corpus*, talk about your construction of 25 Edward III, and then come here and proclaim to this House that "only an imperial or despotic government could subjugate thoroughly disaffected and insurrectionary members of the State!"

The gentleman to-night has sought to justify this remarkable utterance. Hence his elaborate argument to show the limitation of the provision of the Constitution, that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

Mr. Speaker, I do not desire to take up any unnecessary time in the discussion of this great and important question; but, as the gentleman has seen fit to attempt to justify his words

that the United States Government has not the constitutional right to subjugate traitors and suppress armed rebellion by force, I deem it my duty to refer the House to the construction of the statute of 25 Edward III, which the gentleman says is literally the same as the treason clause of the Constitution of the United States. Let this construction of the statute of Edward go out with the gentleman's argument, in order that the antidote may go along with the poison which he attempts to infuse into the public mind. The construction of that statute before the Constitution was made, and, therefore, before its provisions were incorporated into the Constitution, was that the words "adhering to the enemy," etc., applied to cases only of adherence to a *foreign*, not a domestic, enemy. What then? Whoever adheres to a domestic enemy engaged in rebellion is, according to the legal construction of that great statute, instead of being indictable under the second clause thereof, indictable under the first clause, and to be held chargeable with levying war. That is all there is of it.

For the sake of the argument, grant it that words encouraging treason and inciting to treason do not constitute the crime of treason, does it result that such utterances are not a crime, and, as such, to be so declared and punished under the Constitution of the United States? I know, sir, that by a high authority it is said: "It seems clearly to be agreed that, by the common law and the statute of Edward III, words spoken amount only to a high misdemeanor and no treason." Grant this to be the true construction of the statute of Edward III, as the same stand incorporated in the treason clause of our Constitution, what comfort can my colleague derive from that construction in support of his argument against the bill now under discussion, that you may not provide, as in this bill is provided, to punish, not as treason but as "a high misdemeanor," the utterance of words spoken, written, or printed, with intent to counsel and advise resistance to the laws, or to dissuade drafted soldiers from the performance of their duty?

I suppose that the reference of my colleague to the provision of the statute of 25 Edward III, defining treason, was to proclaim in advance that all of this legislation which provides for punishing as a crime those who, in any way, aid in encouraging desertion or forcible resistance to the laws is unconstitutional; that you cannot punish persons who favor this rebellion, except those who actually take up arms and levy war against the Republic. I do not believe it. I wish to say, in addition, that, notwithstanding his suggestion that the Supreme Court would

declare this law unconstitutional and deny the power of the Government to punish and restrain the "treasonable practices" defined in and prohibited by this bill, in my opinion that court will never so decide; never, sir. The gentleman says that, if you pass this and kindred bills for the suppression of this rebellion, then we must have revolution. The people only can make revolution. I rather think that my colleague is not well informed about the purposes of the people to say that they will rush into revolution. He may be ready for revolution, and, doubtless, he may wish to lead that revolution; but are the people ready to assent to that? So long as the people are faithful to the great trust of maintaining free representative government they will take care of a revolution either inaugurated by him or any of his associates who howl against the Executive for protecting and defending that Government against armed rebellion.

What is the gentleman's argument against this bill? One objection by him urged is that the bill provides for what he is pleased to call arbitrary arrests. What is the provision? Simply that whoever shall resist any draft of men enrolled under this act, or counsel or aid any person to resist such draft, or assault any officer in making such draft, shall, for the time being, be subject to summary arrest by the provost marshal, and shall be delivered to the civil authorities, and, upon trial and conviction, be subject to fine and imprisonment. That is what my colleague calls arbitrary arrests. His logic, I suppose, is that men may resist a lawful draft, may aid resistance thereto, may brutally assault drafting officers, but shall not be interrupted in their crime until affidavit is made before and warrant obtained from some United States commissioner or judge, remote, it may be, hundreds of miles. He would not allow the marshals of the United States to be the conservators of the public peace, nor even the judges of the United States to be conservators of the peace, though the steps of the temple of justice and the laws may be stained by the blood of the citizen shed by lawless violence in their presence, and in forbidden resistance to the laws which they are sworn to support and execute. The gentleman's argument means, though he has not the candor plainly to declare it, that traitors and all their aiders have the right to go on with their crime and murder until legally arrested upon complaint and warrant in due form of law, and only after such legal arrest to be made to answer for their crimes upon the verdict of an impartial jury of the State and district in which they may have committed their offences.

We are not to arrest them summarily, for that is arbitrary, he argues, but we are to proceed literally according to the provisions of the Constitution.

If the argument is good for such aiders of the rebellion it is of equal force as to the rebels, for they are persons as well as their aiders, and, like them, are included in the provisions of the Constitution cited. What sort of logic and reason is this upon a question of this sort when three hundred thousand rebels are in arms? Does not the gentleman himself see that there is a hiatus in his logic wide enough to drive a coach and six through?

Now, let us see how this rule, as stated by him, would work practically. Jefferson Davis has three hundred thousand rebels drawn up in line of battle before the capital of the United States, and you are mustering your forces under this conscription act to beat back this rebel host. While this is going on, the gentleman from Ohio stands with the Constitution in hand and calls out to the people all over the North to refuse to come to the rescue of their imperiled capital and violated Constitution because the act under which they are summoned is unconstitutional. By such utterances would my colleague keep back from the field all the loyal people of this land, while traitors in arms were seizing their capital, burning their towns, laying waste their fields, and setting at defiance and overthrowing their Government and laws. While this ruin is being wrought the people are to be greeted with the cry of my colleague: "Hold back! these rebels are citizens, and, though they may be guilty of treason, you must not interfere with them, nor with those who aid them, except you act strictly under the warrants and indictments known to the law." That is the substance of his argument.

The gentleman, not content with his endeavor to fetter the Government by requiring the jury rather than the army to try traitors, complains that we are interfering with the freedom of speech, and again he quotes the Constitution and attempts to hold it up as a shield between these men who commit or aid and abet this great treason against the Republic, and the right and duty of the people to crush them by force under the express sanction of law. I understand that the freedom of speech which is guaranteed by the Constitution is not that freedom of speech which consists in saying that these rebels in arms "ought to be induced to invade the Northern States," and rob and burn the habitations of Northern people. My colleague is learned in the reading of the Constitution, and I would be glad to have him point out a single line ever written by an American citizen or

uttered by an American jurist whose opinion is entitled to any consideration which ever gave any such interpretation as that to the guaranties of the Constitution of the United States. No, sir; freedom of speech is the inborn right of every man, whether citizen or stranger, but it is a right which he may not exercise to the detriment of the commonwealth, and, therefore, for its abuse he is to be held responsible, as he is to be held responsible for the abuse of any other element of his personal liberty. The right of locomotion is as sacredly guarded under your Constitution as is the right of freedom of speech; but, if a citizen, in the exercise of his right of locomotion, sees fit to creep burglariously into the habitation of his neighbor and thereby commit felony it is in vain that he holds up the Constitution as a shield and tells us that that secures him the right of liberty and property. He has the right to play the honest man and loyal citizen, but he has not the liberty to play the part of a common thief or a burglar.

So it is with this guaranteed freedom of speech. I say it is the right of the people to punish and imprison every man in this land who, either by oral, written, or printed words, urges or advises any portion of the American people to quench in blood this last, great experiment of republican government. If there is any man here now who has the effrontery to deny that proposition, I should like to hear him.

The gentleman says that *habeas corpus* can only be suspended within the limits of the rebellion. That is a remarkable suggestion. I suppose, according to that doctrine, that when this rebellion was confined to the corporate limits of Charleston and Sullivan's Island, it would have been highly improper to have suspended the privilege at Columbia or Georgetown in South Carolina, where they were beating up recruits to swell their cowardly cohorts to ten thousand strong, designed to do murder on the seventy brave men within the walls of Fort Sumter. Who ever heard before of such an interpretation as that being put upon your Constitution? I say here, and I challenge contradiction, that the fair construction of that provision is this, that the people, through their representatives, are the sole judges of the extent to which the privilege of the writ may be suspended in time of rebellion or invasion; and if, in their opinion, the public safety in time of such rebellion or invasion requires a suspension of the privilege of the writ in all cases throughout the limits of the Republic, it is their right to declare it and their duty to execute it.

Well, sir, the gentleman says that the suspension of the privilege of the writ does not confer the power of arrest. I answer that the power to suspend the privilege of the writ for the public safety necessarily implies the power of arrest and detention. But the gentleman says you must give all persons charged with conspiracy a speedy trial. Does not he know that by the provision of the Constitution, if a citizen commit treason or other crime against the United States, in South Carolina or North Carolina, he must be tried within the State and district in which he commits the offence? Meantime you have no courts there to try such offenders, and, according to the gentleman's argument, you must not restrain them of their liberty by summary arrest, but allow them to go at large and practice their treason and conspiracy, and give aid and comfort to the enemy, until such time as your civil process and courts are again restored and the supremacy of your laws acknowledged or enforced within the limits of such jurisdiction! Does any man fail to see that such objections to this needful legislation are, after all, disguise it as you may under professions of love for the Constitution and the rights of the people guaranteed under the Constitution, but another attempt to aid this rebellion and secure to it an easy triumph over the Constitution and laws?

Ah, but, says the gentleman, your bastiles are open to receive these victims of executive despotism. I should have been glad if the gentleman had particularized who these persons are that have such a claim upon his sympathy. There was a man arrested for inciting the mob at Baltimore. The gentleman was careful not to name him. It is a name that is in bad association. It is the name by which was designated the first of murderers, on whose brow was set the damning blotch of fratricide. This man was arrested and sent to the "bastile"; and my colleague arises in his place and cries out: "A violation of the Constitution." According to his logic, Kane should have been left at large to incite men to cast iron bars from the tops of their houses in Baltimore upon the heads of our citizen soldiery.

There was another arrest made, to which I suppose the gentleman refers, although he was not pleased to name the party, in our own State. I remember well, Mr. Speaker—who does not remember?—that, about the time that arrest was made in Ohio, for seven long days a battle raged before Richmond. During that protracted struggle, while that field of conflict was covered with the thick darkness of battle and the shadow of death, and in all the loyal homes of our people hands were raised in silent prayer for the Republic and its defenders, a cry came up from the banks of the York and the James Rivers:

Help! help! help! brothers of the free North and West, or we perish, and our banner of glory and of beauty goes down before the armed legions of treason. In response to that call the people rushed to the conflict from the hills of New England to the golden sands of California, filling the continent with their shout—

"We are coming, we are coming,
Six hundred thousand more."

It was in the presence of this sublime uprising of the freemen of this land for the defence of their homes and country, and the rescue from an unequal struggle of your gallant army, that a partisan in Ohio, it is said, dared to outrage and disgrace humanity by saying to his neighbors: "Stop, brother Democrats, stay at home and vote; and let the army of the Union perish." It is said that man was arrested by order of the President.

SEVERAL MEMBERS.—Who was he?

MR. BINGHAM.—I prefer to let history, the avenger, name him.

SAMUEL S. COX [O.].—Will my colleague yield to me for a moment?

MR. BINGHAM.—I do not yield.

MR. COX.—I know my colleague will oblige me.

MR. BINGHAM.—This does not affect my colleague.

MR. COX.—It affects one of my constituents.

MR. BINGHAM.—I have said, Mr. Speaker, that such an utterance is said to have been made and published, and that the author of it was arrested.

MR. COX.—Why was he not tried?

MR. BINGHAM.—I now submit to the country that, if there were any such utterance made, the author of it should not only be arrested and imprisoned, but that the man who, in such an hour of peril, would attempt to keep back citizens from the defence of their homes and the relief of their brothers in arms, should not only be imprisoned, but should be hung by the neck, without judge or jury, till he be dead. [Applause.]

Daniel W. Voorhees [Ind.] closed the debate.

Mr. Speaker, it is either my good fortune or my bad fortune never to have been a member of a legislative body until I took my seat in this Congress. Consequently, I may not be so familiar with the rules of propriety that obtain among members of deliberative bodies as others who have had more experience. But, I must confess, Mr. Speaker, that, with my limited experi-

ence, I have observed the course of this debate with amazement, and with some degree of honest indignation.

This debate was opened by the gentleman from New York [Mr. Olin] with a lecture to this side of the House, informing us how he desired we should discuss this question. We were desired to behave ourselves and to pursue a certain line of conduct marked out for us in advance by his magisterial authority. The air of a testy, domineering pedagogue pervaded the style and substance of all his remarks.

After him comes the strap-and-button gentleman from Pennsylvania [Mr. Campbell], who howled forth his threats on this floor like some angry animal in pursuit of prey. Possibly it has affected somebody's nerves. Doubtless it did affect his own. I must say, however, that it did not affect mine at all, except as a gust of harsh and discordant sound is always more or less jarring to my nervous system. It passed by this side of the House as mere wind, somewhat unpleasant and disgusting, but entirely harmless. I submit that the military and malicious gentleman from Pennsylvania has no right thus to afflict and annoy the persecuted minority in this hall.

After him, in the order of debate, on the other side, comes that strange and eccentric gentleman from Ohio [Mr. Bingham] who so often holds this House and these galleries in listening and wondering suspense and attention. In his private intercourse he is one of the kindest and most amiable gentleman whom I ever had the good fortune to meet; but on this floor a stranger would take him to be, not merely Cato the Censor, for I believe Cato was very dignified, and certainly the gentleman from Ohio hardly ever is [laughter], but some furious actor in a play, whose part required him to scold and rave at every human being who was so unfortunate as to fall beneath his dreadful scowl. He is stormy and terrible to those who know him not, but to those who know him well gentle as summer and as tender as the dove who woos his mate. I am apologizing for his manner to those who do not understand him. His terrific outbreaks here against the minority may be regarded as a sort of pleasant episode to the grave proceedings of this House, a little ridiculous, but perfectly innocent. It is only his manner that is severe, not his matter. He starts out by telling us that the language of the distinguished gentleman from Ohio [Mr. Vallandigham], who held spell-bound this House from the position in which I stand, with one of the ablest arguments I ever heard, was all unworthy of a member of this body. Who constituted him a judge of his colleagues? Where does he find the authority to arraign his

peers on this floor? Sir, there is but one reply to language and conduct like this. We reject with scorn your unasked advice; we spurn your offensive lectures; we despise your puerile threats; we defy the malice which actuates them; we hold you and your outrageous insolence in sovereign and most unmitigated contempt.

Sir, it ill becomes gentlemen who have met with repudiation at the hands of their people; who, for their policy and conduct on this floor, have been rejected by their own constituents, and who stand condemned before the country, to come here and lecture Democratic members. In common decency you ought to keep silent, as mere cumberers of the ground whose days are numbered. Popular majorities have been piled up against you by thousands and tens of thousands. Loyal people have spoken your knell; the funeral bell has been tolled over your political graves by patriotic hands; the grass is growing green on the sod which covers you. And yet you dare come here to lecture living men! We bear in our bodies political vitality; you are political ghosts, specters from political graveyards, where the people buried you last fall, and wrote on your tombstones: "No resurrection." How dare you lecture the living, who yet stand on the shores of time, and who have something to do with earthly affairs? [Laughter.] I invoke the spell of decency and of regard for propriety, and, in the name of that spell, I exorcise these spirits, and tell them "down, down, to whence you came." [Laughter.]

You talk about what is worthy and unworthy. Shall I accept gibbering and squeaking political ghosts, who will troop home on the 4th of March to the vast charnel-house of repudiated politicians, as my masters? I own but one master in this Government—it is the sovereign people.

The days of this Congress are drawing to a close and we may as well have a plain talk among ourselves before we part. If you propose at this time, with Government credit at sixty per cent. below par; if you propose, with $2,500,000,000 of indebtedness; if you propose, with a distracted country, with the agricultural pursuits depressed, and the whole land groaning from the effects of this war; if you propose, in full view of all these things, to tax the people, in addition to what is necessary to sustain the Government, to an unlimited extent—perhaps hundreds of millions—for the purpose of accomplishing compensated emancipation, for the purpose of flooding the free States with free negroes, then you may make up your minds for trouble. The money will not be paid, and you cannot compel it. You will find at last who owns and controls this Government. The people

will assert the original divine right of the oppressed and outraged. They will say to you, in the language of the Constitution: "We, the people, made this Government; you are not our masters, but our servants."

A strange error has crept into the public mind. Men talk as if they could force and coerce public sentiment. The very theory of our Government forbids it. The theory of our Government is that, not Abraham Lincoln, not his Cabinet, not you men whose lingering footsteps are just departing from these places forever, constitute this Government, but that the people made it all, and constitute all its parts. They made it and they will uphold it in the mode which satisfies themselves. But not only that; they will make you obey the Constitution in its spirit, which is the concentrated will of the people.

For the purpose of uniting public sentiment and of prosecuting the war with unity of purpose I presume comes the proclamation of the President of September. Ten days before he issued it he said, himself, to the Chicago ministers that he had not the power to promulgate such a document and that it would do no good if he did. In that he was right, for once. But I suppose he gave way to pressure. He was pressed. By whom? By Horace Greeley, that political harlot, who appeared in a praying attitude in behalf of twenty million people. He gave way to pressure brought to bear, too, by the Governor of Massachusetts [John A. Andrew]. He gave way to the pressure and, I have no doubt, experienced relief. This was Jacksonian, very. It showed what is known as backbone. I have an immense respect for an Executive who violates his oath under the pressure of impertinent meddlers. But the President was told of the moral and military effect of such a proclamation, and I presume he believed all he heard was true. But the gentleman from Ohio [Mr. Bingham] was unfortunate in his musical recitation of the New England song a few minutes ago:

"We are coming, Father Abraham,
Six hundred thousand strong."

for if anybody is on the way here to swell the broken ranks of the army under the inspiration of that proclamation he is tarrying long. His arrival has not been noticed in the papers.

Lo! the mountain had labored, and the mouse came forth! Massachusetts, this hour, instead of crowding the highways and byways with her sons, has her Senator [Henry Wilson] in the other end of the Capitol, the chairman of the Committee on Military Affairs, pressing a conscript bill through the Senate,

when his own State stands in defiance of the call made upon her last summer. To-day her quota is not full, and her Governor has become an itinerant recruiting sergeant in search of negroes to fill up the regiments of Massachusetts troops under the call made last fall by the President of the United States. This is the response of Massachusetts to the proclamation.

And the gentleman from New York, the chairman of the Committee on Military Affairs of this House [Abraham B. Olin], comes here and has to admit his State is delinquent thirty thousand troops, under the calls already made upon her.

Mr. Olin.—And that deficiency is principally owing to a deficiency of troops which ought to have been sent from the city of New York, where the Democracy of the Five Points has held undisputed sway. [Laughter.]

Mr. Voorhees.—You propose to put the black man alongside of the loyal white soldier. You propose to buy negroes, steal negroes, fight for negroes, obtain negroes in any way, and then humiliate and disgrace the white soldier by his presence and contact in the ranks.

You have thus outraged and insulted all classes of citizens, but the soldier most of all. Is it strange, then, that no more volunteers come to the standard of war? You have betrayed the loyal heart of the country, and that betrayal rises up in judgment against you; and its offspring, the birth of that betrayal, is this fearful, odious, and despotic conscription bill.

No conservative general can stand before the consuming flames that emanate from the seething caldron, the boiling cesspool of fanaticism which controls this Administration. Aye, sir, you struck down McClellan at the head of the army. You struck him down because he was in the way of your radical abolition schemes. It was another step in the betrayal of the people. Go with me to the townships in Indiana, Mr. Speaker; go to the hamlets, go to the school-houses and meet there the loyal farmers who pay their taxes from their well-worn pocketbooks—not your flash speculators in stocks on Wall street; not your political or banking gamblers and swindling contractors, who control this Government and who surround this Capitol like jackals and unclean beasts, like kites and carrion crows, watching and snuffing for plunder amid the misfortunes that have befallen the country; not that class of men, but men who are devoted to the old Constitution, who worship reverently after the old forms of religion, who love their country and maintain their own honor—go and ask these men, upon whom you have to rely for this Government, what they think of the removal of George B.

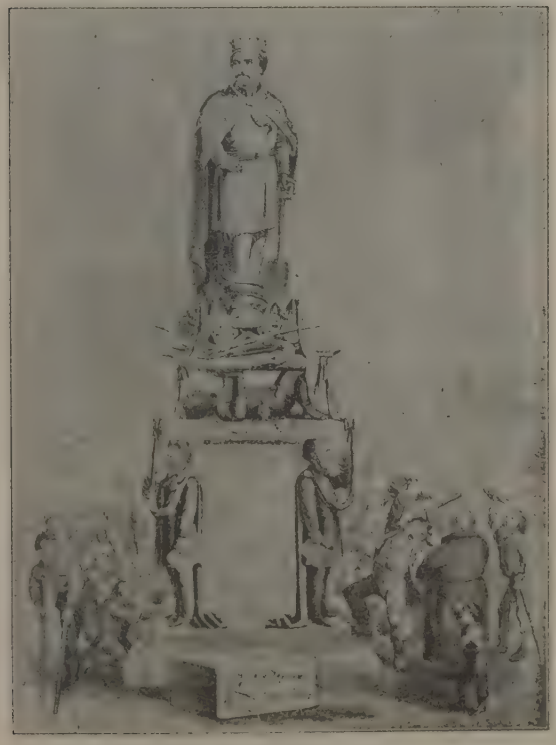
McClellan from the command of their sons. They will tell you that their sons love him as no chieftain was ever loved by his troops since the days of the great Napoleon. They will tell you that, in spite of all jealousies and assailants, he is the only man who has ever gained a battle at the head of the army of the Potomac; and, as plain people, they will tell you that, in their minds, his removal was caused by the machinations, the mischievous machinations, of the radical element which prevails here, and which is now running the Government to destruction in this Capitol. This, sir, is the firm belief of the country, and you will have to meet it.

You may call us disloyal if it will ease your hearts any, but our opinion upon this side of the House is just as firm, just as sharply and clearly made up, that the majority of this House has been disloyal in the acts I have enumerated and in the general scope of its conduct to the Constitution of the country as if you had been convicted of overt treason, and stood ready to be executed according to law.

But there is another feature in the conduct of this Administration and its supporters that goes as a reason why troops cannot now be brought into the field as volunteers, and a despotic conscription bill has to be passed. The people of the country have seen public economy disregarded. They have seen thieves and plunderers in the high places of the Government not only unrebuked, but rewarded by promotion to higher honors in place and profit. They have seen fortunes more than mountain high made in a single night by political favorites. No, sir; keep still, sir. The gentleman from Pennsylvania [John Covode, who made a remark in his seat] can speak feelingly and knowingly and understandingly, I have no doubt, upon the subject to which I allude. He has his friend, the late Secretary of War, the late minister to Russia, the late candidate for United States Senator in Pennsylvania, I presume, in his mind. I have no doubt it is a delicate point with him. I have by my side, however, my very distinguished and reliable friend from Massachusetts [Henry L. Dawes], who always comes to my relief, and, if I cannot prove by him that Simon Cameron and some of his friends are plunderers and public thieves, I will give up the case. [Laughter.]

These contractors and lobby thieves surrounding this Capitol, creating a swell mob in these galleries, the greediest of the greedy, the hungriest of all animals that ever infested in droves and packs the haunts of political offal, are the men who are loudest and most persistent for the continued prosecution of this war.

No abuse can be denounced that we do not hear the cry of treason from their hungry lips. What does it matter to them that the poor soldier lies stiff in the snow upon his thin blanket? They go upon the motto, "Put money in thy purse." If you think that



COPPERHEADS WORSHIPPING THEIR IDOL

[McClellan supported by Vallandigham and Seymour]

From the collection of the New York Historical Society

the people are blind to this state of affairs you are mistaken. They know that these loathsome cormorants are encamped here to eat out their substance. They know that they are the Hessians of this war, and that no peace will be permitted to revisit this bleeding land so long as villainy can find pay in the coffers of the Government, if this evil brood can prevent it.

But, sir, I thank God that the hand-writing is on the wall. The corrupt and impious feast of Belshazzar, the king, his princes, his parasites and concubines, is about over. The fingers of the American people are busily engaged in writing a doom against those who have turned the temple of our fathers into a den of thieves.

The people have seen other things, however, to discourage them in the prosecution of this war. They have seen you take advantage of the political condition of the country—you men who represent the spindles and looms of New England; they have seen you coming here and forcing on the agricultural portions of the country a tariff which is a robbery, a direct plunder on honest labor; they have seen you develop the most selfish, greedy, degrading element of the human heart—the love of gain by unfair means—taxing the whole country for the purpose of carrying out merely personal interests. To-day the Western farmer, the Western mechanic, pays three or four times the ordinary price for the articles which he has to buy from you and which he can buy nowhere else.

The people understand it well. They know that this increase of price does not go into the treasury of their beloved country; that it does not go even into the coffers "where thieves break through and steal"; but that it goes directly into the pockets of the millionaire, the nabob, the monopolist of the manufacturing districts. They know all that. It makes them tired of war. They are sore at heart and see no hope of success, justice, union, or constitutional liberty at your hands.

Further, I say to you, gentlemen, that, as the Lord God reigns in heaven, you cannot go on with your system of provost marshals and police officials arresting free white men for discharging what they conceive to be their duty within the plain provisions of the Constitution and maintain peace in the loyal States. Blood will flow. You cannot and you shall not forge our fetters on our limbs without a struggle for the mastery.

The great American heart is fired anew with the love of liberty, and the people are arousing like the giant after his sleep. They have erected their heads and warn you not to lay the weight of your finger, of your smallest finger, on one of the

great muniments of personal freedom which adorn the history of the world. If you do, it is at your most deadly peril.

Conscription by the South

Conscription in the Southern States, says Alexander Johnston in his "American Political History," preceded, and, to some extent, compelled, the adoption of conscription by the Federal Government. The act of

SOUTHERN VOLUNTEERS

From the collection of the New York Historical Society

April 16, 1862, with the amendment of September 27, 1862, was rather a levy *en masse* than a conscription. It made no provision for draft, but placed all white men between the ages of eighteen and forty-five, resident in the Confederate States, and not legally exempt, in the Confederate service.

July 18, 1863, by proclamation, President Jefferson Davis put the conscription law into operation, and directed the enrolment to begin at once. February 17, 1864, a second conscription law was passed. It added to the former conscript ages those between seventeen and eighteen, and between forty-five and fifty, who were

to do duty as a garrison and reserve corps. It excepted certain classes, such as one editor to each newspaper, one apothecary to each drug store, and one farmer to each farm employing fifteen able-bodied slaves, and provided that all persons who should neglect or refuse to be enrolled should be placed in the field service for the war. No substitutes were or could be accepted, for every person able to do military duty was himself already conscripted.

Very little resistance was made to this sweeping levy, for the Government of the Confederate States showed little mercy to opposition of any kind. Only through the conscription were the Southern armies filled for the last two years of the war, and its enforcement was so rigorous and inquisitorial that toward the end of the war the Confederacy generally had more men in the field than it could provide with arms.

CHAPTER XII

Civil vs. Military Authority

Draft Riots in New York City—The President's Controversy with Gov. Horatio Seymour [N. Y.] on the Constitutionality of the Draft—Gen. Ambrose E. Burnside Imprisons, by Martial Law, Clement L. Vallandigham [O.] for Inciting Resistance to the Draft—The President Changes the Sentence to Exile into the Confederacy—Democratic Resolutions of Protest—The President Replies Justifying Military Arrests—Vallandigham, in Exile in Canada, Is Nominated by Ohio Democrats as Governor—Reply of the President to Committee of Ohio Democrats—Speeches against the Administration by Franklin Pierce and Gov. Horatio Seymour [N. Y.]—Vallandigham Is Overwhelmingly Defeated by Aid of the National Administration—Republican Victories in State Elections—Address of the President to Illinois Voters Justifying His Acts—His Replies to Mayor Fernando Wood, of New York City, and Others Volunteering to Mediate with the South—His Refusal to Accept Alexander H. Stephens [Ga.] as Envoy of the Confederacy.

THE draft ordered by the conscription met with little resistance outside of New York City and a few Democratic counties in Ohio.

In New York the law was put into operation on July 11, 1863. On the following Monday a mob broke into the office of the provost marshal, destroyed the wheel which contained the names of possible conscripts, and, setting fire to the building and preventing the firemen from extinguishing the flames, caused it to be burned to the ground. On the Superintendent of Police endeavoring to enforce order, he was set upon and barely escaped with his life. The police being unable to cope with the disorder, New York City regiments at the front were telegraphed for; they were unable to arrive for four days, and during this time the mob, increasing in number, committed many outrages, hanging negroes, and, after driving the little inmates into the street, pillaging and burning a colored orphan

asylum. Collecting in Printing House Square on Monday they were about to destroy the offices of the newspapers which supported the Administration—particularly the *Tribune*—when Governor Horatio Seymour caused them to desist temporarily from executing their design by speaking to them from the steps of the City Hall. On Tuesday he issued a proclamation against rioting, but this had no effect. On the return of the troops the mob dispersed.

The draft, however, was not enforced in the city for some time. On August 3 Governor Seymour appealed to the President to suspend execution of the law until the courts could decide on its constitutionality, which had been questioned. The President replied that the draft must go on, leaving the question of constitutionality to be decided later.

> My purpose is to be in my action just and constitutional, and yet practical, in performing the important duty with which I am charged: of maintaining the unity and the free principles of our common country.

The draft was resumed on August 19, and was concluded in an orderly fashion.

Arrest of Vallandigham

A less tragic yet politically more important development of Northern resistance to military authority occurred in Ohio during the summer and fall of 1863. General Ambrose E. Burnside in his new department (headquarters Cincinnati) issued an edict known as "General Order No. 38," forbidding acts committed for the benefit of the enemy, and stating that persons committing such offences would be tried as spies or traitors, or sent over into the lines of their friends, the rebels.

Clement L. Vallandigham, whose term in Congress had expired in March, and who had been defeated for reëlection, repeated in various public speeches the sentiments he had uttered in the House of Representatives,

assailing such acts of the Administration as the conscription law as unconstitutional and despotic.

On May 4 General Burnside arrested Mr. Vallandigham at his home in Dayton, and brought him to headquarters at Cincinnati for trial by court-martial. His counsel, ex-Senator George E. Pugh, applied for a writ of *habeas corpus*, which the judge refused, on the ground that the action of General Burnside was in the interest of public safety. Mr. Vallandigham was tried on the 6th, found guilty, and sentenced to imprisonment in a Federal fortress. General Burnside designated Fort Warren in Boston Harbor as the place of incarceration. The President, however, changed this sentence into the alternative presented by Order No. 38, and sent the prisoner over into the Confederate lines. From the South Mr. Vallandigham ran through the blockade, finally arriving in Canada.

Public meetings were held all over the country to denounce the Administration for its despotic act. General Burnside, fearing that he had been unwise in bringing this storm of criticism upon the Government, offered his resignation. In reply the President telegraphed him on May 29 as follows:

> When I shall wish to supersede you I will let you know. All the Cabinet regretted the necessity of arresting, for instante, Vallandigham, some perhaps doubting there was a real necessity for it; but, being done, all were for seeing you through with it.

The brunt of seeing Burnside through, however, fell on the President, and ably did he fulfil the difficult task. Opposed to him were some of the shrewdest constitutional lawyers in the country. At their instigation able resolutions in denunciation of Vallandigham's arrest as unconstitutional were passed at various public meetings. The President chose to reply to the resolutions passed at Albany, N. Y., on May 19. To this Governor Seymour had sent an address, in which he said: "If this proceeding is approved by the Government, and sanctioned by the people, it is not merely a step toward revolution—it is revolution; it will not only lead to military despotism—it establishes military despotism." The resolutions closed with a denunciation of "the blow struck at a citizen of Ohio" as "aimed at every citizen of the North," and "against the spirit of our laws and Constitution." They earnestly called on the President "to reverse the action of the military tribunal which has passed a cruel and unusual punishment upon the party arrested, prohibited in terms by the Constitution," and to restore him to liberty.

The President took his time in preparing a reply, with the result that the letter, when it was finished on June 12, proved to be one of his notable papers, comparable for its cogent argument to his Cooper Union address.

Military Arrests Justifiable

President Lincoln

He began by analyzing the resolutions of the meeting and showing that their movers and himself had a common purpose, the maintenance of the nation, differing only in the choice of measures for effecting that object. "The meeting, by their resolutions, assert and argue that certain military arrests, . . . for which I am ultimately responsible, are unconstitutional. I think they are not." He then argued that these arrests were not made for "treason," as charged, but on "totally different grounds," *i. e.*, for purely military reasons. He narrated the manner in which the enemy with which the country was in open war had, under cover of "liberty of speech," "liberty of the press," and "*habeas corpus*," kept a corps of spies in the North, which had aided the secessionist cause in a thousand ways. "Yet," said the President, "thoroughly imbued with a reverence for the guaranteed rights of individuals, I was slow to adopt the strong measures which by degrees I had been forced to regard as being within the exceptions of the Constitution, and as indispensable to the public safety." But the evil had to be dealt

with, and by more effective means than afforded by the civil courts, on whose juries sympathizers with the accused were apt to sit, "more ready to hang the panel than to hang the traitor." And again, said Lincoln, there are crimes against the country which may be so conducted as to evade the cognizance of a civil court, such as dissuading a man from volunteering or inducing a soldier to desert. These are cases clearly coming under that clause of the Constitution which permits suspension of the writ of *habeas corpus* "when, in cases of rebellion or invasion, public safety may require it."

The President then proceeded to draw a distinction between civil and military law. He said:

> The former is directed at the small percentage of ordinary and continuous perpetration of crime, while the latter is directed at sudden and extensive uprisings against the Government, which, at most, will succeed or fail in no great length of time. In the latter case arrests are made not so much for what has been done, as for what probably would be done. The latter is more for the preventive and less for the vindictive than the former. In such cases the purposes of men are much more easily understood than in cases of ordinary crime. The man who stands by and says nothing when the peril of his Government is discussed cannot be misunderstood. If not hindered, he is sure to help the enemy; much more if he talks ambiguously—talks for his country with "buts," and "ifs," and "ands."

The President showed how greatly the country had suffered through deferring arrests for treason, by citing the cases of John C. Breckinridge, Robert E. Lee, Joseph E. Johnston, and other commanders in the Confederate service who had all been within the power of the Government after the outbreak of the war, and who were well known to be traitors at the time. Said the President:

> In view of these and similar cases, I think the time not unlikely to come when I shall be blamed for having made too few arrests rather than too many.

Mr. Lincoln then examined the contention of the committee that even during a war military arrests were

unconstitutional outside of the region of hostilities. To this the President replied:

> Inasmuch, however, as the Constitution itself makes no such distinction, I am unable to believe that there is any such constitutional distinction. I concede that the class of arrests complained of can be constitutional only when, in cases of rebellion or invasion, the public safety may require them; and I insist that in such cases they are constitutional wherever the public safety does require them, as well in places to which they may prevent the rebellion extending as in those where it may be already prevailing; as well where they may restrain mischievous interference with the raising and supplying of armies to suppress the rebellion, as where the rebellion may actually be; as well where they may restrain the enticing men out of the army, as where they would prevent mutiny in the army. . . .
>
> Mr. Vallandigham's arrest was made because he was laboring, with some effect, to prevent the raising of troops, to encourage desertions from the army, and to leave the rebellion without an adequate military force to suppress it. He was not arrested because he was damaging the political prospects of the Administration or the personal interests of the commanding general, but because he was damaging the army, upon the existence and vigor of which the life of the nation depends. He was warring upon the military, and this gave the military constitutional jurisdiction to lay hands upon him. If Mr. Vallandigham was not damaging the military power of the country, then his arrest was made on mistake of fact, which I would be glad to correct on reasonably satisfactory evidence.

With an argument appealing even more to the hearts than the heads of his critics, Mr. Lincoln continued:

> I understand the meeting whose resolutions I am considering to be in favor of suppressing the rebellion by military force—by armies. Long experience has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. The case requires, and the law and the Constitution sanction, this punishment. Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert? . . . I think that, in such a case, to silence the agitator and save the boy is not only constitutional, but a great mercy.

In fine, said the President:

I can no more be persuaded that the Government can constitutionally take no strong measures in time of rebellion, because it can be shown that the same could not be lawfully taken in time of peace, than I can be persuaded that a particular drug is not good medicine for a sick man because it can be shown not to be good food for a well one. Nor am I able to appreciate the danger apprehended by the meeting, that the American people will by means of military arrests during the rebellion lose the right of public discussion, the liberty of speech and the press, the law of evidence, trial by jury, and *habeas corpus* throughout the indefinite peaceful future which I trust lies before them, any more than I am able to believe that a man could contract so strong an appetite for emetics during temporary illness as to persist in feeding upon them during the remainder of his healthful life.

The President gently rebuked the memorialists for introducing partisan politics into the affair by designating themselves as "Democrats" rather than "American citizens." Nevertheless he accepted the challenge, and showed that Andrew Jackson, the idol of the Democratic party, had made a military arrest of the author of a denunciatory newspaper article, and refused the service upon himself of a writ of *habeas corpus,* being fined for so doing; thirty years later, after a full discussion of the constitutional aspects of the case, a Democratic Congress refunded him principal and interest of the fine.

At the conclusion of his letter the President stated that he had been pained when he learned of Mr. Vallandigham's arrest, and he promised to release him with pleasure when he felt assured that the public safety would not suffer by it.

Treason Made Odious

On June 11 the Ohio Democratic convention nominated Vallandigham for governor of the State upon a platform which protested against the emancipation proclamation, military arrests in loyal States, and, in

particular, the banishment of Vallandigham. A committee presented these resolutions to the President, and on June 29 he replied to them in the tenor of his letter to the Albany meeting, elaborating the constitutional argument, and closing with the following proposition:

Your nominee for governor . . . is known . . . to declare against the use of an army to suppress the rebellion. Your own attitude, therefore, encourages desertion, resistance to the draft, and the like, because it teaches those who incline to desert and to escape the draft to believe it is your purpose to protect them and to hope that you will become strong enough to do so. . . .

I cannot say I think you desire this effect to follow your attitude; but I assure you that both friends and enemies of the Union look upon it in this light. It is a substantial hope, and, by consequence, a real strength to the enemy. If it is a false hope, and one which you would willingly dispel, I will make the way exceedingly easy. I send you duplicates of this letter, in order that you, or a majority, may, if you choose, indorse your names upon one of them, and return it thus indorsed to me, with the understanding that those signing are thereby committed to the following propositions, and to nothing else:—

1. That there is now rebellion in the United States, the object and tendency of which is to destroy the national Union; and that, in your opinion, an army and navy are constitutional means for suppressing that rebellion.

2. That no one of you will do anything which, in his own judgment, will tend to hinder the increase, or favor the decrease, or lessen the efficiency of the army and navy, while engaged in the effort to suppress that rebellion; and,—

3. That each of you will, in his sphere, do all he can to have the officers, soldiers, and seamen of the army and navy, while engaged in the effort to suppress the rebellion, paid, fed, clad, and otherwise well provided for and supported.

And with the further understanding that upon receiving the letter and names thus indorsed I will cause them to be published, which publication shall be, within itself, a revocation of the order in relation to Mr. Vallandigham.

The committee, put upon the defensive by this clever device of the President, took the only attitude which was possible short of capitulation, and rejected the proposition as an insult to their loyalty.

Distinguished members of the Democratic party in other States took the same position as the Ohio committee. Ex-President Franklin Pierce delivered a carefully prepared oration at a great Democratic meeting held in Concord, N. H., in midsummer. He said:

"Moral Force, Not Arms, Will Save the Union"

Franklin Pierce

Do we not all know that the cause of our calamities is the vicious intermeddling of too many of the citizens of the Northern States with the constitutional rights of the Southern States, coöperating with the discontents of the people of those States? And now, war! war, in its direst shape—war, such as it makes the blood run cold to read of in the history of other nations and of other times—war, on a scale of a million of men in arms —war, horrid as that of barbaric ages, rages in several of the States of the Union, as its more immediate field, and casts the lurid shadow of its death and lamentation athwart the whole expanse, and into every nook and corner of our vast domain. Nor is that all; for in those of the States which are exempt from the actual ravages of war, in which the roar of the cannon, and the rattle of the musketry, and the groans of the dying are heard but as a faint echo of terror from other lands, even here in the loyal States, the mailed hand of military usurpation strikes down the liberties of the people and its foot tramples on a desecrated Constitution. Aye, in this land of free thought, free speech, and free writing—in this Republic of free suffrage, with liberty of thought and expression as the very essence of republican institutions—even here, in these free States, it is made criminal . . . for that noble martyr of free speech, Mr. Vallandigham, to discuss public affairs in Ohio—aye, even here, the temporary agents of the sovereign people, the transitory administrators of the government, tell us that in time of war the mere arbitrary will of the President takes the place of the Constitution, and the President himself announces to us that it is treasonable to speak or to write otherwise than as he may prescribe; nay, that it is treasonable even to be silent, though we be struck dumb by the shock of the calamities with which evil counsels, incompetency, and corruption, have overwhelmed our country.

This fearful, fruitless, fatal civil war has exhibited our amazing resources and vast military power. It has shown that,

united, even in carrying out, in its widest interpretation, the Monroe Doctrine, on this continent, we could, with such protection as the broad ocean which flows between ourselves and European powers affords, have stood against the world in arms. I speak of the war as fruitless; for it is clear that, prosecuted upon the basis of the proclamations of September 22 and September 24, 1862, prosecuted, as I must understand those proclamations, to say nothing of the kindred brood which has followed, upon the theory of emancipation, devastation, subjugation, it cannot fail to be fruitless in everything except the harvest of woe which it is ripening for what was once the peerless Republic.

Now, fellow citizens, after having said thus much, it is right that you should ask me, What would you do in this fearful extremity? I reply, From the beginning of this struggle to the present moment my hope has been in moral power. There it reposes still. When, in the spring of 1861, I had occasion to address my fellow citizens of this city, from the balcony of the hotel before us, I then said I had not believed, and did not then believe, aggression by arms was either a suitable or possible remedy for existing evils. All that has occurred since then has but strengthened and confirmed my convictions in this regard. I repeat, then, my judgment impels me to rely upon moral force, and not upon any of the coercive instrumentalities of military power. We have seen, in the experience of the last two years, how futile are all our efforts to maintain the Union by force of arms; but, even had war been carried on by us successfully, the ruinous result would exhibit its utter impracticability for the attainment of the desired end. Through peaceful agencies, and through such agencies alone, can we hope to 'form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity': the great objects for which, and for which alone, the Constitution was formed. If you turn round and ask me, What if these agencies fail, what if the passionate anger of both sections forbids, what if the ballot-box is sealed? Then, all efforts, whether of war or peace, having failed, my reply is, You will take care of yourselves; with or without arms, with or without leaders, we will, at least, in the effort to defend our rights as a free people, build up a great mausoleum of hearts, to which men who yearn for liberty will, in after years, with bowed heads and reverently, resort, as Christian pilgrims to the sacred shrines of the Holy Land.

Governor Horatio Seymour [N. Y.] addressed a large gathering in New York City about the same time. He said:

The Revolutionary Doctrine of Public Necessity

Governor Seymour

A few years ago we stood before this community to warn them of the dangers of sectional strife; but our fears were laughed at. At a later day, when the clouds of war overhung our country, we implored those in authority to compromise that difficulty: for we had been told by that great orator and statesman, Burke, that there never yet was a revolution that might not have been prevented by a compromise opportunely and graciously made. [Great applause.] Our prayers were unheeded. Again, when the contest was opened, we invoked those who had the conduct of affairs not to underrate the power of the adversary—not to underrate the courage, and resources, and endurance of our own sister States. This warning was treated as sympathy with treason. You have the results of these unheeded warnings and unheeded prayers; they have stained our soil with blood; they have carried mourning into thousands of homes; and to-day they have brought our country to the very verge of destruction. Once more I come before you to offer again an earnest prayer, and beg you to listen to a warning. Our country is not only at this time torn by one of the bloodiest wars that has ever ravaged the face of the earth, but, if we turn our faces to our own loyal States, how is it there? You find the community divided into political parties, strongly arrayed, and using with regard to each other terms of reproach and defiance. It is said by those who support more particularly the Administration that we, who differ honestly, patriotically, sincerely, from them with regard to the line of duty, are men of treasonable purposes and enemies to our country. ["Hear, hear."] On the other hand, the Democratic organization look upon this Administration as hostile to their rights and liberties; they look upon their opponents as men who would do them wrong in regard to their most sacred franchises. I need not call your attention to the tone of the press, or to the tone of public feeling, to show you how, at this moment, parties are thus exasperated, and stand in defiant attitudes to each other. A few years ago we were told that sectional strife, waged in words like these, would do no harm to

our country; but you have seen the sad and bloody results. Let us be admonished now in time, and take care that this irritation, this feeling which is growing up in our midst, shall not also ripen into civil troubles that shall carry the evils of war into our own homes.

Upon one point all are agreed, and that is this: Until we have a united North we can have no successful war. Until we have a united, harmonious North we can have no beneficent peace. How shall we gain harmony? How shall the unity of all be obtained? Is it to be coerced? I appeal to you, my Republican friends, when you say to us that the nation's life and existence hang upon harmony and concord here, if you yourselves, in your serious moments, believe that this is to be produced by seizing our persons, by infringing upon our rights, by insulting our homes, and by depriving us of those cherished principles for which our fathers fought, and to which we have always sworn allegiance. [Great applause.]

We only ask that you shall give to us that which you claim for yourselves, and that which every freeman, and every man who respects himself, will have—freedom of speech, the right to exercise all the franchises conferred by the Constitution upon American citizens. [Great applause.] Can you safely deny us these? Will you not trample upon your own rights if you refuse to listen? Do you not create revolution when you say that our persons may be rightfully seized, our property confiscated, our homes entered? Are you not exposing yourselves, your own interests, to as great a peril as that with which you threaten us? Remember this, that the bloody, and treasonable, and revolutionary doctrine of public necessity can be proclaimed by a mob as well as by a government. [Applause.]

To-day the great masses of conservatives who still battle for time-honored principles of government, amid denunciation, contumely, and abuse, are the only barriers that stand between this Government and its own destruction. If we should acquiesce in the doctrine that, in times of war, constitutions are suspended, and laws have lost their force, then we should accept a doctrine that the very right by which this Government administers its power has lost its virtue, and we would be brought down to the level of rebellion itself, having an existence only by virtue of material power. When men accept despotism they may have a choice as to who the despot shall be. The struggle then will not be, Shall we have constitutional liberty? But, having accepted the doctrine that the Constitution has lost its force, every instinct of personal ambition, every

instinct of personal security, will lead men to put themselves under the protection of that power which they suppose most competent to guard their persons.

In conclusion he said:

We stand to-day amid new-made graves, in a land filled with mourning; upon a soil saturated with the blood of the fiercest conflict of which history gives us an account. We can, if we will, avert all these calamities and evoke a blessing. If we will do what? Hold that Constitution, and liberties, and laws are suspended?—shrink back from the assertion of right? Will that restore them? Or shall we do as our fathers did, under circumstances of like trial, when they combated against the powers of a crown? They did not say that liberty was suspended; that men might be deprived of the right of trial by jury; that they might be torn from their homes by midnight intruders? [Tremendous and continued applause.] If you would save your country and your liberties, begin right; begin at the hearthstones, which are ever meant to be the foundations of American institutions; begin in your family circle; declare that your privileges shall be held sacred; and, having once proclaimed your own rights, take care that you do not invade those of your neighbor. [Applause.]

The Ohio Democrats went into the campaign foredoomed to defeat. The Republican party determined to "make treason odious" by piling up an enormous majority of votes against him. They nominated John Brough, a "War Democrat," to make the issue as clear as possible. By a State law the soldiers in the field were permitted to vote, and they, as well as the citizens at home, cast their ballots under conditions which would be far from satisfactory to a ballot reformer of the present day. Brough won the election with over 100,000 votes to spare. Soon after his defeat, Vallandigham returned openly to Ohio, evidently daring the Government to arrest him again. The President, however, realizing that Vallandigham's power to injure the draft was broken, ignored his presence in the country. Undoubtedly he would have taken a similar course from the beginning, had not Burnside's action in arresting Vallan-

digham forced him to carry out an autocratic policy. For Lincoln did not approve of supplying martyrs to the opposition, and, therefore, when forced to do so, he contrived to make them as unheroic, and even ridiculous, as possible. Brilliant orator though he was, Clement L. Vallandigham's connection with his party became a positive detriment to it, and he soon retired from politics to devote himself to law, in the practice of which he met his death in a strange and tragic fashion. In defending a man accused of murder he shot himself, as he was illustrating the manner in which his client might have discharged his pistol by accident while drawing it from his pocket.

The political campaign of 1863 in other States as well as in Ohio was waged along the lines laid down by the President, with the result of sweeping gubernatorial victories for the Administration.

The President not only sounded the keynote of the campaign, and formulated the Administration's platform, but wrote, as it were, the campaign text-book of his party, reviewing the acts of the Administration and supporting its policies so completely and cogently that nothing essential could be added. All this he did in an address which he sent to a mass-meeting of "unconditional Union men" at Springfield, Ill., and which was there read on September 3 amid the greatest enthusiasm.

Justification of His Administration

President Lincoln

After tendering the nation's gratitude to those "noble men whom no partisan malice or partisan hope can make false to the nation's life," the President plunged at once into a justification of his course.

There are those who are dissatisfied with me. To such I would say: You desire peace, and you blame me that we do not have it. But how can we attain it? There are but three conceivable ways: First, to suppress the rebellion by force of arms. This I am trying to do. Are you for it? If you are,

so far we are agreed. If you are not for it, a second way is to give up the Union. I am against this. Are you for it? If you are, you should say so plainly. If you are not for force, nor yet for dissolution, there only remains some imaginable compromise. I do not believe any compromise embracing the maintenance of the Union is now possible. All I learn leads to a directly opposite belief. The strength of the rebellion is its military, its army. That army dominates all the country and all the people within its range. Any offer of terms made by any man or men within that range, in opposition to that army, is simply nothing for the present, because such man or men have no power whatever to enforce their side of a compromise, if one were made with them.

To illustrate. Suppose refugees from the South and peace men of the North get together in convention and frame and proclaim a compromise embracing a restoration of the Union. In what way can that compromise be used to keep Lee's army out of Pennsylvania? Meade's army can keep Lee's army out of Pennsylvania, and, I think, can ultimately drive it out of existence. But no paper compromise to which the controllers of Lee's army are not agreed can at all affect that army. In an effort at such compromise we should waste time which the enemy would improve to our disadvantage; and that would be all. A compromise, to be effective, must be made either with those who control the rebel army, or with the people first liberated from the domination of that army by the success of our own army. Now, allow me to assure you that no word or intimation from that rebel army, or from any of the men controlling it, in relation to any peace compromise, has ever come to my knowledge or belief. All charges and insinuations to the contrary are deceptive and groundless. And I promise you that, if any such proposition shall hereafter come, it shall not be rejected and kept a secret from you. I freely acknowledge myself the servant of the people, according to the bond of service—the United States Constitution—and that, as such, I am responsible to them.

But to be plain. You are dissatisfied with me about the negro. Quite likely there is a difference of opinion between you and myself upon that subject. I certainly wish that all men could be free, while I suppose you do not. Yet I have neither adopted nor proposed any measure which is not consistent with even your view, provided you are for the Union. I suggested compensated emancipation, to which you replied you wished not to be taxed to buy negroes. But I had not

asked you to be taxed to buy negroes, except in such way as to save you from greater taxation to save the Union exclusively by other means.

You dislike the emancipation proclamation, and perhaps would have it retracted. You say it is unconstitutional. I think differently. I think the Constitution invests its commander-in-chief with the law of war in time of war. The most that can be said—if so much—is that slaves are property. Is there—has there ever been—any question that, by the law of war, property, both of enemies and friends, may be taken when needed? And is it not needed whenever taking it helps us, or hurts the enemy? Armies, the world over, destroy enemies' property when they cannot use it; and even destroy their own to keep it from the enemy. Civilized belligerents do all in their power to help themselves or hurt the enemy, except a few things regarded as barbarous or cruel. Among the exceptions are the massacre of vanquished foes and non-combatants, male and female.

But the proclamation, as law, either is valid or is not valid. If it is not valid it needs no retraction. If it is valid it cannot be retracted, any more than the dead can be brought to life. Some of you profess to think its retraction would operate favorably for the Union. Why better *after* the retraction than *before* the issue? There was more than a year and a half of trial to suppress the rebellion before the proclamation was issued, the last one hundred days of which passed under an explicit notice that it was coming, unless averted by those in revolt returning to their allegiance. The war has certainly progressed as favorably for us since the issue of the proclamation as before.

I know as fully as one can know the opinions of others that some of the commanders of our armies in the field, who have given us our most important victories, believe the emancipation policy and the use of colored troops constitute the heaviest blows yet dealt to the rebellion, and that at least one of those important successes could not have been achieved when it was but for the aid of black soldiers.

Among the commanders who hold these views are some who have never had any affinity with what is called "abolitionism," or with "Republican party politics," but who hold them purely as military opinions. I submit their opinions as entitled to some weight against the objections often urged that emancipation and arming the blacks are unwise as military measures, and were not adopted as such in good faith.

You say that you will not fight to free negroes. Some of them seem willing to fight for you; but no matter. Fight you, then exclusively, to save the Union. I issued the proclamation on purpose to aid you in saving the Union. Whenever you shall have conquered all resistance to the Union, if I shall urge you to continue fighting, it will be an apt time then for you to declare you will not fight to free negroes. I thought that in your struggle for the Union, to whatever extent the negroes should cease helping the enemy, to that extent it weakened the enemy in his resistance to you. Do you think differently? I thought that whatever negroes can be got to do as soldiers leaves just so much less for white soldiers to do in saving the Union. Does it appear otherwise to you? But negroes, like other people, act upon motives. Why should they do anything for us if we will do nothing for them? If they stake their lives for us they must be prompted by the strongest motive, even the promise of freedom. And the promise, being made, must be kept.

The letter closed with a glowing exordium, such as those which, in the days of the fight for free territory, had roused his auditors to a frenzy of enthusiasm. In classic phrase it pictured the soldiers and sailors of the Union marching on to certain victory. It paid tribute to the courage of the negro troops, and with Cromwellian ire contrasted their patriotism with the hypocritical pretensions of the "malignants" of the peace party. Yet its oratorical fever was restrained from soaring into bombast by a ballast of common sense, and its tense feeling was relieved by a touch of grotesque humor, to which, as President even more than as citizen, Lincoln was wont to give loose in his most serious moments. Virtually his "last stump-speech," it was unquestionably his most characteristic and best one.

The signs look better. The Father of Waters again goes unvexed to the sea. Thanks to the great Northwest for it; nor yet wholly to them. Three hundred miles up they met New England, Empire, Keystone, and Jersey, hewing their way right and left. The sunny South, too, in more colors than one, also lent a helping hand. On the spot, their part of the history was jotted down in black and white. The job was a great na-

tional one, and let none be slighted who bore an honorable part in it. And, while those who have cleared the great river may well be proud, even that is not all. It is hard to say that anything has been more bravely and well done than at Antietam, Murfreesboro, Gettysburg, and on many fields of less note. Nor must Uncle Sam's web feet be forgotten. At all the watery margins they have been present. Not only on the deep sea, the broad bay, and the rapid river, but also up the narrow, muddy bayou, and wherever the ground was a little damp, they have been and made their tracks. Thanks to all: for the great republic—for the principle it lives by and keeps alive—for man's vast future—thanks to all.

Peace does not appear so distant as it did. I hope it will come soon, and come to stay, and so come as to be worth the keeping in all future time. It will then have been proved that among free men there can be no successful appeal from the ballot to the bullet, and that they who take such appeal are sure to lose their case and pay the cost. And then there will be some black men who can remember that with silent tongue, and clenched teeth, and steady eye, and well-poised bayonet, they have helped mankind on to this great consummation, while I fear there will be some white ones unable to forget that with malignant heart and deceitful speech they strove to hinder it.

Still, let us not be over-sanguine of a speedy final triumph. Let us be quite sober. Let us diligently apply the means, never doubting that a just God, in his own good time, will give us the rightful result.

That reference in the address to offers of compromise made by representatives of the Confederacy was evoked by various propositions made for self-advertisement by irresponsible parties such as Fernando Wood, a Democratic politician of New York, who boldly confessed his sympathy with the South and virtually offered himself as a mediator. To him Lincoln had replied (on December 12, 1862):

Understanding your phrase, "The Southern States would send representatives to the next Congress," to be substantially the same as that "the people of the Southern States would cease resistance, and would reinaugurate, submit to, and maintain the national authority within the limits of such States, under the Constitution of the United States," I say that in

such case the war would cease on the part of the United States, and that if, within a reasonable time, "a full and general amnesty" were necessary to such end, it would not be withheld. I do not think it would be proper now for me to communicate this formally or informally to the people of the Southern States. My belief is that they already know it; and when they choose, if ever, they can communicate with me unequivocally. Nor do I think it proper now to suspend military operations to try any experiment of negotiation.

It is true, however, that a no less responsible party than Alexander H. Stephens, Vice-President of the Confederacy, had presented to the Navy Department on July 4, 1863, a request that he be permitted to come to Washington bearing "a communication in writing from Jefferson Davis, Commander-in-Chief of the land and naval forces of the Confederate States, to Abraham Lincoln, Commander-in-Chief of the land and naval forces of the United States," but there was no statement of the nature of the communication. As the request studiously avoided recognition of the President in other than the military capacity of that office, Mr. Lincoln very wisely and properly ordered the Secretary of the Navy [Gideon Welles] to reply:

The request of A. H. Stephens is inadmissible. The customary agents and channels are adequate for all needful communication and conference between the United States forces and the insurgents.

CHAPTER XIII

"Bayonets at the Polls"

Lazarus W. Powell [Ky.] Introduces Bill in Senate to Prevent Military Interference with Elections—Debate: in Favor of Bill, Senator Powell, James A. McDougall [Cal.], Reverdy Johnson [Md.]; Opposed, Jacob M. Howard [Mich.], James Harlan [Ia.].

OWING to charges that there had been military interference by the order of the President with elections held in the border States during the summer and autumn of 1863, Lazarus W. Powell [Ky.] introduced in the Senate on January 5, 1864, a bill to prevent officers of the army and navy from interfering in elections in the States. This was finally referred to the Committee on Military Affairs, which reported against it, and presented an elaborate report justifying the action of the President. On March 3 Senator Powell's bill was brought before the Senate as in Committee of the Whole.

Military Interference with Elections

Senate, March 3-5, 1864

On March 3 and 4 Senator Powell spoke in favor of the bill.

It cannot be doubted that upon the keeping of the elective franchise absolutely free depends the very existence of our form of government and our republican institutions. Free States in all ages have regarded the purity of the elective franchise as of the greatest and most vital importance, and have enacted severe penal laws for the punishment of those who interfered by force or fraud to prevent free elections. I believe there is no government on the face of the earth in which elections have been carried on for the purpose of appointing any of the officers of the government, save and except the United States of

America, that has not had laws to punish, and severely punish, those who should interfere with the freedom of the elective franchise. All the republics of antiquity had the severest laws punishing those who interfered with the freedom of their elections.

By the laws of Great Britain persons convicted of bribery, force, or fraud at elections are punished severely. At the common law bribery and kindred offences were crimes, and the British statutes punished persons guilty of such offences on conviction with fines of £500, and deprived them of the privilege ever after of voting or holding any office of trust or honor under that government. One section of this bill provides that the soldiers of the army of the United States shall not be permitted to be kept within one mile of any poll where an election is going on, on the day of election. I find similar provisions in the English law.

Mr. Tucker, in his notes to Blackstone's Commentaries, in reference to the British law requiring soldiers to be removed from the place of voting, says, "A similar regulation in the election of Representatives to Congress seems highly proper and necessary." It is strange to me that we have never had such a law on our statute book. I suppose the only reason for the absence of such a law is that our elections have been regulated heretofore by officers appointed by the States, and it is only very recently that the armies of the United States have attempted to interfere in our elections.

By the spirit of the Constitution of the United States, and by the constitution of every State in the Union, the military is to be kept in strict subordination to the civil power; and I suppose that those who went before us never thought we should have rulers so wicked and corrupt as to use the machinery of the Federal Government for the purpose of prostrating the freedom of elections in the States; otherwise, I am sure that such laws as the one before us would have been enacted long before this. I find upon examination that seven of the States of the Union have enacted statutes to prevent soldiers making their appearance on election day at the places where the elections are held—Maryland, Mississippi, New Jersey, New York, Pennsylvania, Maine, and Massachusetts. The constitution of the State of Maryland provides that, upon conviction for the offence of giving or receiving bribes or influencing any man to give an illegal vote, not only the man giving the bribe, but the man giving the illegal vote shall forever after be disqualified from voting and from holding any office of trust, honor, or profit under the

State government. Every State in the Union has severe penal laws, providing for the punishment of all who in any way interfere to prevent free elections.

With us, Mr. President, sovereignty resides in the people, and the people by the exercise of free suffrage declare their will and appoint their agencies to carry on the government. He who attempts to interfere with this most inestimable right, whether he be President, major general, or citizen, is an enemy to the Republic and deserves the harshest punishment. In order to have free elections, there must be free speech and a free press; the sovereign people must have an opportunity of forming an enlightened public opinion upon the questions at issue, which can only be done after full and free discussion. Free speech and a free press in a government like ours are the soul of republican institutions; free suffrage is the very heart-strings of civil liberty. To be free, the elections must be conducted in accordance with laws so framed as to prevent fraud, force, intimidation, corruption, and venality, superintended by election judges and officers independent of the executive or any other power of the Government; the military must not interfere, but be kept in strict subordination to the law, which should be so framed as to prevent absolutely such interference. The only duty of the Executive is to see that the law is faithfully executed. The Executive must not use the power intrusted to him to prevent free elections.

It is certainly a subversion of the very foundation of the Government for the Executive to use the force and the power that the Government has placed in his hands for defensive purposes to overthrow the free suffrages of the people and to appoint those to power who will be his truckling menials, his subservient agents to carry out his will, to aid him it may be to overthrow the liberties of the people whom they should represent, betray the Constitution that they should preserve and protect, destroy everything that makes the Government desirable and worthy of the support of an honest and free people. Yet, sir, such things have been done, and I regret to say that there are those in the Senate chamber who not only do not denounce, but who approve these usurpations, these plain, palpable violations of the Constitution of their country.

Mr. President, let us for a moment see what are the powers of the President of the United States. From whence does he derive this power to regulate elections and to appoint representatives of the people? for when stripped of its verbiage that is really what has been done in many parts of the States of

Maryland, Missouri, Kentucky, and Delaware. Where, I ask, does the Executive of the United States derive such power? He certainly does not derive it from the Constitution.

He is commander-in-chief of the armies of the United States, and under that clause I suppose those who oppose the bill claim that the President can rightfully exercise the power that he has exercised in overthrowing the freedom of elections in Maryland and other States. They claim it under the war power, which I will notice in another part of my remarks. The President is to "take care that the laws be faithfully executed." What laws are they that the President shall see faithfully executed? The Constitution declares that—

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land."

These are the laws that the President is to see faithfully executed. Whenever he goes beyond that he is a usurper. The President, under the Constitution, can exercise no implied power. All the implied powers that can be exercised under our Government must be exercised by another and a different body of magistracy, to wit, the legislative; and that is the express language of the Constitution.

In the States to which I have alluded, the President, or those acting under his orders, have prescribed the qualifications of voters and the qualifications of candidates for office, and that, too, in direct violation of the Constitution of the United States. This is a grave charge, but it is one that I will make good by testimony that none can doubt. Let us see who it is that has the right to prescribe the qualifications of voters. I suppose that no Senator will deny that as to all State offices the States have the power to prescribe the qualifications of the officer as well as of the voter. That power not having been delegated by the Constitution to the general Government, the States necessarily retain it. But there is an express provision of the Constitution. The tenth amendment, which declares "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people," and the Constitution very clearly indicate who are qualified voters for members of Congress. The second section of the first article of the Constitution declares who shall be qualified electors for members of Congress. It fixes the qualification as the one ordained by the State government for

the members of the most numerous branch of their legislature. That is the fundamental law of the land; but in violation of that provision of the Constitution the military have seen fit, by military orders, to fix the qualifications of voters in the States. They have gone further, and fixed the qualifications for office. Not only the military have done this, but the President of the United States himself has done it. I am not going to waste all my time upon those who do the chief magistrate's bidding, but it is my purpose to-day to expose his atrocious violations of the Constitution. I trust that I shall speak of the President in a manner that is courteous, but I certainly shall do it in very plain language. The charges that I have to make I trust will not be misunderstood by anyone. I will not deal in innuendo, insinuation, or hint, but I will make the charge directly, and I have the proof to sustain it.

The Committee on Military Affairs, who made a very elaborate report, which I have before me, and which I shall presently review, justify the military in all they have done in controlling elections. The sole object of the committee in their report seems to be the justification and vindication of the military authorities for their atrocious assault on the rights of the States and the liberties of the people and their wicked and illegal interference in elections; and they assault every person who says or does anything tending to prove that the military have usurped powers that belong to the civil officers of the States and to the people. The committee justify the President and the military authorities for this interference in elections upon the ground that it was right and proper that the military arm should have been so used to protect the voters, "the loyal voters," as they are called in the report. The Constitution prescribes the duty of the chief magistrate on this subject in article four:

The President of the United States has no authority or power to send his military into one of the adhering States for the purpose of preventing domestic violence at the polls unless he has been invited to do so by the State authorities.

But for this provision of the Constitution a corrupt, venal, or ambitious President could by means of the military force, under some imaginary plea of domestic violence, invade any State in this Union on the eve of an election, and dictate the persons who should be returned as members of the other House of Congress, who should be returned as members of the legislature, who should be returned as governors of the States. In a

word, if you allow him to use the army in this way without the invitation of the State authorities, a wicked and corrupt man would have it in his power to prostrate every State government in the Union, and to elect officers who would do his bidding, and thus overthrow the liberties of the people, and establish a consolidated despotism of which he would be the master.

The speaker referred in particular to military interference in the gubernatorial election in Kentucky, where Charles A. Wickliffe was the Democratic candidate.

The committee say that Mr. Wickliffe and the gentlemen who invited him to become a candidate desired rebels to vote.

The committee say that they invited those whose hands were red with the blood of Unionists, and who were loaded with the spoils of the plundered friends of the Union, to come to the polls. The committee were drawing upon their fancy for their facts in making such a statement, and a most distempered fancy it must have been. They could not have been deluded by the words "Southern rights," because this address states distinctly that the Southern rights men were not secessionists, and were not implicated in the rebellion.

The organization that put Mr. Wickliffe forward as a candidate was the Democratic party under its old name and under its old flag.

In this report the committee impugn the loyalty of Mr. Wickliffe; and upon what ground? Mr. Wickliffe was one of the first and stanchest Union men in the State of Kentucky. In the other end of this Capitol he voted men and money to carry on the war; and he never failed to do so until the last session, when he voted against an appropriation bill because the House would not insert a clause in it that the money should not be used for the purpose of freeing negroes and reducing States to provinces. It is well known that Mr. Wickliffe was a strong and warm friend of the war up to that time, until he thought the radical policy of the President was such as would destroy every hope of the restoration of the Union.

Well, sir, that sterling old patriot became the candidate of a party that were prevented from exercising the right of suffrage in Kentucky; and in order to justify that outrage and the striking of his name from the polls by the ruthless hand of the military, this committee say he is disloyal. I have no doubt if an angel of the Lord had appeared before the Committee on

Military Affairs and told them there had been military interference in the elections in Maryland and Kentucky, that it was seen and known by all who were present at the polls, the writer of the report of the committee would have asserted that the angel was disloyal. Every man—I do not care how elevated his position or upright his standing in society, or how devoted he may have been in the past or the present to the Union—who asserts that there was interference in the elections, the committee say is disloyal, or they impute some unworthy motive to him.

General Burnside, on the 31st of July, issued an order placing Kentucky under martial law, declaring that it was to prevent the rebel troops interfering in the election. There was no necessity for that order. At the time it was issued there were not in Kentucky more than about a thousand rebel soldiers, and they were cavalry in one portion of the State in rapid retreat; and on the day of election there were no Confederate soldiers in the State.

I will not now discuss the question as to whether General Burnside had the power to declare martial law. It is well known to the Senate that I hold there is no power in the Government, in the President, or any of his commanders, to declare martial law; but if it did exist it should be confined to besieged cities and localities occupied by the army. But certainly there is no power to declare martial law in the adhering States, when they are not occupied by the forces of the enemy.

General Burnside plainly and palpably violated the Constitution of his country when he issued that order interfering with elections. Let me ask, did Kentucky invite General Burnside to bring his forces there to protect the election? No, sir. The legislature did not do it; the governor, in the language of the day a loyal man, never invited him to do it.

What did General Burnside do? What were the orders issued by his subordinates? Here is an extract from one of them:

"Judges and clerks so appointed are hereby directed not to place the name of any person on the poll books to be voted for at said election who is not a Union man, or who may be opposed to furnishing men and money for a vigorous prosecution of the war."

There is appended to that order an oath which varies from the oath prescribed by the law of Kentucky. The constitution and laws of Kentucky do not require that a man shall be in

favor of furnishing men and money for a vigorous prosecution of the war to qualify him to hold office.

In many of the counties the name of the whole Democratic ticket was stricken from the poll book by the military authorities. In many voting places and in entire counties of Kentucky no man was allowed to vote for that ticket.

In many places the candidates were arrested. In the first congressional district Judge Trimble, the candidate for Con-

"BAYONETS AT THE POLLS"

From the collection of the New York Historical Society

gress, as loyal a man and as true to the Constitution and Union of his fathers as lives in the Union, was arrested by military authority. He was brought to the city of Henderson, a town just without his district, and there he was kept in military confinement near a month, until after the election was over. They told him that, if he would decline being a candidate for Congress, they would release him. He would not so degrade his manhood as to decline the canvass at the bidding of military tyrants and usurpers, and he was kept in prison. They found that he would be elected by a large majority notwithstanding his imprisonment, and then they sent the military over his district and had his name stricken from the polls in almost every voting precinct in the district. The gentleman who beat him

got some four thousand votes in a district that polls about twenty thousand.

Mr. Anderson, who now occupies the seat in Congress from the first district in Kentucky, frankly acknowledges that he was elected by the bayonets.

Such were the terrorism and interference by the military that Mr. Wickliffe, the Democratic candidate for governor, in some six or seven of the strongest Democratic counties in the State, did not get a single vote, and in many other strong Democratic counties he received very few votes.

In the case of the Maryland election the speaker afforded proof that the President was directly responsible for military interference at the polls.

The Athenians were so watchful and so jealous of the right of free suffrage that a stranger who interfered in the assemblies of the people was regarded as a traitor, and was punished by their laws with death. Had President Lincoln and General Schenck lived in the time of the free commonwealth of Athens, and interfered with the assemblies of the people as they did with the right of free suffrage in Maryland, they would have been executed as traitors and felons, and would have justly deserved their fate.

The doctrine of those gentlemen who desire to clothe the Executive with this supreme power, with this absolute power, with this more than dictatorial power, places this great Republic in that humiliating attitude. I do not think that a citizen in a country governed by law was ever driven to the necessity of appealing to one man for protection. Sir, the citizen who for the time being fills the chief executive office is bound to see that the laws are faithfully executed: that is his sworn duty. There is no liberty save in the supremacy of the law. In all free governments the citizen appeals to the law for protection.

Mr. President, all usurpers and all tyrants that have gone before us, those who have overthrown the liberties of every people who have lost their liberties, claim their powers under this plea of necessity. Cæsar, when he led his army from Gaul, crossed the Rubicon, and overthrew the liberties of his country, did it upon the plea of necessity, and tyrants the world over have done the same thing. The President seems to me to follow in the footsteps of Cæsar, Pompey, and Cromwell. The Chief Magistrate, I regret to say, seems to copy all the faults, while

he has exhibited none of the virtues of those distinguished men.

Speaking of Cæsar Montesquieu says:

"He raised troubles in the city by his emissaries; he made himself master of all elections; and consuls, prætors, and tribunes purchased their promotions at their own price."

"He made himself master of all elections." That is what is being done here.

Mr. President, from the authorities I have read it seems that we are following in the footsteps of nations whose liberties have been overthrown and trampled down beneath the iron heel of military despotism.

Allow me to tell you, Senators, that one reason why the people have submitted so quietly, so uncomplainingly, to the many usurpations of the Executive is that they hoped in a short time to have the privilege of relieving themselves of the President by means of free suffrage; but if you allow the military to prevent free elections you not only stab the Republic in its very vitals, but you will by that means cause many persons who think that these usurpations of power ought to be resisted only at the ballot box to look about for other means to redress their grievances. If you do not wish blood to flow in this land, if you wish to preserve our institutions, allow the people the privilege of turning out every four years their President if they desire to do so.

Sir, the President and his satraps had better beware. A brave people will not stand these things always. A day of reckoning will come, and an awful day it will be to those guilty men who have overthrown and trodden under foot the Constitution and laws of their country, and unlawfully deprived the people of their dearest rights.

It is pleasant when we see that a gleam of light has broken in upon persons from whom we expected little good. I hold in my hand an extract from a speech of the most distinguished radical in America—a man of learning, a man of eloquence, indeed of rare elocution. I had thought that his whole soul was fully absorbed in this negro question, and that he could not talk without bringing it in. I mean Wendell Phillips. But while I think him a fanatic of the deepest dye, he differs from others of his party; he sometimes has lucid intervals. Allow me to read an extract from a speech of that eloquent man on this very point:

"But let me remind you of another tendency of the time. You know, for instance, that the writ of *habeas corpus*, by which government is bound

to render a reason to the judiciary before it lays its hands upon a citizen, has been called the high-water mark of English liberty. The present Napoleon, in his treatise on the English Constitution, calls it the germ of English institutions. Lieber says that that, with free meetings like this, and a free press, are the three elements which distinguish liberty from despotism, and all that Saxon blood has gained in the battles and toils of two hundred years are these three things. Now, to-day, every one of these—*habeas corpus*, the right of free meeting, and free press—is annihilated in every square mile of the Republic. We live to-day, every one of us, under martial law or mob law. The Secretary of State puts into his bastile, with a warrant as irresponsible as that of Louis, any man whom he pleases; and you know that neither press nor lips may venture to arraign the government without being silenced.

"We are tending with rapid strides—you say, inevitable; I don't deny it, necessarily; I don't question it; we are tending to that strong government which frightened Jefferson; toward that unlimited debt, that endless army. We have already those alien and sedition laws which, in 1798, wrecked the Federal party and summoned the Democratic into existence. For the first time on the continent we have passports, which even Louis Bonaparte pronounced useless and odious. For the first time in our history, government spies frequent our great cities."

That, sir, is a very graphic and truly eloquent picture of the times in which we are, and I hope the country will take warning. We seem to have yielded everything to the military power, and I regret to say with a tameness and submission which, in my judgment, are unbecoming members of an American Congress.

A military republic we have, and we have a republic but in name—the animating principle, the security of the citizen in life, liberty, and property is gone.

There never was a time, it does not exist now, and has not existed since this unfortunate civil war commenced, in which it was necessary for the President to overthrow the Constitution and elevate the military above the civil power. There is power enough in the Constitution to furnish the President every dollar and every man needed for this war. Congress can give him the sword and the purse. What more can you confer? Nothing. Where, then, the necessity and the excuse for these wanton violations of the Constitution, this reckless overthrow of the liberties of the people, this setting at naught the laws and the constitutions of the States, this regulating of elections by the sword? None. None. The genius of our Government is founded upon the principle that the military shall be kept in strict subordination to the civil power. But the friends of the President claim it as a matter of necessity to save the life of the nation, when they must see that the President is trampling under his feet the Constitution, and crushing out the liberties

of the people, and destroying every vital principle that gives value to free government.

But, sir, we have had other great chieftains before. There was a man who lived in this Republic that I suppose was thought by all wise and good men to be almost as great as Abraham Lincoln is thought to be by his cringing, truckling, and obsequious followers; that man was George Washington. He led our armies through a seven years' war in most trying times, when the organization of the civil authority was very defective; when there was great difficulty in procuring men for the army and money to defray the necessary expenses of the Government, many of the States failing to furnish their quotas of men and money. Did Washington, during that long and arduous struggle, ever think it necessary to subordinate the civil to the military authority? No, sir; no. In 1783, when he resigned his commission at Annapolis, Thomas Mifflin, President of the Continental Congress, addressed him as follows:

"You have conducted the great military contest with wisdom and fortitude, invariably regarding the rights of the civil power through all disasters and dangers."

This I regard as the highest and most deserved compliment that was ever bestowed upon mortal man.

Sir, I would that this vacillating, dissembling, weak, and I fear wicked and corrupt man in the White House had been infused with the wisdom, virtue, and patriotism that animated the soul and prompted the actions of the great Washington in our revolutionary struggle. Washington and his compatriots were engaged in a struggle for civil liberty; the sword was used only to resist the encroachment of tyrants, and was subordinated to the civil power. The resistance was successful. They then laid broad, deep, and strong the foundation of civil and religious liberty. They proclaimed the Constitution as the fundamental law, and threw it as a strong and impenetrable shield around the rights of the States and the liberties of the people. The Executive is now using the sword which should only be directed against the armed enemies of the Republic for the sacrilegious purpose of suppressing free speech, free press, and free suffrage, and the overthrow of the Constitution, the rights of the States, and the liberties of the people of the adhering States.

On March 23 Jacob M. Howard [Mich.] spoke against the bill.

This measure is brought forward at an unpropitious time, at a time when the country is engaged in a struggle against an immense armed rebellion which calls for the exertion of all the faculties, all the power of the Government, all its means, and for the exercise of every patriotic quality which belongs to American freemen. In the strictest sense of the law of nations it is a civil war, it has been so adjudged to be by the Supreme Court of the United States.

The two governments being, in respect to each other, not foreign and independent, but their citizens being citizens of the same common government, and in law subject to the same authority, there cannot be drawn between them that exact line of distinction which exists between the subjects of two belligerent foreign governments at war with one another; yet there is, because there must be somewhere, a test, recognized by the law of war, which is to determine the treatment that one party may exercise toward the subjects of the other, and by which one party may be known from the other. It is that line of demarcation which divides the loyal from the disloyal. It is the test and touchstone by which the heart of every citizen is to be tried and by which it is to be determined whether he is in favor of the old Government or whether he is opposed to it. All those who in their hearts are friendly to the old Government, who are willing to support and uphold it, are loyal—they have the rights of loyal belligerents; while all those who in their hearts are opposed to the old Government, or even indifferent to its preservation, who are willing to destroy and overthrow it, or to see it destroyed or overthrown, and especially those who directly or indirectly give actual aid and comfort to the rebellion, are disloyal, and are to be treated as enemies. I know of no other rule by which a distinction can be established between the two classes, those who are loyal and those who are disloyal.

In the midst of this clash of arms, while the whole hemisphere is lighted up by the lurid flames of war, extending from the Atlantic Ocean far west to the Rocky Mountains, while every loyal man is filled with anxiety for the final result of the contest, while along this frontier, marked by a line of bristling bayonets for more than fifteen hundred miles, the war is waging with fury, and the line itself constantly fluctuating, the Senator from Kentucky brings forward a bill prohibiting the military authorities, in any case, in any manner, to interfere with what he calls the freedom of election in the States, severely punishing military men for fighting battles, in certain

cases, as well as for preventing the enemy himself from participating in State elections!

That honorable Senator will admit that for a measure so novel in its provisions, so extraordinary in the results which it aims to accomplish, there should be evidence of some great and intolerable evil which may be cured by such a measure. It is not sufficient that there may be a few trifling instances of wrong and misuse of military power; the evil should be so enormous as to address itself to the conscience of every member of the Senate, and the evidence of it so clear and overwhelming as to leave no doubt or hesitation in the mind. I shall show, I think, before I conclude my remarks, that there is no such evil; and that, if there be any evil of even considerable magnitude, the evidence of its existence has not been presented to us by the honorable Senator from Kentucky or any other member in such form as to deserve our serious attention.

And, sir, *in limine*, I have to say, in respect to this bill, that it contains a provision which, in my judgment, is utterly unsupported by any clause of the Constitution of the United States, and is as clearly obnoxious to the objection of unconstitutionality as any bill which has ever been presented to the Senate.

I beg to know from what provision of the Constitution it is that the Senator from Kentucky derives the power of employing the courts or other authorities of the United States to punish persons who may violate a State law regulating elections or defining the qualifications of State voters? Whence does he derive the power to punish by Federal sentences in Federal courts violations of a law which it is competent for a State and a State only to enact?

Will the Senator tell me in reply that Congress have a right to inflict this punishment upon a man because he is in the military or naval service of the United States? Such a proposition is not capable of argument. Men are placed in the military service of the United States for the purpose of acting in that capacity; and the power of Congress in such cases only goes to the extent of controlling and regulating their conduct according to the code of war; and there it stops. It cannot be pretended that because a man is a soldier in the army and goes home and commits a murder in the State to which he belongs Congress therefore may declare by a law that he shall be tried and punished for the murder in a Federal court. The crime in such a case is committed against the peace and dignity of the State, not against the peace and dignity of the United States;

and, although if committed by him while in actual service and in the ranks, he might be punished by court-martial, yet the offence would be against the code of war and not the laws of the State.

Let us, then, sir, hear something less, if the Senator pleases, of these continued, bitter denunciations against the majority of this body for violations of the Constitution. For one, sir, I say to that Senator, I do not acknowledge him as a safe teacher. "*Non tali auxilio, nec defensoribus istis.*" Give us no such aid, no such defenders.

Mr. President, we are told by the Senator from Kentucky that the Government of the United States have no power to restrain persons who are rebels, or who are suspected to be rebels, from voting in the States. I do not agree with the Senator as to the power of the Government to prevent disloyal men voting at a State poll. In the present state of things every man who is not for us is against us. Every man, as I said before, who is not friendly to the Government of the United States in his heart is opposed to it. Every man who is not willing to use reasonable and ordinary means, military means, for defending and upholding it at such a moment as this, is an enemy of the United States, and deserves to be treated as an enemy.

Sir, I stand by the doctrine laid down in the report of the Committee on Military Affairs. I hold that these persons whose hearts are against their Government, who are willing that the Government should be destroyed—and I go as far as to declare that those who are unwilling in such a crisis as this to come to the support of the Government and render it their aid, and even those who affect to occupy a position of mere indifference toward it, are also within the category of enemies of their country—ought not, in justice, to be suffered to go to the polls. There must be a distinction somewhere, in this war, between enemies and friends. A friend is the man whose heart is attached to the Government and who is willing, according to his means, to do something to uphold it. He is not the only enemy who takes up arms or furnishes supplies to those in arms, but who looks upon this struggle with indifference, whose heart has no pulsation in favor of the cause, but who is ready whenever an occasion presents itself to go over and join the rebels, or to welcome them when they come as invaders into our midst.

The Senator tells us that the military authorities have no right whatever to interfere in a State election; and if I understood him rightly he went so far as to declare that every person who is not prohibited by the laws of the State itself from

voting has a right to vote, and that the United States have no authority to intervene for the purpose of preventing it, although he may be a rebel, stained from the crown of his head to the soles of his feet with the blood of loyal men. I am about to quote an authority which will perhaps have some weight with that Senator. I believe the first example of such interference in a State election was set by General McClellan while commander of the army of the Potomac. In response to a letter of request, addressed to him by Governor Hicks of Maryland, dated October 26, 1861, he issued the following order, dated October 29, 1861, to General N. P. Banks:

GENERAL: There is an apprehension among Union citizens in many parts of Maryland of an attempt at interference with their rights of suffrage by disunion citizens on the occasion of the election to take place on the 6th of November next.

In order to prevent this the major-general commanding directs that you send detachments of a sufficient number of men to the different points in your vicinity where the elections are to be held *to protect the Union voters*, and to *see that no disunionists are allowed* to intimidate them, or in any way to interfere with their rights.

He also desires you to arrest and hold in confinement until after the election all disunionists who are known to have returned from Virginia recently, and *who show themselves at the polls*, and to guard effectually against any invasion of the peace and order of the election. For the purpose of carrying out these instructions *you are authorized to suspend the habeas corpus.*

If this power exists in the Government of the United States in any of its departments, in time of war, then no State can interfere with its exercise, but the citizens of the State must submit it as to the exercise of any other Federal power, because it acts upon those citizens as individuals. In short, if the Government have this tutelary authority, if they have the right to treat rebels or rebel sympathizers, or those who aid and abet the rebellion, *as enemies*, as they undoubtedly have, then they may use it through the military arm or any other instrumentality to which they see fit to resort. They may thus prevent those enemies from exercising any of the rights of citizens in the State. For this we have at least the sanction of General McClellan—certainly, with a certain portion of the members of this body, a high authority; and I am very happy to be able for once to concur fully in the opinions of the general. The power is thus, as we see, sanctioned by that distinguished military leader, the heir-apparent of the Democratic party to the next Presidency, and the promising help and support, I suppose, of the cause of the Union as they would restore it. At all events,

it is sufficient for my purpose that I have his complete sanction of the principle that it is the right of the military arm to interfere in State elections so far as to prevent traitors from voting, although they may happen to possess the formal qualifications of electors of the State. I think he was entirely right, and I am free to give him that praise.

If we have that power, as General McClellan agrees we have, then it belongs to us exclusively, and the States have nothing to do but to permit its exercise. It is a power peculiarly pertaining to the United States, and as much to be respected and obeyed as the judicial power of the Government. The two jurisdictions are here as separate and distinct as in any other case. The States have just as much right to trespass on any other constitutional power belonging to the Government as upon this.

Sir, in my judgment, the case comes clearly and distinctly within the principle laid down by the Supreme Court of the United States in the case of Booth, in which the decision of the court was delivered by the present chief justice [Roger B. Taney]. (See 21 Howard's Reports, p. 524.)

And I say here that, whenever a military officer has issued an order for the purpose of keeping traitors away from the polls, and the order is regular in form, no State has in a time of rebellion or civil war any right to dispute or obstruct its operation; and whenever the governor of a State, a judge of election, or other State magistrate, undertakes to resist such an order, he brings himself within the principle laid down by the Supreme Court, asserting that such interference may be resisted even by violence. It is nothing more nor less than this, that the authority of the United States is supreme; and it rests with the Senator from Kentucky, and those who entertain his views, to establish the principle that the Government of the United States is not supreme in the treatment of its enemies. The Senator has not argued that question. He has assumed that it is not. It is with him a mere *petitio principii*, the assumption of the truth of a proposition that remains to be proved. Let him by fair and candid argument, by reference to the books of authority, show, if he can, that the Government of the United States in the prosecution of a war is not supreme and has no right to define and declare who are enemies of the United States and who are friends. He will find it a vain task; and I indulge the fancy that he will not be swift to undertake it.

Sir, the rebels on this subject have been our instructors.

They have found no constitutional difficulty in treating persons within their limits attached to the Government of the United States, and acknowledging their allegiance to it as enemies. Without scruple or hesitation they proceeded at an early day to enact a statute, now in force among them, by which every Union man born in a State still adhering to the Union is proscribed and expelled from their territorial limits.[1]

But, sir, the Senator from Kentucky has made another novel discovery in the field of constitutional law, to which I must be indulged in paying some slight attention. He tells the Senate in his speech on this bill that the Government of the United States has no right whatever to send troops into any State unless it be at the request of the legislature while in session, or of the Executive when the legislature cannot be convened; and he is extremely earnest and confident on this point. He flatters himself that he has at length discovered the great touchstone by which this whole war is proved to be unconstitutional, and "coercion" a tyranny and an outrage. This is the first time in my professional life that I ever heard it asserted by a gentleman professing to be a judge of the principles of the Constitution, and a good lawyer, that the right of the Government of the United States to employ military force to put down an insurrection was derived from and is solely dependent upon that clause of the Constitution to which he refers. The clause declares that the Government of the United States shall protect each State against domestic violence when called upon by the State. The very language itself shows that the violence against which the State is to be protected is violence not against the authority of the United States, but against the authority of the State, and of the State only.

Domestic violence in a State is violence against the authority of the State, and that violence may be in perfect consistency with the loyalty of the persons who commit it to the Government of the United States.

It is merely local violence against the regular government of the State, and does not embrace an insurrection or rebellion against the Federal Government. And such is the meaning given to the clause in "The Federalist," if the Senator will see fit to consult it. It may be entirely consistent with the authority of the United States, like the Dorr rebellion, in Rhode Island, or the more ancient insurrection of Shay, in Massachusetts. The present war is a rebellion against the authority of the United States, not that of any one particular State, and is not there-

[1] "An act respecting alien enemies," approved August 8, 1861.

fore a case of mere domestic violence as mentioned in the clause on which the Senator relies.

This, however, is the Senator's logic: the States in rebellion are agitated by domestic violence; in such cases the Government of the United States cannot interpose, except upon the request of the legislature of the State when in session, or of the Executive when the legislature cannot be convened; and because the legislature and Executive of all the seceded States have omitted to apply to the Government of the United States for aid to put down this violence; *ergo*, the Government of the United States has no right to march its troops into those States; *ergo*, the whole war is unconstitutional, and we who are engaged in prosecuting this war within the limits of these seceded States are guilty of a perpetual violation of our oaths and of the Constitution of our country. Such is the Senator's logic.

The Senator seemed to forget that, aside from this particular clause, there is given to Congress in express terms power to suppress rebellion and insurrection against the Federal Government itself. We are now acting under this broader and general power. We are acting under a power by no means necessary to have been incorporated in the Constitution—the power to suppress rebellion and insurrection—because from the very nature of Government itself, from the very necessity of its being, the Federal Government, like every other government, must be held to have the right of self-defence, the right to put down resistance to its authority, the right to enforce its own laws, for that cannot be called a government which has no power to carry its own enactments into execution. It is of the very essence of all governments to command, and if a government may command, it is the duty of those who are commanded to obey; so that even without the clause expressly giving to Congress the power to put down an insurrection they would have plenary power so to do.

But the framers of the instrument saw fit to grant the power in express terms, as if in anticipation of this "State rights" objection. (See "The Federalist," 43.)

My conscience will not be troubled by the fanciful constitutional objection that the Government of the United States have no right to "subjugate a State." We have, sir, the same right to subjugate a State in insurrection as to subjugate a foreign country with which we are at war; and the Senator from Kentucky will find it impossible, I apprehend, to draw anything like a sensible distinction between the two cases.

The report of the committee alleges that at the date of a certain letter, which is included in the pamphlet, addressed to Mr. Wickliffe, of Kentucky, and dated June 13, 1863, the business of recruiting blacks was in active progress. It is against that policy that the letter is particularly denunciatory. The writers of the letter used the following language:

"We hold this rebellion utterly unjustifiable in its inception, and a dissolution of the Union the greatest of calamities.

"We would use all just and constitutional means adapted to the suppression of the one and the restoration of the other."

Again they say:

"It is now obvious that the fixed purpose of the administration is to arm the negroes of the South to make war upon the whites, and we hold it to be the duty of the people of Kentucky to enter against such a policy a solemn and most emphatic protest."

What is the plain implication from this language addressed to Mr. Wickliffe, that the writers hold the rebellion unjustifiable "in its inception"? Is it not tantamount to a declaration that, although in its inception the rebellion was utterly unjustifiable, it had, nevertheless, become otherwise in consequence of the acts of the Administration, and particularly the act authorizing the recruiting of black troops?

And the Senator says that, at the very time this solemn protest was entered by these leading gentlemen of Kentucky, there was no such thing in Kentucky as the recruiting of black troops.

What, then, is the pith and point of the declaration that the rebellion had become justifiable, although unjustifiable in its inception? Not because recruiting of black troops was going on in Kentucky, but because it was going on somewhere else, and because these troops were to be used as aids in suppressing the rebellion. Sir, this is an audacious presumption on the part of Kentucky. No, sir, I will not say Kentucky; I do not mean the people of Kentucky; I mean the demagogues who assume to be the leaders of the people of Kentucky. What right have they to dictate to the United States what troops they shall raise, or where they shall raise them, or how employ them, so long as the people of Kentucky are not affected by the proceeding?

Mr. President, if there ever was a necessity for the vigorous interposition of military authority to guard the polls against the intrusion of rebels, if there was ever a case in the

history of the United States in which the strong arm of military power was invoked by every interest of community, it was the case of Kentucky; and I undertake to say that, without this interference, Kentucky, in all human probability, would to-day have been regularly installed as a member of the rebel confederation. Nothing but the loyal hearts and strong arms of Northern men who hurried from their homes has prevented that State, with all its glorious memories, going over to the rebellion.

I do not stand here to pretend, and I will not assert, that there may not have been abuses in the execution of some of the orders. But you may say the same of the execution of any law. Every power, every law is liable to be abused; but this is no reason for denying or extinguishing the power itself, for repealing it or for repealing the law.

The leader of the Democratic party, Mr. Wickliffe, was plainly unfriendly to the Government of the United States. He was their candidate for governor. The letter inviting him to stand as such declares that the writers "hold this rebellion utterly unjustifiable in its inception," plainly, as I have already remarked, intimating that it had become justifiable. The writers of the pamphlet observe: "Mr. Wickliffe, in accepting the nomination which had thus been tendered him, expressed his hearty concurrence in our view"; that is, his hearty concurrence in the statement that the rebellion had become no longer unjustifiable. I submit, sir, that a man who, at such a time, can so far forget what is due to his country as to intimate that this rebellion had become a justifiable one was not a fit person to be voted for at the polls. And I say boldly that I think the military authorities in Kentucky did exactly right when they instructed the judges of election not to permit Mr. Wickliffe's name to appear on the poll list as a candidate for governor, although, notwithstanding several orders of that kind, he received a very considerable vote in Kentucky.

But, sir, there is no allegation, even in the pamphlet itself, that any one single individual known to be a true and loyal man was hindered from voting at the election in Kentucky on the 3d of August, 1863. It is very true, as the writers of the pamphlet remark, that the aggregate vote at that election compared with the number of male persons over twenty-one years old in 1862 was small. But the smallness of the vote shows not so much that voters were excluded from the polls as that multitudes kept away because of their own disloyal proclivities, while thousands upon thousands had emigrated or gone into the rebel army or into the Union army.

The declarations of the authors of the pamphlet show a different kind of loyalty from mine. It is the loyalty of neutrality, which is no loyalty, and just as inconsistent with the duty which a State and its people owe to the Government of the United States as open rebellion.

Neutrality, sir, Kentucky neutrality, what is it in law, and what would it be if practically carried out there or elsewhere? If the agreement said to have been made by General McClellan with Buckner recognizing the neutrality of the State had been carried into execution practically Kentucky would have been as effectually out of this Union as is now the State of South Carolina. Neutrality, let me say to the Senator, is an attribute belonging exclusively to a sovereign power, an independent nation. You cannot predicate neutrality of any community that does not possess the right of sovereignty as an independent nation, for there are certain rights and duties pertaining to neutrality which can be exercised only by an independent nation, and with which any subordinate or dependent condition is totally incompatible.

Sir, let us contemplate for a moment the condition that Kentucky would have been in if she had carried out effectually her idea of neutrality. The Government of the United States would have been disabled from recruiting a single man within her limits, such recruiting being forbidden by the laws of war and nations within neutral territory. Again, the United States could not have marched a single platoon across the border of Kentucky, although the enemy had been in her midst. The Ohio and the Mississippi would have been sealed up against the navigation of the United States. Kentucky would have been flourishing in all the peace and comfort of neutrality, keeping the Union forces away upon the one side and possibly inviting the rebels upon the other, while at the same time she would have been at complete liberty to carry on trade and commerce in everything not contraband of war with both the belligerent parties.

In short, she would have been enjoying a harvest of profits in her trade with the rebels, and a like harvest in her trade with the Union armies, and at the same time feeling none of the inconveniences of the war. Such, sir, was manifestly the idea at the bottom of Kentucky neutrality.

Is it founded upon the Constitution? Will the gentleman say that under that instrument it is the right of any one of the States to set up to be neutral in a war, whether a civil or a foreign war? No, sir. It is as plainly prohibited as open re-

bellion, and the claim is as incompatible with fidelity to the Government as the claim of nullification or secession.

Sir, it is amazing that a gentleman who has so much to say about the violation of the Constitution of the United States, a gentleman who has not hesitated to say upon this floor that if justice had been done to Abraham Lincoln for his imputed unconstitutional interference in State elections he would have been hanged like those who were denounced as traitors by the laws of Greece for voting at elections where they had no right—it is amazing that such a Senator can stand up here and advocate in the same breath the right of a State to assume the condition of neutrality in a war. It is nothing more nor less than actual secession, because it implies an utter repudiation of the obligations of the State to the general Government. Sir, I thank Heaven that the President of the United States at an early day rebuked this pretension.

The speaker then turned to the Maryland election. Referring to the proclamation of Governor Bradford he said:

This proclamation was a direct invitation to the judges of election and the people of Maryland to disregard the order [of Gen. Schenck], and, if need be, to resort to violence in resisting it. It was a threat to produce an insurrection, and to drive out the United States troops by force. The report of the Military Committee holds that the governor had no right to issue it, or to instruct the judges in this manner. The Senator from Kentucky, in his emphatic reply to this part of the report, tells us that the Governor of Maryland had "a right to issue a proclamation concerning elections." Who denies it? The Senator was combating a proposition the committee had not made.

Undoubtedly, sir, the Governor of Maryland, like any other governor, has a right to issue a proclamation on any subject connected with his duties; but neither the Governor of Maryland nor any other governor has the right to say to the judges of elections, "Your duties are such and such, and you must do so and so." The law, not the governor's proclamation, regulates their duties. And whatever may be that law, whether in the shape of a State statute or the order of a military man for the protection of the polls, such as that of General Schenck, it is nevertheless law, and Governor Bradford had no more right to say to the judges that they were not to obey General

Schenck's order than to tell them they were not to obey a statute of the United States. It did not lie in the mouth of the Governor of Maryland to dispense them from that obligation.

Sir, if the judges of election had been as hasty as the governor, if they had resorted to the power of the county or other force for the purpose of resisting the execution of this order, it is easy to see that before the sun of the 3d of November went down below the western horizon the soil of ancient Maryland would have been stained with fraternal blood, and hundreds, perhaps thousands, of her sons would have been weltering in their gore; for it would inevitably have led to a violent collision between the troops of the United States and the people of Maryland.

The Senator alleges that the judges were prevented from executing the laws. In many cases, he says, they were imprisoned. Let me say, with the utmost personal respect for that Senator, that I have discovered no case, from the beginning to the end of this vast amount of written testimony, which shows or conduces to show that the judges of election were prevented in any case from executing the laws. If there be any such case, I hope the honorable Senator will be able to lay it before the Senate. There are but two cases in which the judges of election were arrested; the one the case in Kentucky, where the judges of election openly and contemptuously refused to recognize the military authority and to execute the orders, and were therefore placed under arrest; the other in Maryland, where an investigation ordered by the President showed that the persons arrested were not judges, but citizens, who had abandoned their posts as officers.

As I said in the beginning, Mr. President, in order to justify Congress in passing this bill, the proof of existing evils should be plain, indubitable, and irresistible. The times especially require it. Were it a time of peace, I admit the military authorities of the United States would have no power to interfere with State elections; but it is not a time of peace, but of war; a time in which the feelings of every man in the nation are taking a fixed direction, either in favor of the Government or against it; a time when it is absolutely necessary for the preservation not only of the Federal Government, but of the State governments, that a line of demarcation should be drawn between the loyal and the disloyal, between men who are friendly and men who are unfriendly; and I insist that, in view of the evidence before us, there is no sufficient reason for the passage of this bill had we even the power to pass it.

that such a person is in all respects and at all times subject to the laws of the Federal Government relating to him as a public enemy, and subject to those laws in exclusion of any conflicting law of a State. For a State cannot legally be engaged in war; the whole of the war power pertains exclusively to the Federal Government.

Reverdy Johnson [Md.] replied to Senator Howard.

Who is to ascertain what men are public enemies of the United States? Shall a citizen of Maryland, for instance, decide that I am not entitled to vote at an election in my own State? There is but one subject upon which the Federal Government has any authority to interfere with elections. Over the times, the places, and the manner, the Constitution gives to the several States the exclusive authority with two exceptions, which have nothing in the world to do with the manner in which the franchise is to be exercised or with the parties who are to exercise it. Upon all other subjects, therefore, than of time and manner, the jurisdiction of the States is just as paramount and exclusive as it was before the Constitution was adopted.

Mr. President, we hold our rights under the Constitution consecrated by the blood of our ancestors. We have proved ourselves worthy to enjoy them by meeting the enemies of our country upon the field and the ocean, and we are doing it now. Oh, save us, save us in the name of freedom, from the rule of military despotism!

On June 28 the motion to reconsider the vote on the bill was defeated by a vote of 19 to 23.

The bill was debated at various times until June 22, when, through the persistent efforts of Senator Powell, it was finally brought to a vote. Several amendments, however, were first offered by the Senator himself; the most important of which was one providing that soldiers may be stationed at the polls if "it shall be necessary to repel the armed enemies of the United States." This and other amendments were adopted.

Samuel C. Pomeroy [Kan.] then moved to add to Senator Powell's amendment the words: "or to keep the peace at the polls."

Senator Powell, James A. McDougall [Cal.] and others objected to this amendment as destroying the effect of the bill. It expressed, they declared, the very pretext upon which the recent outrage against the free ballot had been committed. This amendment, however, was adopted by a vote of 16 to 15. The bill was then passed by a vote of 19 to 13.

James Harlan [Ia.] moved to reconsider the passage of the bill. The motion was entered.

On June 23 Senator Howard spoke in favor of reconsidering the measure.

This bill gives permission for the employment of the military forces of the United States at elections only where there shall be armed enemies of the Federal Government at the polls, or where it shall be necessary to employ a military force to keep the peace. It therefore leaves the implication perfectly irresistible that in all other cases it shall not be lawful for the military authorities to employ their forces, although there might be thronging around the polls rebels who had just left the field of battle, and whose hands were crimsoned with the blood of loyal men. This bill allows notorious rebels to come to the polls and cast their ballots without the slightest fear of interference on the part of the military authorities.

It is said, Mr. President, that it is the exclusive privilege of the States to protect their own polls. But this is true only in a time of peace. For in a time of war a State government is not competent to extend to a person who is a public enemy of the National Government, and against whom and against whose class or community the United States as a nation is waging war, any political right or privilege whatever; and I do assert

CHAPTER XIV

The Thirteenth Amendment

[CONSTITUTIONAL ABOLITION OF SLAVERY]

Lyman Trumbull [Ill.] Moves in the Senate a Constitutional Amendment Abolishing Slavery—Debate: in Favor, Sen. Trumbull, Henry Wilson [Mass.], Daniel Clark [N. H.], Timothy O. Howe [Wis.], Reverdy Johnson [Md.], John P. Hale [N. H.], Charles Sumner; Opposed, Garrett Davis [Ky.], Willard Saulsbury [Del.], James A. McDougall [Cal.]—Resolution Is Carried in the Senate, and Defeated in the House—It Is Passed at the Next Session.

ON March 28, 1864, Lyman Trumbull [Ill.] introduced in the Senate, from the Committee on the Judiciary, the following proposed amendment to the Constitution:

ARTICLE XIII

Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Abolition of Slavery

SENATE, MARCH 28-APRIL 8, 1864

SENATOR TRUMBULL.—Without stopping to inquire into all the causes of our troubles, and of the distress, desolation, and death which have grown out of this atrocious rebellion, I suppose it will be generally admitted that they sprung from slavery. If a large political party in the North attribute these troubles to the impertinent interference of Northern philan-

thropists and fanatics with an institution in the Southern States with which they had no right to interfere, I reply, if there had been no such institution there could have been no such alleged impertinent interference; if there had been no slavery in the South, there could have been no Abolitionists in the North to interfere with it. If, upon the other hand, it be said that this rebellion grows out of the attempt on the part of those in the interest of slavery to govern this country so as to perpetuate and increase the slaveholding power, and failing in this that they have endeavored to overthrow the Government and set up an empire of their own, founded upon slavery as its chief corner-stone, I reply, if there had been no slavery there could have been no such foundation on which to build. If the freedom of speech and of the press, so dear to freemen everywhere, and especially cherished in this time of war by a large party in the North who are now opposed to interfering with slavery, has been denied us all our lives in one-half the States of the Union, it was by reason of slavery. If these halls have resounded from our earliest recollections with the strifes and contests of sections, ending sometimes in blood, it was slavery which almost always occasioned them.

Senator Trumbull here reviewed the acts of the President and Congress relating to negroes, previously to the Emancipation Proclamation.

But, sir, had these laws, all of them, been efficiently executed they would not wholly have extirpated slavery. They were aimed only at the slaves of rebels. Congress never undertook to free the slaves of loyal men; no act has ever passed for that purpose.

At a later period, the President by proclamation undertook to free the slaves in certain localities. Notice of this proclamation was given in September, 1862, and it was to become effective in January, 1863. Unlike the acts of Congress, which undertook to free the slaves of rebels only, and of such as came under our control, the President's proclamation excepted from its provisions the regions of country subject to our authority, and declared free the slaves only who were in regions of country from which the authority of the United States was expelled, enjoining upon the persons proposed to be made free to abstain from all violence unless in necessary self-defence, and recommending them in all cases, when allowed, to labor faithfully for reasonable wages.

The force and effect of this proclamation are understood very differently by its advocates and opponents. The former insist that it is and was within the constitutional power of the President, as commander-in-chief, to issue such a proclamation; that it is the noblest act of his life or the age; and that by virtue of its provisions all slaves within the localities designated become *ipso facto* free; while others declare that it was issued without competent authority, and has not and cannot effect the emancipation of a single slave. These latter insist that the most the President could do, as commander of the armies of the United States, would be, in the absence of legislation, to seize and free the slaves which came within the control of the army; that the power exercised by a commander-in-chief, as such, must be a power exercised in fact, and that beyond his lines where his armies cannot go his orders are mere *brutum fulmen*,[1] and can work neither a forfeiture of property nor freedom of slaves; that the power of Frémont and Hunter, commanders-in-chief for a certain time in their departments, who assumed to free the slaves within their respective commands, was just as effective within the boundaries of their commands as that of the commander-in-chief of all the departments, who as commander could not draw to himself any of his presidential powers; and that neither had or could have any force except within the lines and where the army actually had the power to execute the order; that to that extent the previous acts of Congress would free the slaves of rebels, and if the President's proclamation had any effect it would be only to free the slaves of loyal men, for which the laws of the land did not provide.

I will not undertake to say which of these opinions is correct, nor is it necessary for my purposes to decide. It is enough for me to show that any and all these laws and proclamations, giving to each the largest effect claimed by its friends, are ineffectual to the destruction of slavery. The laws of Congress if faithfully executed would leave remaining the slaves belonging to loyal masters, which, considering how many are held by children and females not engaged in the rebellion, would be no inconsiderable number, and the President's proclamation excepts from its provisions all of Delaware, Maryland, Kentucky, Tennessee, Missouri, and a good portion of Louisiana and Virginia—almost half the slave States.

If then we are to get rid of the institution, we must have some more efficient way of doing it than by the proclamations

[1] Idle thunder.

that have been issued or the acts of Congress which have been passed.

Some, however, say that we may pass an act of Congress to abolish slavery altogether, and petitions are sent to Congress asking it to pass such a law. I am as anxious to get rid of slavery as any person; but has Congress authority to pass a law abolishing slavery everywhere, freeing the slaves of the loyal, the slaves of the friends of the Government as well as the slaves of the disloyal and of the enemies of the Government? Why, sir, it has been an admitted axiom from the foundation of this Government, among all parties, that Congress had no authority to interfere with slavery in the States where it existed. But it is said this was in a time of peace, and we are now at war, and Congress has authority to carry on war, and in carrying on war we may free the slaves. Why so? Because it is necessary; for no other reason. If we can do it by act of Congress it must be because it is a necessity to the prosecution of the war. We have authority to put down the enemies of the country; we have the right to slay them in battle; we have authority to confiscate their property; but, mark you, does that give any authority to slay the friends of the country, to confiscate the property of the friends of the country, or to free the slaves of the friends of the country?

But it said that freeing slaves would aid us in raising troops; that slaves are unwilling to volunteer and enter the public service unless other slaves are made free, and that we could raise troops better, sooner, and have a more efficient army if slavery were declared abolished. Suppose that were so, is it a necessity? Can we not raise an army without doing this? Has not the Congress of the United States unlimited authority to provide for the raising of armies by draft, by force to put any and every man capable of bearing arms into its service? Have we not already passed a law compelling men to enter the service of the Government in its defence and for the putting down this rebellion? Then there is no necessity to free the slaves in order to raise an army.

But it is a convenience, perhaps some will say. Sir, it is not because a measure would be convenient that Congress has authority to adopt it. The measure must be appropriate and needful to carry into effect some granted power, or we have no authority to adopt it. I can imagine a thousand things that would aid us to raise troops, which no one would contend Congress had authority to do. We now find that it is costing us a large sum of money to carry on this war. There are apprehen-

sions in some quarters that the finances of the country will not be sufficient to prosecute it to the end. A measure that would enable us to carry on the war cheaper would certainly be one in aid of this war power. In consequence of the prosperity which prevails in the country, wages at this time are very high. Men are unwilling to enlist without large bounties and large pay, because they get high wages at home. Suppose we introduce a bill that no man shall be paid in any manufacturing establishment, at any mechanic art, or for his daily labor, more than ten cents a day, and we visit with penalties and punishment any man who shall give to his employee more than that sum; do you not think that would hold out an additional inducement to volunteer? But who would contend that Congress had any such authority? Manifestly it has not. Nor can I find the constitutional authority to abolish slavery everywhere by act of Congress as a necessity to prosecuting the war.

Then, sir, in my judgment, the only effectual way of ridding the country of slavery, and so that it cannot be resuscitated, is by an amendment of the Constitution forever prohibiting it within the jurisdiction of the United States. This amendment adopted, not only does slavery cease, but it can never be reëstablished by State authority, or in any other way than by again amending the Constitution. Whereas, if slavery should now be abolished by act of Congress or proclamation of the President, assuming that either has the power to do it, there is nothing in the Constitution to prevent any State from reëstablishing it. This change of the Constitution will also relieve us of all difficulty in the restoration to the Union of the rebel States when our brave soldiers shall have reduced them to obedience to the laws.

Henry Wilson [Mass.] followed in a speech, entitled "The Death of Slavery Is the Life of the Nation."

I think it is reasonable to suppose that if this proposed amendment passes Congress it will within a year receive the ratification of the requisite number of States to make it a part of the Constitution. That accomplished, and we are forever freed of this troublesome question. We relieve Congress of sectional strifes, and, what is better than all, we restore to a whole race that freedom which is theirs by the gift of God, but which we for generations have wickedly denied them.

Slavery is the conspirator that conceived and organized this mighty conspiracy against the unity and existence of the Re-

public. Slavery is the traitor that madly plunged the nation into the fire and blood and darkness of civil war. Slavery is the criminal whose hands are dripping with the blood of our murdered sons. Yes, slavery is the conspirator, the traitor, the criminal that is reddening the sods of Christian America with the blood of fathers and husbands, sons and brothers, and bathing them with the bitter tears of mothers, wives, and sisters.

Sir, slavery—bold, proud, domineering, with hate in its heart, scorn in its eye, defiance in its mien—has pronounced against the existence of republican institutions in America, against the supremacy of the Government, the unity and life of the nation. Slavery, hating the cherished institutions that tend to secure the rights and enlarge the privileges of mankind; despising the toiling masses as mudsills and white slaves; defying the Government, its Constitution and its laws, has openly pronounced itself the mortal and unappeasable enemy of the Republic. Slavery stands to-day the only clearly pronounced foe our country has on the globe. Therefore, every word spoken, every line written, every act performed, that keeps the breath of life in slavery for a moment, is against the existence of democratic institutions, against the dignity of the toiling millions, against the liberty, the peace, the honor, the renown, and the life of the nation. In the lights of to-day that flash upon us from camp and battlefield, the loyal eye, heart, and brain of America sees and feels and realizes that the death of slavery is the life of the nation! The loyal voice of patriotism pronounces, in clear accents, that American slavery must die that the American Republic may live!

Sir, under the Constitution, framed to secure the blessings of liberty, slavery strode into the chambers of legislation, the halls of justice, the mansions of the Executive, and, with menaces in the one hand and bribes in the other, it awed the timid and seduced the weak. Marching on from conquest to conquest, crushing where it could not awe, seduce, or corrupt, slavery saw institutions of learning, benevolence, and religion, political organizations and public men, aye, and the people, too, bend before it and acknowledge its iron rule. Seizing on the needed acquisitions of Louisiana and of Florida to extend its boundaries, consolidate its power, and enlarge its sway, slavery crossed the Mississippi and there established its barbarous dominion against the too feeble resistance of a not yet conquered people. Controlling absolutely the policy of the South, swaying the policy of the nation, impressing itself upon the legislation, the sentiments, and opinions of the North,

slavery moved on to assured dominion. Under its aggressive advances emancipation societies, organized by the men of the revolutionary era in the first bright ardor of secured liberty, one by one disappeared; presses and churches forgot to remember those in bonds as bound with them, and recreant sons disowned the sentiments, opinions, and principles of a glorious ancestry. And slavery, in the pride of power, proclaimed itself in the halls of Congress, through its apostles and champions, its Calhouns and McDuffies, "a positive good," "the only stable basis of republican institutions," "the corner-stone of the republican edifice."

But amid this general defection from the faith of the statesmen and heroes of the revolutionary age, a fearless and faithful few clung to the teachings of Washington and Franklin, Jefferson and Jay, and their illustrious compeers. Unawed by its power, unseduced by its blandishments, they opposed to the aggressions of slavery—aye, to slavery itself—a stern and unyielding resistance. They proclaimed emancipation to be the duty of the master and the right of the slave. To advance the cause of emancipation and to improve the condition of free people of color they avowed their readiness to use "all means sanctioned by law, humanity, and religion." Slavery marked and branded these heroic men as political and social outlaws; compelling them, in the words of John G. Whittier, "to hold property, liberty, and life itself at the mercy of lawless mobs." Slavery cast its malign influence over all the land, maddening the brain and firing the heart of a deluded people against the fearless few who opposed its aggressions and pitied its hapless victims. Passion—blind, unreasoning passion—ruled the hour. Cities were lighted by the sacked and burning dwellings of a proscribed and hated race. Churches, institutions of learning, and presses were often forcibly closed or destroyed at the bidding of slavery by the lawless violence of "gentlemen of property and standing."

Slaves were held in the District of Columbia, and slave pens and the slave trade polluted and dishonored the national capital under the color of laws for which the people of America were responsible in the forum of nations and before the throne of Almighty God. Christian men and women, oppressed with the sin and shame, humbly petitioned Congress to relieve them from that sin and shame by making the national capital free. Slavery bade its tools—its Pattons, its Pinckneys, and its Athertons—violate the constitutional right of petition, and willing majorities hastened to register its decree. Slavery arraigned

before the bar of the House of Representatives John Quincy Adams, the illustrious champion of the right of petition and the freedom of speech, and it expelled the fearless and faithful Giddings for the offence of daring to construe the Constitution of his country and interpret the law of nations. Slavery stepped upon the decks of Massachusetts ships in the harbor of Charleston, seized colored seamen, citizens of the commonwealth, and consigned them to prisons, to be fined, to be lashed, and to be sold into perpetual bondage. Massachusetts, mindful of the rights of all her citizens, sent Samuel Hoar, one of her most honored sons, to test the constitutional rights of her imprisoned citizens in the judicial tribunals. Slavery cast him violently from South Carolina, and enacted that whoever should attempt to defend the rights of colored seamen in the courts of that commonwealth should suffer the ignominy of imprisonment.

Slavery cast its devouring eye upon the broad, rich fields of Texas, and sent its pioneers to wrench them from the feeble grasp of the Mexican republic. By the pen of Calhoun, its great champion, slavery in the name of the nation demanded, in the face of Europe, the annexation of that slaveholding republic, to defeat ultimate emancipation there, and to tighten the fetters of the bondmen here. In obedience to the humiliating demand of slavery, Texas was forced into the Union by an unconstitutional joint resolution, and the nation plunged into a war with Mexico. When peace returned, it brought with it half a million square miles of free territory. The North, the humiliated North, timidly asked that this territory, made forever free by Mexican law, should be forever consecrated to freedom by national legislation; but slavery demanded the right to extend itself over these free Territories, and threatened the dismemberment of the Union if that claim was denied. California framed a constitution and asked admission as a free commonwealth, but slavery resisted her admission with menaces of disunion and civil war. To appease slavery, a pliant Congress organized Utah and New Mexico, so that slave masters could range over them with their fettered bondmen, gave fifteen thousand square miles of the free soil of New Mexico to slaveholding Texas, and with them $10,000,000, and enacted the unconstitutional, inhuman, and unchristian Fugitive Slave Act, that has dishonored and humiliated the nation before earth and heaven. Slavery then, in its hour of complete triumph, insolently demanded that the two great political parties, who had shrunk appalled before its menaces of disunion and civil war,

who had betrayed the cause of freedom, humanity, and civilization in America, should now declare these its acts "finalities," and bid the people forever cease "agitation."

Having forced these parties to pronounce its legislation of 1850 a "finality in principle and substance," slavery strode like an imperial despot into these chambers and demanded the repeal of the Missouri prohibition of the 6th of March, 1820, and a faithless Congress and a subservient Executive hastened to open half a million square miles, in the central regions of the Republic, consecrated forever to freedom and free labor, to the footsteps of the bondman. Northern freemen went to that magnificent Territory to found there the institutions of freedom. Slavery made its brutal tools invade Kansas, seize the ballot box, elect a territorial legislature, enact inhuman and unchristian laws, bathe the virgin soil of that beautiful region with the blood of civil war, frame a slave constitution by fraud, and force it upon a free people. Faithfully did the propagandists of slavery labor in Kansas and in Congress, and in the executive departments of the Government, to execute its decrees. They invaded the Territory, they usurped the government, they enacted slave statutes, they robbed and burned, they murdered brave men contending for their lawful rights. In Congress, the champions of slavery were hardly less brutal than in the wilds of distant Kansas. My colleague [Mr. Sumner] portrayed the crimes of slavery against Kansas, and he was smitten down upon the floor of the Senate by "a brutal, murderous, and cowardly assault." The propagandists of slavery framed a slave constitution, sustained it by fraud and violence, and the weak and wicked administration of James Buchanan, in obedience to the imperative demands of slavery, attempted to force it by corruption through Congress upon an unwilling people, but for the first time slavery was baffled, defeated, dishonored. Freemen triumphed; Kansas came into the Union radiant with liberty.

Sir, slavery saw its waning power; it saw, too, that its criminal victories of the past were but barren and fruitless triumphs that turned to ashes on the lip. It then wrung from the Supreme Court the Dred Scott decision, by which it hoped to control the vast Territories of the Republic, even against the will of the actual settlers. It bade the legislature of New Mexico enact a slave code, and also a code for the enslavement of white laboring men. It sent Walker and his filibusters to Central America to win slave territory. It sighed for Cuba, which it could not clutch. It mobbed, flogged, expelled, and sometimes murdered Christian men and women in the South for no

offence against law, humanity, or religion. It maddened the Southern brain and fired the Southern heart. It turned large masses of the people of the South against the institutions and the people of the North, against the Constitution and the old flag of their country. It came into the Thirty-sixth Congress threatening to dismember this Union of constellated commonwealths if the people of America should elect a President opposed to its admission into the Territories. It rushed into the Democratic national convention, and, as the first step toward disunion, severed the Democratic party. It then went into the presidential election, seeking defeat, yet threatening the vengeance of disunion and civil war if defeated. Regardless, however, of its treasonable menaces, the people went to the ballot boxes and made Abraham Lincoln President of the United States. Slavery instantly raised the banner of treason, dragged South Carolina with headlong haste into open rebellion, and forced other States swiftly to follow her example. Slavery organized conspiracies in the cabinet, conspiracies in Congress, conspiracies in the States, conspiracies in the army, conspiracies in the navy, conspiracies everywhere for the overthrow of the Government and the disruption of the Republic. At the bidding of slavery the oft-vaunted Southern Confederacy, the dream of slaveholding traitors for thirty years, rose upon the recognized basis that bondage was the normal condition of all men of the African race. Slavery bade those of its champions who were in the service of the nation leave cabinets and Senates, military posts and naval stations, for the service of the rebellion; and, at the bidding of slavery, Floyd, its truest exponent, left the cabinet when there seemed nothing more for him to steal; and Davis and Toombs, Slidell and Mason, Hunter and Benjamin, and their guilty compeers in treason, in solemn mockery left the chambers of Congress when the plots, conspiracies, treacheries, and perjuries imposed upon them by the great architect of ruin seemed accomplished.

Sir, not content with seizing forts, arsenals, arms, and public property everywhere within the rebel States, slavery bade the frowning batteries menacing Sumter fire upon the *Star of the West* sailing under the protecting folds of the national flag, and freighted with bread for starving soldiers; and when that act of armed treason failed to arouse to action an insulted but patient and forbearing country, slavery bade those rebel batteries open their fire on Sumter and its few starving but heroic defenders; and those consuming batteries, in obedience to its command, hurled shot and shell upon that devoted fortress till

the glorious old flag of united America came down, and the rebel banner waved over the smoking ruins. And thus slavery, after an aggressive warfare of two generations upon the vital and animating spirit of republican institutions, upon the cherished and hallowed sentiments of a free and Christian people, upon the enduring interests and lasting fame of the nation, organizes a treasonable conspiracy, raises the standard of revolt, and plunges the nation into a bloody contest for the preservation of its menaced life. To the full comprehension of every man in America whose heart, brain, and soul have not been poisoned by its seductive arts and malign influence slavery is the cause, the whole cause, of this foul, wicked, and bloody rebellion. Every loyal American whose reason is unclouded sees that slavery is the prolific mother of all these nameless woes—these sunless agonies of civil war. He sees that every loyal soldier upon the cot of sickness, of wounds, and of death was laid there by slavery; that every wounded and maimed soldier hobbling along our streets was wounded and maimed by slavery; that the lowly grave of every loyal soldier fallen in defence of the country was dug by slavery; that mourning wives and sorrowing children were made widows and orphans by slavery. Before the tribunal of mankind of the present and of coming ages, before the bar of the ever-living God, the loyal heart of America holds slavery responsible for every dollar sacrificed, for every drop of blood shed, for every pang of toil, of agony, and of death, for every tear wrung from suffering or affection, in this godless rebellion now upon us. For these treasonable deeds, for these crimes against freedom, humanity, and the life of the nation, slavery should be doomed by the loyal people of America to a swift, utter, and ignominious annihilation.

But slavery, Mr. President, should not only be doomed to an ignominious death, to perish utterly from the face of the country, for the treasonable crime of levying war upon the Government, but the safety if not the existence of the nation demands its extermination. The experience of nearly three years of civil war has demonstrated to the full comprehension of every loyal and intelligent man in America that slavery is the motive power, the heart and soul and brain of the rebellion.

Sir, slavery not only fires the Southern heart, brain, and soul, and nerves the Southern arm in council hall and on the battlefield with its malignant hate and bitter scorn of Yankee laborers and Yankee institutions, its lofty contempt for the principles and policy of freedom, its haughty defiance of the authority of the national Government, and its gorgeous visions

of the future power of the Southern Confederacy, extending its imperial sway over Cuba, Mexico, and Central America, and commanding the commerce of the world by its tropical productions and its millions of slaves, but it uses the bones and sinews of more than three millions of the bondmen of rebel masters in support of the rebellion. These slaves of rebel masters sow and reap, plant and gather the harvests that support rebel masters and feed rebel armies. By their ceaseless, unpaid toil, these millions of bondmen enable their traitorous masters and the poor white men of the rebel States to leave their fields and shops and rush to the battlefield to shed the blood of our loyal countrymen, of our neighbors and friends and brothers and sons. These bondmen throw up fortifications, dig trenches and rifle pits, make roads and bridges, fell forests and build barracks, drive teams, and relieve in many ways the toil of rebel soldiers, thus making more efficient the rebel armies. The spade and hoe of the slaves of rebels support the rifle and bayonet of rebel soldiers. Slavery is not only the motive power, the heart and soul of the rebellion, but it is the arm also. Therefore the preservation of the life of the country, and the lives of our brave soldiers battling for national existence, as well as the just punishment of conspiracy and treason, demand that the loyal men of the Republic shall swear by Him who liveth evermore that slavery in America shall die.

Not only the punishment of its appalling crimes, not only the lives of our countrymen and the preservation of the life of the nation, demand the utter extermination of slavery, but the future repose of the country also demands it. Slavery has poisoned the very fountains of existence in the South; it has entered into the blood and bone and marrow and the soul of our Southern countrymen. It has filled their bosoms with bitter, fierce, unreasoning hate toward their countrymen of the North, and the institutions, the Government, and the flag of their country. So long as slavery shall live, it will infuse its deadly and fatal poison into the Southern brain, heart, and soul. Then let slavery die a felon's death, and sink into a traitor's grave, amid the curses of a loyal nation. Then, when slavery shall sleep the sleep that knows no waking, in the grave of dishonor and infamy, reason will assume its mild sway again over our now maddened, poisoned, and intoxicated countrymen of the South. Take the maddening cup from the trembling hand of the drunkard, who, in his wild delirium, hates the mother who bore him, the wife of his bosom, and the children of his love, and that drunkard will be a man again, and love,

cherish, and protect the mother, wife, and children he would smite down in his madness. Smite down slavery, strike the fetters from the limbs of its hapless victims, and slave masters will become loyal again, ready to pour out their blood for the Government they now hate and the country they now assail. They will recur to the recollections of the early days of the Republic with gratitude and patriotic pride, they will look forward with undoubting confidence in the future of their country. Their hearts will again throb with kindly regard for their countrymen of the North, and they will hail once more the beneficent institutions of a united country. The old flag, under which the men of the North and of the South fought and bled, side by side, on land and wave, will again be an object of affection and pride; its stars, now obscured to their vision, will gleam again with brighter luster and more radiant beauty.

Congress, not by the consent of the loyal States or loyal masters, but by the will and power of the nation, has made free at once and forever every slave who enlists into the military service. The Attorney-General pronounces the black man, who was said to have no rights that white men were bound to respect, a citizen of the United States. The Secretary of State gives the black man the passport of citizenship, which in every quarter of the globe is evidence that the bearer is a citizen of the North American Republic. The Secretary of War commissions a black man to be a surgeon in the military service of the United States, and the President organizes a hundred and twenty regiments, of eighty thousand black men, who are bearing upon their flashing bayonets the unity of the Republic and the destinies of their race.

Sir, slavery in America, though upheld by interests, customs, and usages, trenched about by inhuman statutes, and hedged around by passionate, vehement, and unreasoning prejudices, is fast crumbling to atoms beneath the blows rained upon it by a liberty-loving and patriotic people. But let anti-slavery men listen to no truce, to no compromise, to no cry for mercy. Let them now be as inflexible as justice, as inexorable as destiny. Whenever and wherever a blow can be dealt at the vitals of the retreating fiend, let that blow be struck in the name of the bleeding nation, and of the "dumb, toiling millions bound and sold." A truce with slavery is a defeat for the nation. A compromise with slavery is a present of disaster and dishonor and a future of anarchy and blood. Mercy to slavery is a crime against liberty. The death of slavery is the annihilation of the rebellion, the unity of the Republic, the life of the nation, the

harmonious development of republican institutions, the repose, culture, and renown of the people.

The hideous Fugitive Slave Act still blackens the statutes of this Christian land, reminding us of the degradation and humiliation of our country when the heel of that master was on its neck. Justice and humanity, self-respect and decency, all demand that the lingering infamy shall be obliterated from the page it blackens.

If this amendment shall be incorporated by the will of the nation into the Constitution of the United States, it will obliterate the last lingering vestiges of the slave system.

Our country is now floating on the stormy waves of civil war. Darkness lowers and tempests threaten. The waves are rising and foaming and breaking around us and over us with ingulfing fury. But amid the thick gloom, the star of duty casts its clear radiance over the dark and troubled waters, making luminous our pathway. That duty is, with every conception of the brain, every throb of the heart, every aspiration of the soul, by thought, by word, and by deed to feel, to think, to speak, to act so as to obliterate the last vestiges of slavery in America, subjugate rebel slave masters to the authority of the nation, hold up the weary arm of our struggling Government, crowd with heroic manhood the ranks of our armies that are bearing the destinies of the country on the points of their glittering bayonets, and thus forever blast the last hope of the rebel chiefs.

Then shall the waning star of the rebellion go down in eternal night, and the star of peace shall ascend the heavens, casting its mild radiance over fields now darkened by the storms of this fratricidal war. Then, when "the war drums throb no longer and the battle flags are furled," our absent sons, with the laurels of victory on their brows, will come back to gladden our households and fill the vacant chairs around our hearthstones. Then the star of United America, now obscured, will reappear, radiant with splendor on the forehead of the skies, to illume the pathway and gladden the heart of struggling humanity.

On March 30 Garrett Davis [Ky.] spoke against the proposed amendment.

I am opposed to the pending proposition to amend the Constitution of the United States for several reasons intrinsic to the subject. In the first place, it strikes at one of the most

essential principles of our commingled system of national and of State governments.

To maintain the Union, to hold it in its harmonious and perfect action, it is as essential that the existence of the authority and powers of the States within their reserved sovereignty should be upheld, maintained, and preserved as it is that the limited and delegated powers and sovereignty of the general Government should exist, be supported, defended, and exercised.

The absorption of the sovereignty not delegated by the Constitution to the general Government, and consequently reserved to the States, or any portion of it, by the President or Congress, would be revolutionary and destructive of our system, as would be the absorption by the States of the sovereignty, or any portion of it, delegated to the Government of the United States. The encroachment of either upon the other is equally unauthorized and criminal, and the persons engaged in making it are punishable for parallel offences by their respective judicial tribunals. Mr. President [Mr. Powell in the chair], it is clearly and imperatively the duty of you and myself to defend the reserved rights and sovereignty of Kentucky against the encroachments of Abraham Lincoln and his party, as it is to defend the limited sovereignty of the United States against the assaults of the rebels. To fail in either would be equally delinquent and criminal. Whoever, and by whatever command, has resisted by an array of force the execution of the laws of Kentucky has committed the offence of treason against that State, and should suffer the penalty denounced against the crime. The President of the United States, the Secretary of War, and generals high in command have moved armed bodies of men into Maryland, Delaware, Kentucky, and Missouri, to resist and defeat the execution of the election laws of those States, and have themselves, by the power of the sword, driven their free citizens from their own polls, and themselves virtually appointed the minions of executive power to seats in the House of Representatives of Congress and to State offices. Those high functionaries thereby committed treason against those States, and the most important and imperative duty of their authorities and people is to have those great delinquents arraigned and punished for their crimes by the judgment of the courts of the States against which they were committed. The punishment of Federal officers so high in authority for the commission of treason against the States, by the just and firm execution of the law in their civil courts, would be an example of the most salu-

tary influence. To suppress the rebellion by force of arms, and to punish by the due administration of the law its most guilty authors, and also the great violators of the Constitution of the United States, who profess to be acting under its authority, and who have committed treason against States, would effect more in the support and preservation of constitutional liberty, and to vindicate the capacity of the people for self-government than the performance of any other duty or work.

But to the objection that the proposed amendment of the Constitution would infringe the right of the States to manage their local and domestic affairs, it may also be answered that slavery concerns all the States as well as those in which it exists. If there be truth in this position, it may be replied that there is no important property interest, pursuit, or institution in any State that does not, directly or indirectly, concern the people of every other State; and that argument would require the Constitution of the United States to be so amended as to give the Federal Government power over all of them, which would establish a perfectly consolidated Government and virtually annihilate the States.

There are many matters, the control of which is left by our Government wholly and exclusively with the States, and over which the people would not have confided to Congress and the President a particle of power when the Constitution was formed, that much more closely and momentously concern all the States than the continuance of slavery in some of them. Religious faith is one. The Federal Government has no power to interfere in any way with the subject of religion. The *entailment* of real and personal property, the principle of *primogeniture*, a system of railroads and other internal improvements in the several States connecting with the systems of other States—all these are subjects of domestic and local concern within every State, of which it has the exclusive management; and yet each one more nearly, and with larger interest and greater sympathy, would concern the people of all the other States than does slavery in the slave States the people of the free States.

Slavery, in this day and generation, has for the people of the United States a factitious but an absorbing interest; in the future, under altered circumstances, the others, and especially religion, may still more strongly possess them. If this proposed alteration of the Constitution be accepted it will be a precedent, and may establish a principle that may carry those other domestic concerns, and still others not now thought of, into the

domain of an encroaching and centralized despotism, and which would be a very great stride.

If it were conceded that the power to amend the Constitution, as established and regulated by the fifth article, would by its terms and letter authorize the proposed change, it would be in fatal conflict with its intent and spirit, and, therefore, according to a universal rule of construction, void and of no effect. It never was the purpose of those who made it to subject many of its great principles to be expunged by the exercise of this power of amendment. The power to amend is but the power to improve, and any alteration to be legitimate should be an amendment. To this it may be said that as there is no certain test by which this question of amendment can be tried it is necessarily decided by the amending power. Granting this argument to be sound, still there is another and very important question connected with this power of amendment. Does it import the power of revolution? Of making such essential change in the nature, form, powers, and limitations of the Government as would be revolutionary of it—of its important structure, of its characteristic principles, of the great and essential rights and liberties assured by it to the citizen? The true and precise question is, does the proposed change, or *amendment*, carry a revolutionary principle and power? I hold that the framers of the Constitution did not intend it to be, and that it is not, in its nature or in fact, a revolutionary power; that there is a boundary between the power of revolution and the power of amendment, which the latter, as established in our Constitution, cannot pass; and that if the proposed change is revolutionary it would be null and void, notwithstanding it might be formally adopted. It would not be a part of the Constitution, and would consequently have no effect. An amendment proposing to abolish all the popular elective features of our Government, or that Representatives should hold their offices for life; that the place of Senator should be hereditary, coupled with a title and the privileges of nobility; that the President should be a king, and transmit his crown and throne as in England, would be revolutionary, and out of the power of the pale of amendment. Neither the legislative, executive, nor judicial branch of the Government could be swept away under the guise of the exercise of this power of amendment. The States and their governments are as essential and indispensable parts of our compound system of government as the United States and the Federal Government, and could not be expunged by this power of amendment. The retention by

the States of their exclusive rights, and the right to ordain, manage, and control them, independent of all control or interference by the United States Government any more than of a foreign power, is a great and essential feature of our system, and it cannot be revolutionized, destroyed, by this power of amendment. If it can take cognizance of slavery, it may of every other local and domestic concern of the States. That would be revolutionary, and is therefore out of the domain of amendment. The power of amendment can only be made to embrace the forms and the provisions and principles of secondary importance.

If the principle involved by the proposed amendment be sound, and, it, if formally adopted, would be valid and obligatory, then in the same mode the terms of the members of the House could be extended for seven years; Senators could be metamorphosed into hereditary nobles, with titles, and the President into a monarch; and any other changes, utterly revolutionary and destructive of our Government and the popular freedom it establishes, could be made. No, sir, this power of amendment does not carry the power of revolution, in whole or in part, to be executed *in solido* or in detail, to burst forth at once in full-grown proportions, or to be cautiously developed from time to time and by gradual accumulation, like Mr. Lincoln's war policy, until the whole work is consummated. Neither the subversion of our free and popular Government, nor any of its great distinctive and essential features, or of those preëxisting and vital rights and liberties to secure and perpetuate which to the people were its object and its mission, is within the legitimate scope and operation of the power of amendment. That would be in both aspects, not amendment, but destruction and revolution.

Nor, sir, is the present condition of the country and the people at all propitious or fit to enter upon the most grave and important work of amending, altering the Constitution of our Government, the paramount law which regulates and controls within its orbit the constitutions, laws, and administrations of all the States and every official act of Congress, of the President, and of every other officer of the United States. The revision of the work of the preëminently great and patriotic men who put together that wonderful political structure, so admirably adjusted and balanced, so novel yet so complete, so free and yet possessed of all the necessary and proper powers and vigor, is one of the most delicate and important tasks which those who are to perform it can possibly undertake. They ought to be free

from all sectional prejudice and excitement, and bring to it calm and unperturbed reason and broad and true patriotism and statesmanship. The condition of the country should be fixed, that of settled and stable repose, that any changes and modifications might be safely and wisely adapted to its permanent relations, interests, and tranquillity.

There is every probability that when the war is closed modifications of the Constitution will then be highly necessary and proper; but their nature, extent, and the features and powers of the Government in which they may be required cannot be possibly divined. Now to make any might mar rather than improve.

But when to this consideration, the unsettled condition of the country, is added the present state of the mind and passions of the people, nationally, sectionally, and individually, the position that now is not the proper time to intermeddle with the Constitution cannot, with any reason, be controverted. No man is free from apprehension and excitement, and with vast numbers it approximates frenzy, mania. Sectional opinions and prejudices were never before so rife and extreme. Hatred to slavery and slave owners by the members of the Republican party generally has demented them. They are wholly incapable of any fair and just consideration of the rights of slaveholders, in relation not only to that property, but all their other rights individually and collectively as slaveholding States. Extreme aversion and prejudice with both of those classes of the people have usurped the place of reason and truth. Neither entertains for the other any sentiments of kindness, fraternity, charity, or justice. I have no belief that there is in either House of the present Congress, or that there would be in the legislature or convention of any one of the States, a single member whose mind and passions are so little affected by the present condition of public affairs as not to be disqualified for the delicate and difficult work of revising and altering the common government of all the States and all the people of the United States. I believe with the most of them that unfitness would exist to such an extent as to make it impossible for them to deliberate and act, not only impartially and justly for their adversaries in politics and their sections, but also wisely and safely for themselves and their own States.

Another objection of overruling weight is that no revision of the Constitution in any form ought to be undertaken under the auspices of the party in power. Its leaders have always been hostile to the compromises on the subject of slavery, and

the protection which it guarantees to the owners of that property. From a much earlier day than secession was thought of in the South, those leaders had determined on the destruction of slavery; and, if they could not succeed by any other means, even to revolutionize the Government to effect it. They did not bring on a general war to that end, though they had long assaulted it in every other form; and as soon as the rebellion broke forth they quietly decided, if possible, to make it the occasion and to furnish the means of the overthrow of slavery. Mr. Lincoln had been an extreme abolitionist from early life; and it was that consideration that procured him the nomination of the Chicago convention. When he and the chiefs of his party in Congress, at the commencement of the war, unanimously declared that their purpose and policy were not to attack slavery, or any other rights or institutions of the insurgent States, but only to vindicate the authority and laws of the United States over the rebels, they were dissembling, and then lying in wait to make an onset on slavery. They knew that their purpose could be effected only by breaking over constitutional guaranties, and by the power of the army to subdue all opposition to their scheme. There is no right of person or property that the President and Congress have not outrageously infracted and trampled out, under and by the agency of the iron heel of military despotism, to subjugate or awe every person disposed to offer even legal and peaceful resistance to their flagrant abuses and usurpations of power. As they progressed, and met with impunity in their nefarious work, their objects were enlarged. They determined not only to consummate the destruction of slavery, so that it could never be restored, but also to continue themselves and their party in place and power. The first they consider substantially as an accomplished fact; and they are, and have been for more than a year, moving with increasing energy and boldness toward the other as their now paramount object. They affect to adhere to the forms of the Constitution, while they utterly disregard not only its spirit, but also its express provisions and all the liberty and protection which it assures to the citizen. They have devised the boldest and most revolutionary measures under the guise of law and executive administration as the machinery of their operations. The first in time was the erection of West Virginia into a new State, and her admission into the Union in palpable violation of the Constitution, so admitted and avowed by many of their leaders both in and out of Congress; and attempted to be justified by them on the ground that the country was in a state

of rebellion and revolution, and the Constitution of no obligation whatever. The President took the official opinion of the Attorney-General, which was that the measure was without constitutional authority, and yet he approved it.

After the congressional elections in the fall of 1862 it was apparent that, if those which were to take place in the other States in 1863 were to be decided by the free suffrages of their people, Mr. Lincoln and his party would be in a minority in the present House. The success of their projects and the retention of power by them made it necessary that they should have the majority in the House as well as in the Senate. He therefore ordered the military authorities to interfere and overthrow the freedom of elections, and to depose the State laws and officers for conducting them in Missouri, Kentucky, Maryland, and Delaware, to the extent of securing a majority for him in the House. To that extent he was equally a usurper with Cæsar, Cromwell, and Bonaparte.

But Mr. Lincoln has long since imbibed other views and projects of personal ambition. A desire for reëlection has seized upon him. It now possesses all the mind and heart and soul that he has. He is no statesman, but a mere political charlatan. He has inordinate vanity and conceit. He is a consummate dissembler, and an adroit and sagacious demagog. He has the illusion of making a great historical name for himself in connection with the total abolition of slavery in the United States. He also loves power and money. He has long foreseen that in his desire for reëlection he would have several competitors from his own party. He is not fierce or revengeful, or even boldly audacious and radical; and, though not marked by any sense of benevolence, humanity, or justice, he does not possess positively the opposite qualities, and, though a radical, is not reckless or rash. He is, and always has been, as uncompromisingly opposed to slavery as the most ultra radical, but preferred to overthrow it with some show of legal and constitutional authority; and that it should be effected gradually, and not by sudden and violent change. Such were his first and individual views and policy in relation to slavery; but, being rather of flexible but still obstinate nature, the pressure of the bold and more energetic radicals has pushed him pretty well nigh to their extreme position. As this "marshaled him the way he was going," he is well disposed to accept it, and, if it promised to aid him materially in his purpose of a reëlection, he would not hesitate to take it with alacrity. But he understands that most of the radicals prefer

other men to himself, and, while he must manage to satisfy and win them if possible, and especially as their second choice, he must hold on to all the moderate men of the Republican party, and by some show of conservatism win others outside. This keeps him very busy at his favorite game of "playing for all the pockets."

But he regards, and with much truth, that his personal, official, and distinctive party consists of the officeholders and seekers, contractors and those seeking contracts, whose numbers are greater than our armies in the field. To those prætorian, not *cohorts,* but *legions,* he was determined to add others in his own especial interests. Hence he issued another edict, the effect of which was to demolish all the constitutions and governments of the rebel States, and among them Tennessee and Arkansas and other States whose constitutions have not been changed in a particle within many years before the rebellion; and to authorize one-tenth of as many people as voted in them at the last presidential election to reconstruct and to carry on their State governments. But he prescribed as the indispensable condition that all men who took part in the reconstruction must renounce their negro property and take an oath to support his war policy as embodied in all his proclamations and the laws of Congress passed by his party. He pledged his faith to support and defend these spurious State governments by the power of the United States armies and navies. All their elections were to be under the surveillance of the President's military subordinates; and consequently none but his minions and tools could vote or hold office. The reorganization of those States is to be virtually by him and for all his purposes. They were designed to be dependencies and he the autocrat. The world never witnessed a more lawless and daring political enterprise, and, except in the feature of blood, it comes up to the measure of the greatest usurpations. The people of the States are the only legitimate power to construct or reconstruct their civil governments; and Congress, and not the President, is the authority to admit them primarily, or secondarily, into the Union, and to guarantee to them *republican forms of government.* Mr. Lincoln seizes upon all this power. Under this presidential autocracy, old, or Eastern, as well as West Virginia, Louisiana, Arkansas, Tennessee, and other rebel States have been or are to be readmitted into the Union, and to take part with the other States in its government. By the present ratio all Virginia, east, west, and rebel, would be entitled to eleven Representatives in Congress. The new State has three, and it

is a question what portion of the residue the few counties of the other division of the State within our military lines can rightfully have, and, a yet more difficult one, what number of electoral votes in the presidential election will be the right of those few counties. The new State having but three for her Representatives and two for her Senators, if those few counties can elect the residue for the whole of the remaining State, and also for its two Senators, the new State and a small fractional part of the remainder of the State would cast together fifteen electoral votes. That vote by those counties would give them a very undue and unconstitutional weight over the people of the other States in the presidential election. If that will be permitted may depend, I presume, upon the problem whether it would be necessary to reëlect Mr. Lincoln. To effect that object I believe a separate State could and would be organized out of East Tennessee, and two in Maryland, one upon the eastern and the other upon the western shore, without the least regard to constitutional difficulties. When Louisiana is readmitted she will be entitled to seven electoral votes, Tennessee to ten, Arkansas to five, and all Virginia to fifteen. So that by the organization of these four "rottenborough" and unauthorized States there would be secured to Mr. Lincoln not only thirty-seven electoral votes in the presidential election, but, what may be even of more importance, that number in the Republican nominating convention at Baltimore. I take it for true that these illegitimate States, being the progeny of Mr. Lincoln, will support him when and where and anyhow they can. They will also be ready to vote for this proposed amendment of the Constitution.

But Mr. Lincoln is a cautious and farseeing man. He has had still another provision made, first and mainly for his own personal success, subordinately for that of his party. The Territories of Colorado and Nevada have already, at the present session, been admitted as new States into the Union; and the chairman of the Committee on Territories has told us, and no doubt truly, that Nebraska will also be admitted. Thus there will be admitted three more new States, each with one Representative and two Senators, having an aggregate of eleven electoral votes and an equal strength in the Baltimore convention. I believe, both on principle and policy, that no Territory ought to be admitted as a State until it has a population equal to the ratio of representation. That ratio is now 127,000. By the census of 1860, Colorado had a population of 34,277; Nebraska, 28,841; and Nevada, 6,857.

Thus by military interference at elections, the destruction and reorganization of States, the admission of new States with but a small fraction of the ratio of population, all by infraction of the Constitution, and in opposition to right, justice, and policy, and chiefly by the power and under the supervision of Mr. Lincoln, a great and dangerous strength has been accumulated to him as President to be exercised to promote his own selfish and ambitious views in the first place; and, secondly, to continue his party in power to enable it to protract the aggrandizement of its leaders, the pecuniary advantages of its masses, and the complete consummation of its most wicked and destructive policy and measures.

Our own Government has become so abused and perverted, so unjust and oppressive to all who will not bow to those who administer it in unquestioning submission, so fruitful and general a source of evil and practical despotism, that hundreds of thousands and millions of the most loyal people of the United States are in doubt whether it, as administered, or the rebellion is the greatest national scourge. The assaults, wrongs, and oppressions of both on the border slave States is such as to be passing them, as it were, between the upper and nether millstone. The greatest good that could now fall to the lot of the people of those States would be the speediest suppression of the rebellion by all constitutional measures and means, and by the expulsion from power of the party that has possession of the Government and is ruling the country and so recklessly rushing both upon ruin. I look for the consummation of the first to the continued efforts of our brave and numerous soldiery and the submission of the rebels. For the second I still rely upon the peaceful remedy of the ballot-box, applied by the sovereign power of the United States; and, if it were applied so as to produce that great change, I believe that the cessation of the war, the submission and reconciliation of the rebels, the reconstruction of the Union, and the vindication of the laws and Constitution, with renewed guaranties and strength, would all speedily ensue. But if the dominant party can continue their power and rule, either by the will or acquiescence of the people or the exercise of the formidable powers which it has usurped, I am not able to see any termination of the present and still growing ills short of the ordeal of general and bloody anarchy.

On March 31 Willard Saulsbury [Del.] replied to Senator Trumbull.

Mr. President, we are told that the reason why this amendment should be made is that slavery has caused the present national difficulties; that if it had not been for the existence of slavery there would be no war. The honorable chairman of the Judiciary Committee tells us that even if the present troubles have been brought on by the interference of Northern fanatics with the institution of slavery, then if slavery had not existed there would have been nothing for them to interfere with, and the rebellion would not have taken place; that if it was brought on by the desire of the people of the South to strengthen and encourage the institution, then if it had not existed the rebellion would not have taken place; and he seems to think that to it we owe the loss of freedom of speech, freedom of the press, and most of the ills under which we are now suffering. He therefore proposes as the great remedy,—I presume not only to heal our present troubles, but as a bond of peace in the future—that the institution of slavery shall be wiped out by a change of the Constitution.

If there had been no fire, so large a portion of the city of New York as was burned down in 1835 would not have been burned down. If there was no water, there would be no overflowing floods. If there was no sun in the heavens, no man would fall prostrate to the earth and die from the heat of that sun. Let the Senator correct all the ills of life. Let him quench the fire that warms all the human race, and no incendiary then could burn our dwellings; let him dry up the fountains of the deep and close the windows of heaven, that there shall be no more water; let him pluck the sun from on high, that his heat shall no more cause death.

But, sir, I hold that if you adopt this amendment, and you could get three-fourths of the States to ratify it, it would not be obligatory upon the others for another reason; and that is that you cannot propose this amendment to all the States, as contemplated by the Constitution of the United States. There are confessedly some eight or nine of these States now out of the Union, over which the Federal Government does not pretend to exercise control. What is the meaning of the clause that the Congress of the United States may propose amendments which, when ratified by three-fourths of the States, shall become a part of the Constitution? It means that you shall propose those amendments, not to a portion of the States, but to all the States, so that all the States may have the power to act upon them.

The Constitution of the United States is the same as any

other contract. It is a contract between the States, who, in the language of Mr. Madison, are parties to it, and the plain, evident, honest import of this clause of the Constitution giving the power of ratification to three-fourths of the States is and must be so understood by all right-thinking men, that all the States shall have the power of passing upon that proposed amendment, of ratifying or rejecting it, and that, if that privilege is denied any State, if your amendment is not proposed to any State, it cannot operate upon that State, because it would be in violation of the just terms and fair interpretation of the Constitution.

If you wish to make an amendment to the Constitution of the United States which shall be binding and obligatory in all future time upon the parties to that Constitution, why not wait till peace is restored; why not wait till passion ceases to inflame the breast and madness to warp the judgment and craze the brain of men? The fundamental law of a great people should never be changed amid the shock of arms. Reason should sit calmly on her throne; judgment should be brought to the "line" before acting on such a question.

But, sir, I oppose this proposed amendment on another ground. It is impossible for it to be ratified by a vote of three-fourths of the States. The Senator from Illinois,[1] the chairman of the Committee on the Judiciary, said it would require twenty-eight States, and he named the States which he supposed would vote to ratify it. He included all the adhering States with the exception of my own, and he thought she could not stand against it Let me tell the honorable Senator that, if the resolution is passed, I do not suppose my State will be in the way of it; not because she will approve of it; not because the majority of her people will not be honestly opposed to it and would not vote against it, but because you do not intend that they shall ever act upon it. The Senator said that Maryland had inaugurated this policy, and she would be in favor of it. I have some acquaintance with the people of that State. She will agree to it, just as the Senator, if met by a highwayman, solitary, alone, and unarmed, presenting a pistol at his head and demanding his purse, would agree to give it up.

But he expects to receive accessions from Arkansas, Tennessee, North Carolina, and Louisiana in favor of this proposed amendment. Does the Senator believe that, if the people of those States were free to act, and could pass upon his

[1] Lyman Trumbull.

proposed amendment according to their wish or judgment, there would be one man in ten who would vote to ratify it?

What is your government in Arkansas, in Louisiana, and in Tennessee? Take away your soldiers, and there would be scarcely one man in fifty in either of those States that would either approve your amendment or recognize your authority. And yet the Senator would affect the rights of nearly one-half of what was once this Union by going through—I say it in no disrespect to the honorable Senator, but I say it because I believe it and think it—going through the farce of an election under military control and restraint, and then come in the presence of the Senate of the United States and before the people of the country and of the world, and proclaim that the people of three-fourths of the States of the Union, in the spirit which their fathers intended them to act and in the free exercise of their judgments and their opinions as guaranteed to them by their fathers, have agreed to amend their Constitution and forever hereafter wipe out the foul blot of slavery!

Mr. President, nothing is to be gained by this except one thing, and that you may accomplish. You may succeed by such an amendment as this, by an election—no, not by an election, but by a farce enacted in the border States and by a worse farce enacted in some of the seceded States—you may succeed in abolishing slavery in the States of Delaware, Maryland, Kentucky, and Missouri. That is what you can do. You can succeed in injuring those who never tried to injure you; but, unless you conquer the South, unless you make them pass under the yoke as you avow your purpose to do, unless you take bodily hold of their slaves and draw them within your lines and keep them there, you have accomplished nothing. You have regarded them as belligerents, and consequently the slave you take to-day from them and put your uniform upon, if he is recaptured by them, is not free, though proclamations and legislative enactments may so declare, but is a slave still, and not only a slave by reason of the fact that he is in possession of his original master, but, by a sound principle of the law of nations, the *jus postliminii*, he reverts to his original owner.

Daniel Clark [N. H.] rebutted the argument that the time was not ripe for the amendment.

I am told that this is not the time for such an amendment of the Constitution. Pray when, sir, will it come? Will it be when the President has issued more and more calls for two or

three hundred thousand men of the country's bravest and best? Will it be when more fathers and husbands and sons have fallen, and their graves are thicker by the banks of the rivers and streamlets and hillsides? Will it be when there are more scenes like this I hold in my hand, of a quiet spot by the side of a river, with the moon shining upon the water and a lonely sentinel keeping guard, and here in the open space the headboards marking the burial places of many a soldier boy, and an open grave to receive another inmate, and underneath the words, "All quiet on the Potomac"? [Exhibiting a photograph to the Senate.] Will it be when such scenes of quiet are more numerous, not only along the Potomac but by the Rapidan, the Chickahominy, the Stone, the Tennessee, the Cumberland, the Big Black, and the Red? Sir, *now*, in my judgment, is the time, and the fitting time. Never until now could this amendment have been carried, and now I hope and believe that it can be carried. "Whom the gods would destroy they first make mad."

Slavery's strongest and safest guaranties were in the Constitution, and its supporters were made when they cast away and threw off those guaranties. Remaining in the Union, no one would probably have moved for an amendment of the Constitution. Loyal to the Government, hostile armies would not have set free their slaves, nor laws now necessary and expedient have authorized their employment against their masters in arms.

But now, sir, every free State will gladly, it is hoped and believed, vote for the proposed amendment. Most would rejoice to do it; while numbers of the slave States, aghast at the miseries of secession and the horrors of this cruel Civil War, recognizing slavery as the cause of all this disturbance and all these woes, would be among the foremost to sweep it forever away.

Now, sir, is the time to do it. And not only is now the time, but the necessity and the duty of doing it are upon us. We can have no permanent peace nor restored Union until it is done.

There are those who cry, "The Union as it was and the Constitution as it is!" But I am free and bold to confess that I am for a Union without slavery, and an amended Constitution making it forever impossible. This revolt was to preserve slavery, and we shall fail of our whole duty if we do not remove the inciting cause. To restore this Union with slavery in it when we have subdued the rebel armies would be

again to build your house on its smoking ruins when you had not put out the fire which burned it down.

If the dire calamities now befalling us be the "retributions of Providence upon a stupendous crime," what mad folly to hug that crime, and seek to avoid its future punishment! "Let my people go." But Pharaoh would not let them go; and then came sufferings, and plagues, and the smiting of the first-born. Oh! how many of our first-born have been smitten and fallen. Let us be wise and heed the teaching. There is a Providence in the great events now transpiring. The people see the hand. It points the way. They are filled with hope and faith. They follow the pillar and the cloud, and will struggle and endure.

I know, Mr. President, that the suppression of the rebellion will necessarily wound and maim slavery. I know that every victory over the rebels is a victory also over the cause of the rebellion, and I know, too, that the arming of the slaves will make the future enslaving of these men and their kindred well-nigh impossible; but slavery will still exist, not in much vigor or strength, but in the root and principle. This amendment will dig out the root and repudiate the principle.

Mr. President, in a quiet churchyard, near his home, is the grave of a soldier who returned to die. At the head of his grave is a marble slab, and on it these few but expressive words, "Mustered out." Let both Houses of Congress, by a two-thirds vote, recommend this amendment abolishing slavery, and let three-fourths of the States, burying slavery by their ratification, come and write its epitaph on the Constitution, "Mustered out."

The soldier was "mustered out," we trust, to enlist again in the shining cohorts in advance of earth's extreme picket line, but let this be "mustered out" to go, like Judas, to its own place.

On April 4 Timothy O. Howe [Wis.] spoke upon the likelihood of the border States accepting the amendment and upon the status of the seceded States.

The State of Delaware will adopt this amendment; her people will adopt it in the exercise of their free judgment. The Senator from Delaware [Mr. Saulsbury] shakes his head. I do not know but that he will oppose the amendment; that he will advise the people of Delaware not to adopt it; but his advice will not prevail, I humbly trust and I humbly believe.

Undertake to persuade that little State of Delaware not to enfranchise her few slaves when all the rest of the Union are crying for it! Dame Partington, Mr. President, standing on the beach of the Atlantic, trying to put back its waves with her mop, would be a model of practical sagacity compared with the Senator from Delaware if he should stand on the borders of that little State and undertake to persuade her not to let the deluge of freedom, which God has commanded to sweep the continent, flow over that little patch of His pasture.

Delaware will adopt the amendment, and so will Kentucky. Sir, Henry Clay sleeps in Kentucky. Let her people reject this proposition to amend the Constitution under the pressure of this great national necessity, and they would see the bones of the great hero rise from his grave and stalk indignantly from the borders; they would not rest there any longer. Kentucky will adopt this amendment. Every State will adopt it. I know that there are eleven States which have declared themselves independent of this Constitution and of all amendments to it. What are you going to do with them? There are those communities of people. They are States or they are not. It is a question that you ought to settle. In my judgment, there are no American States there. Decide the matter as you will: if they are States, they are going to vote upon this amendment, and they are going to vote for it; every man who votes at all upon it will vote to adopt the amendment. If they are not States, they are not to vote upon it, and their votes are not to be counted, and you still have a unanimous verdict from the States of the American Union in favor of this amendment to the Constitution.

On April 5 Reverdy Johnson [Md.] spoke in favor of the amendment.

To manumit at once nearly four million slaves who have been in bondage by hereditary descent during their whole lives, and who, because they were in bondage, and as one of the consequences of the condition in which they were placed, have been kept in a state of almost absolute ignorance, is an event of which the world's history furnishes no parallel. Whether if it succeeds it will be attended by weal or by woe the future must decide. That it will not be followed by unmixed good or by unmixed evil is perhaps almost certain; and the only question in my view that presents itself to statesmen is, first, whether the measure itself be right, independent of its consequences; and, secondly, whether those consequences may be such as render it inexpedient, because inhuman in other particulars, to do what is right.

There was a period in our own time when there was but one opinion upon the question of right. The men who fought through the Revolution, those who survived its peril and shared in its glory, and who were called to the convention by which the Constitution of the United States was drafted and recommended to the adoption of the American people, almost without exception thought that slavery was not only an evil to any people among whom it might exist, but that it was an evil of the highest character, which it was the duty of all Christian people, if possible, to remove, because it was a sin as well as an evil.

Its recognition in the Constitution (for it is idle, as I think, to deny that it is there recognized), the authority given by implication to a trade which might lead to its increase by immigration, was not because a large majority of the members of the convention, and a large majority of the people of the United States in the mass favored the institution, but because they believed that without provisions of that description it would be difficult to have a Union adopted. Whether they were right or wrong it is now useless to inquire. Judging by what was occurring at the time, it is possible, and perhaps even more than probable, that they were right; but, if they made a mistake as to that fact, if the Union could have been adopted without the recognition of the institution in the government which formed it, if its gradual extirpation could have been provided for, no one who is a spectator of the scenes around us will now fail to regret that it had not been done.

My private opinion has ever been that slavery is an evil. But in the public situation in which I now stand I have deemed it my duty to recognize the binding and paramount authority of the Constitution, to yield my moral convictions to the obligation of that instrument, and not to esteem myself as excusable or justified in construing it by any views of morality which I might entertain, or in construing out of it any provisions that might be found in it inconsistent with such views. With these views, I appeal to the authority of the Constitution itself as a justification for the vote which I shall give upon this measure.

I shall not stop to inquire whether slavery produced the war or not. One thing, in my judgment, is perfectly clear, now that that war is upon us, that a prosperous and perma-

nent peace can never be secured if the institution is permitted to survive; and will it not survive unless a measure like that upon your table shall receive the sanction which the Constitution requires? That brings me to inquire into the legality and the effect of the other means by which it is proposed to get rid of it.

First, can it be accomplished by the President? He does not claim for himself—he has not gone to that extent—the authority to abolish slavery except as an incident of the military power with which in the state of civil war in which we are engaged he is vested as Commander-in-chief of the army. The Supreme Court has asserted, what cannot be denied, because your own legislation had recognized its existence, and because the fact, independent of that recognition, was apparent, that a state of war did exist. But in so saying, and in meeting the objection that, although in one sense it was a war, yet in another sense it was a mere rebellion in which each one of the parties concerned in the seceded States was committing from day to day, and as often as he denied the authority of the United States and attempted to maintain his denial by force of arms, treason, they said that these parties were not the less to be considered as enemies because they were traitors.

The Supreme Court never pretended and never intimated, as I read their opinion, that the existence of that belligerent relation terminated all the civil obligations which the citizens of the seceded States were under to the Government of the United States; but, on the contrary, announced it as the inevitable inference, from the statement which I have just made, that in their view they were enemies although traitors; that, although they were enemies; they were not less so because they were traitors; that in point of fact, as the parties then stood, there was due from each one of the citizens or inhabitants of the seceded States an allegiance and an obligation to fulfill it, and of course to observe the laws and yield to the authority of the United States, which, at the end of the war, if that end should be so successful as to reinstate the Government of the United States in authority, might proceed against them under the laws of the land as traitors, and in the sense of the Constitution which defined the crime of treason.

It would be monstrous, Mr. President, as I think, if it were otherwise. There are now—I think the number has been lessened, and it is due to truth, as I think, so to state, by the policy which has been adopted in the prosecution of the war—but there are now in the rebellious States hundreds and thousands

of citizens just as devoted to the Union as any member of the Senate, and just as anxious to see its authority restored as any member of this body. These are entitled, therefore, to the protection of the Government. Their obedience in point of fact and their ostensible obedience to the eye of the power which is around them, in itself a government *de facto,* is an obedience which they have no power to resist, and upon the well-established principles of the laws of nations is an obedience in which there is no crime.

If it be true that it is a legal exercise of a belligerent right to manumit the slaves of the enemy, one thing is perfectly certain as a proposition equally applicable to a civil war, which in this aspect, with reference to the power which it confers on the President, stands precisely in the condition in which his power stands in the case of an international war, that he has no practical power to effect the manumission of slaves belonging to the enemy where he has not the physical power to attain that result. The President never uttered a truth more absolutely sound than when he stated that a proclamation of manumission or of freedom could have just as much effect upon the slaves of the enemy as a popish bull would have upon the course of a comet. All, therefore, in my view, that can be accomplished by means of presidential power derived from his being by the Constitution placed at the head of the armies of the United States in this war is that, if he can get the slave under the control of the Union, he can manumit him.

If these slaves come to the standard of the United States, or if that standard is carried within the territorial limits of the foe and the slaves are there within its control, discharged actually from the domination of their masters, the proclamation which declares them free may, and I am inclined to think will, have that effect. But just as sure as anything in the future can be said to be sure is it, in my judgment, that, if the war was to terminate without any provision being made for the condition of the slaves who have not come within the actual control of the military authority of the United States, they will be decided by the courts of the United States to be slaves still.

It is evident that the tendency of the President's own mind led to that result. In his proclamation of amnesty he says, in effect: When I offer to you an amnesty, coupled with the condition not only that you are to support the Constitution of the United States and the laws made in pursuance of the Constitution by Congress, but that you are to support any

proclamations that may have been or may hereafter be issued by the Executive from time to time, I am willing that you shall take that oath subject to the right of having that question decided judicially in the future.

Second, can emancipation be accomplished by the legislative power? It is true that the Congress of the United States by the Constitution is clothed with an authority to declare war; and it is maintained that, under the authority to declare war, slaves may be emancipated. That may be true; but it may not be true so as to do away with the necessity of the measure upon your table. They may be emancipated, *quo modo?*[1] The power, like whatever emancipating power the President may be clothed with under his authority as Commander-in-chief executing the war power, is limited by the practical exercise of that war power. How far do your troops go? Against whom are they fighting? Get the slaves under the protection of your standard, and, if you think proper then is the time (and before then you are impotent to accomplish it), make them free; but until then the effort to accomplish it by the mere exercise of legislative authority, in my judgment, is just as futile as the effort to accomplish it by the mere exercise of executive authority.

That is not all. In order to gain the end which, in common with a majority of the Senate, I have at heart, the abolition of slavery by means of the exercise of this legislative war power must go a step further and show that it is a power which may be exerted over the loyal as well as the disloyal States. Will that proposition bear examination? The Constitution of the United States, as we all know, in a state of peace gives no power to any branch of the Government of the United States to interfere with slavery in the States. A few wild men, carried away by some loose and undefined notions of human liberty with which the Constitution does not deal, think that they find, in the principles of the Declaration of Independence and in the great principles which were the object for establishing the Constitution of the United States, principles so inconsistent with human slavery that the Constitution not only does authorize the legislative department of the Government to put an end to it, but makes that the duty of the Government; or rather that it is so inconsistent with the principles upon which the Government is founded that the judiciary, if called upon to decide, will decide that there can be no human slavery. I will not stop to examine that. I as-

[1] "In what manner?"

sume what, with the exception of a few persons to whom I have just alluded, has been the universal opinion—the opinion pronounced by the convention which nominated the present incumbent of the presidential chair, over and over again announced on the floor of Congress, announced upon the floor of Congress by overwhelming majorities since this rebellion commenced—that with the existence of human slavery in the States the Constitution of the United States in a time of peace has nothing whatever to do. If in time of war, the Government of the United States may in a certain condition of things effect the object of freeing slaves, putting an end to the institution under the military power, it can only be in those cases and against those people against whom they have a right to exert their power. Because one or more States have seceded and have carried their secession to an extent that they have become belligerents in a certain sense toward the United States, what right have the United States, in the exercise of the power which they are authorized to wield for the purpose of putting down the rebellion and reinstating the authority of the Government, to interfere with the loyal States of Maryland, or Kentucky, or Missouri? Have they any right to declare war upon Maryland, or upon either of the other States that I have named? Certainly not; and, if so far from having the authority to carry on war against a loyal State they are carrying on the war against the disloyal States by means of the power of the loyal States, including Maryland, Kentucky, and Missouri, it is a contradiction in terms that in the exercise of that war power they can, as against themselves, against the loyal States, exert an authority incident alone to the war power, when the war power itself is applicable alone to a state of war.

There remains a third method of emancipation—by an amendment to the Constitution. Now it is said it cannot be done in that mode. The honorable member from Kentucky [Mr. Davis], if I understand him correctly, in the very elaborate speech which he delivered upon the subject a few days since, full of all the learning which belongs to the question and pregnant with a very ingenious application of that learning, seems to think that there is something in the admitted sovereignty of the States which is inconsistent with the authority of the people of the United States to amend the Constitution so as to trench at all upon the existing authority of the States. The honorable member from Delaware [Mr. Saulsbury] takes another ground, and that is that, as slaves are made property by the laws of the States, that property, like every other description

of property, is not the subject of government interference, except as that interference may be necessary for its protection. Now, a word or two upon each objection.

The honorable member from Kentucky is right in saying that in a certain sense the States are sovereign; but, if he means by that to say that the United States in another sense are not equally sovereign, he is mistaken. The school of which Mr. Calhoun was the head, and the antecedent school by whose teachings he professed to be governed, that which had for its head Mr. Madison, seemed to have been under the impression, and unfortunately succeeded in inculcating it upon the public mind too strongly for the peace of the country, the safety and prosperity of his own section, that the only sovereignty was that which belonged to the States. There never was a greater political heresy. The States, in the first place, were never disunited. As one they declared independence. As one they fought and conquered the independence so declared. As one, in order to make that independence fruitful of all the blessings which they anticipated from it, they made the Constitution of the United States. They met in convention, they adopted the Constitution in convention, and recommended it not to the States in the capacity of States, not to the governments of the States as governments, but to the people of the States for their adoption; and they could have submitted it in no other way. Any other mode of laying it before the country would have been inconsistent with the preamble to the instrument, which states that it is the work of the people as contradistinguished from the States. How the people were to assemble, where they were to assemble, what influences were to govern them in deciding for or against the Constitution is immaterial. When they once decided in its favor, the people of each State agreed as a people with the people of every other State that that should be the form of government. They consented in adopting the Constitution as a people that the Constitution, if adopted by the people of nine States, should be the Constitution of the people of those States in the aggregate.

So said the Supreme Court of the United States in the case of McCulloch *vs.* The State of Maryland in the opinion given by Mr. Chief Justice Marshall. So said the same court in the opion given, and it was the unanimous opinion, in the case of Booth *vs.* The United States by the present Chief Justice. They both announced as the clear operation of the Constitution, and as a fact ever to be borne in mind in construing the Constitution of the United States, that it was the adoption of the

people of the United States, and that the sovereignty of the United States to the extent of the powers conferred upon the Government of the United States, and the sovereignty conferred upon the governments of the States by the people of the States respectively, was precisely the same and no more than it would have been if they had been framed and adopted at the same time. That is to say, each State, except so far as the people as a people had gone with other people in depriving themselves of the powers with which they were antecedently clothed, had no authority, as long as that other Constitution remained, to take any step inconsistent with the powers conferred by that Constitution; or, in the language of the court, that each, within the sphere of the authority with which it was clothed, was supreme. There was no absolute sovereignty; that is to say, there was no sovereignty coextensive with the whole scope of political power belonging to the government of either; but each was invested with a portion of the sovereignty which the people might create, and each therefore within the extent of the portion allowed it was to the extent of that portion supreme.

Now a word or two in answer to the honorable member from Delaware. He says that, with reference to the Constitution of the United States, the institution of slavery is not within the amendatory clause, because, with reference to the Government of the United States, it is not a subject for political interference. Let me ask the honorable member, and he can answer it hereafter if he thinks proper, could human slavery have been abolished by the Constitution originally? I suppose no one will doubt that. Then why is it that it cannot be done now under the clause which gives to the people of the United States the authority to amend the Constitution? It can only be that it has been taken entirely out of the scope of governmental power, the scope of the political power of the people, because it was not abolished by the Constitution. Why, Mr. President, what says the preamble to the Constitution? That justice might be established; that tranquillity might be preserved; that the common defence and general welfare might be maintained; and, last and, chief of all, that liberty might be secured. Is there no justice in putting an end to human slavery? Is there no danger to the tranquillity of the country in its existence? May it not interfere with the common defence and general welfare? And, above all, is it consistent with any notion which the mind of man can conceive of human liberty? The very clause under which we seek to put an end to the institution, the amendatory clause, may have been, and

in all probability was, inserted into the instrument from a conviction that the time would come when justice would call so loudly for the extinction of the institution that her call could not be disobeyed, when the peace and tranquillity of the land would demand in thunder tones the destruction of the institution as inconsistent with such peace and tranquillity; and when the sentiment of the world would become shocked with the existence of a condition of things in the only free government upon the face of the globe as far as the white man is concerned, and founded upon principles utterly inconsistent with any other form of government than a government which secures freedom.

On the following day Senator Saulsbury replied to Senator Johnson's argument based on the preamble of the Constitution. He said that a preamble to any instrument was effective in construing the meaning of the body of the instrument only when the latter was doubtful, and that the body of the Constitution was clear and plain upon the relative powers of the Federal Government and the States. But, accepting Senator Johnson's view of the bearing of the preamble of the Constitution upon the license allowed in the emendation of that instrument, he said:

That, because this Constitution was ordained "to form a more perfect Union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty," it does not follow that any such amendment as this can be made, because the instrument itself shows for whom these blessings were intended to be preserved—to us and to our posterity. What connection had the slave population of the United States with the formation of this Constitution? Did they constitute any part of "us and our posterity" in the contemplation of the framers of this instrument? Not at all. Without elaborating this idea, I submit that no just or legitimate argument can be drawn from the preamble of the Constitution that the Congress of the United States have authority to propose this amendment, or that it would become binding in consideration of the ratification of three-fourths of the States.

John P. Hale [N. H.] followed Senator Saulsbury.

Our friends who oppose this resolution die hard, very hard. I remember reading that when the British Parliament sat in judgment upon Charles I, and sentenced him to lose his head, they were apprehensive that when it came to the last, and he was actually required to bow down and put his head under the axe, he might resist, and the Commons, with great prudence and prescience, had prepared pulleys and machinery by which, if he resisted, he should actually be drawn under the axe and his head severed from his body. That is history that I think is not without its teaching in the present day. I think that the judgment has gone forth that slavery must die. The commons have passed that sentence; and I tell you, sir, that, if slavery is refractory, and does not quietly submit, the Commons will prepare pulleys by which to bring the victim under the axe.

Mr. President, permit me to say that this is a day when the nation is to commence its real life, a day when the nation is to be disembarrassed of the inconsistencies which have marked its history and its career.

Sir, what is the truth? We have had upon the pages of our public history, our public documents, and our public records some of the sublimest truths that ever fell from human lips; and there never has been in the history of the world a more striking contrast than we have presented to heaven and earth between the grandeur and the sublimity of our professions and the degradation and infamy of our practice. That day is to pass away, and to pass away, I trust, right speedily.

But I desire to say a word, in all sincerity and in all kindness, to those gentlemen who still linger here, the representatives, or rather the administrators *de bonis non*,[1] of what was once the old Democratic party. [Laughter.] They pretend to think—and I am not the man to stand here and say they do not believe what they pretend to believe—that it is in their power, if they had the control, to save the country and restore the Union. I am willing to concede, for the purposes of all that I have to say, that they actually believe it; that that is their faith; and I apprehend, from some things that have fallen from some gentlemen even in this neighborhood, that my honorable and venerable friend from Kentucky [Mr. Davis] is not far from entertaining similar opinions, that the Democratic party might, by some possibility, save the country and save the Union; and, what is more than all that, save themselves, too. Sir, it is a delusion, an utter delusion. Let me ask their

[1] "Of no goods."

attention for a moment or two to some considerations which induce me to believe that it is an utter delusion.

How can they do it? Patrick Henry, the great orator of the Revolution—no offence to Massachusetts [laughter]—said that he knew of no other lamp to guide his feet but the light of experience. Taking that as a maxim or as a text, let me ask what there is in the history of this Democratic party that gives countenance to the idea that by any possibility, even if they had everything their own way, they could save the country and save the Union? This rebellion, revolution, or whatever you please to call it—I believe it has been judicially decided that we are not at war—commenced under James Buchanan, a Democratic President. They had a Democratic Senate, a Democratic House of Representatives, a super-Democratic Supreme Court of the United States, and a large majority of all the officers of every organization, moral and physical, in the country, including the army and navy and ministers. They could not keep the peace with all that. They lost it. Nay, more than that, they had a little love feast of their own down at Charleston; there was no Abolitionist, no Federalist there to vex and plague them; and they could not keep family peace. They could not keep national peace, and they could not keep family peace, but split, broke, went asunder, every man his own way, and the present is the result of it.

How are they going to do any better now than they did then? They lost eleven States at one slide that they had then. They are all gone; and I say it with great respect and great kindness to them they have lost, besides, pretty nearly every respectable man they had in the free States that gave character and stability to their party. I need not go out of the Senate chamber to prove that. Well, sir, they have lost all that; and now, in the days of their dissolution and weakness, when their preaching here sounds in one respect something similar to that of John the Baptist—"the voice of one crying in the wilderness" [laughter]; for there is only here and there one of them—they are still impressed with that insane delusion that if they had the power they could save the country and save the Union and save themselves.

It is said to be a hard thing for an individual to find out when his mental faculties begin to fail him. It is not difficult for him to find out when his physical strength fails him, but it is very rare that a man finds out when his mental vigor begins to fail him. I suppose what is true of individuals is true of parties and of collections of men. But let me ask my friends,

do they not feel in their own experience that the day of the strength of the Democracy has departed, that it has gone or is going? It seems to me that they must. I appeal, then, to all who hear me, is it not the part of wisdom to submit to what is inevitable? Charles I did not compel the Commons to put the pulleys on to haul him under the axe; but when he found the axe was up and that the Commons had decreed that his head should go under it and the axe should come down, like a sensible and well-bred gentleman as he was, he put his head under.

Mr. President, what is to be cannot be avoided; and if there is any one thing which, it seems to me, the indications from every side everywhere teach us, it is that the day of this power is over; and there is no indication more conclusive of it than the Christian and statesmanlike effort made by the honorable Senator from Maryland yesterday. I ask everybody who hears me, do you not rejoice that the day has come? Are you not glad that this nation, blind and deaf so long to the teachings of history and the commands of God, has at length aroused itself from its lethargy, listened to the voices which heaven and earth, God and nature, are proclaiming, and is preparing to put itself in alliance with the Power which cannot be resisted and whose fiat will most surely be executed.

Whenever, unconditionally and without equivocation, we come up to the mark and place ourselves on the high standard of Christian duty, and resolve that, despite of all extraneous circumstances, of all doubtful contingencies, of all questions of expediency, we will place ourselves firmly upon the everlasting rock of duty and our action shall be in accordance with our conscientious convictions, then, and not till then, will that pillar of cloud by day and of fire by night which led the chosen people from the house of bondage to the land of promise be ours. Then we shall indeed and in truth be worthy of our genealogy and our history. Then the sublime teachings of the Pilgrim Fathers, who left everything behind them that they might come hither and plant in this wilderness a temple of liberty and throw wide open its doors for the oppressed of earth to enter and be at rest—then will all that be realized. Then without shame, without reproach, and without apology, we can stand in this nineteenth century, soldiers of the new civilization and of an old Christianity, going forth to battle with every impulse of our hearts and every purpose that we entertain in full accordance with the best wishes and hopes of the good on earth and of the God in heaven; when we take

this position and take it firmly and ably, then and not until then shall we triumph; then and not till then shall we see the beginning of the end.

Mr. President, let me say one word more. When the Savior of man, with the sympathy and pathos with which He loved the chief city of His native land, wept over Jerusalem His lamentation was, "If thou hadst known in this thy day the things that belong to thy peace!" Sir, that is what this nation ought to know; that is what the nation ought to understand. It is what I believe; and by a vigorous prosecution of this measure we shall evidence to heaven and earth that we do understand and mean to perform the things which belong to our nation's peace.

On April 8 Charles Sumner [Mass.] closed the debate in a long and brilliant speech in favor of the amendment.

Under the influences of the present struggle for national life, and in obedience to its incessant exigencies, the people have already changed, and in nothing so much as slavery. Old opinions and prejudices have dissolved, and that traditional foothold which slavery once possessed has been gradually weakened until now it scarcely exists. Naturally this change must sooner or later show itself in the interpretation of the Constitution. But it is already visible even there, in the concession of powers over slavery which were formerly denied. The time, then, has come when the Constitution, which has been so long interpreted for slavery, may be interpreted for freedom. This is one stage of triumph. Universal emancipation, which is at hand, can be won only by complete emancipation of the Constitution itself, which has been degraded to wear chains so long that its real character is scarcely known.

Sometimes the concession is made on the ground of *military necessity*. The capacious war powers of the Constitution are invoked, and it is said that in their legitimate exercise slavery may be destroyed. There is much in this concession; more even than is imagined by many from whom it proceeds. It is war, say they, which puts these powers in motion; but they forget that wherever slavery exists there is perpetual war—that slavery itself is a *state of war* between two races, where one is for the moment victor—pictured accurately by Jefferson when he described it as "permitting one-half of the citizens to trample on the rights of the other, transforming those into enemies and

these into despots." Therefore, wherever slavery exists, even in seeming peace, the war power may be invoked to put an end to a condition which is internecine, and to overthrow pretensions which are hostile to every attribute of the Almighty.

But it is not on military necessity alone that the concession is made. There are many who, as they read the Constitution now, see its powers over slavery more clearly than before. The old superstition is abandoned; and they join with Patrick Henry when, in the Virginia convention, he declared that the power of manumission was given to Congress, (1) in the "general welfare" clause. He did not hesitate to argue against the adoption of the Constitution because it gave this power. And shall we be less perspicacious for freedom than this Virginia statesman was for slavery? Discerning this power, he confessed his dismay; but let us confess our joy.

2. Next comes the clause, "Congress shall have power to declare war, to raise and support armies, to provide and maintain a navy." A power like this is from its very nature unlimited. In raising and supporting an army, in providing and maintaining a navy, Congress is not restrained to any particular class or color. It may call upon all and authorize that *contract* which the Government makes with an enlisted soldier. But such a contract would be in itself an act of manumission; for a slave cannot make a contract. And if the contract be followed by actual service, who can deny its completest efficacy in enfranchising the soldier-slave and his whole family? Shakespeare, immortal teacher, gives expression to an instinctive sentiment when he makes Henry V, on the eve of the battle of Agincourt, encourage his men by promising,

> "For he to-day that sheds his blood with me
> Shall be my brother; *be he ne'er so vile*
> *This day shall gentle his condition.*"

3. There is still another clause: "The United States shall guarantee to every State in this Union a *republican form of government.*" But the question recurs, What is a republican form of government? John Adams, in the correspondence of his old age, says:

> "The customary meanings of the words *republic* and *commonwealth* have been infinite. They have been applied to every government under heaven; that of Turkey and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino."—*John Adams's Works*, Vol. 10, p. 378.

But the guaranty of a republican form of government must have a meaning congenial with the purposes of the Constitution. Evidently it must be construed so as to uphold the Constitution according to all the promises of its preamble, and Mr. Madison has left a record showing that this clause was originally suggested in part by the fear of slavery. But no American need be at a loss to designate some of the distinctive elements of a republic according to the idea of American institutions. These will be found first in the Declaration of Independence, by which it is solemnly announced "that all men are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." And they will be found, secondly, in that other guaranty and prohibition of the Constitution, in harmony with the Declaration of Independence; "*no person* shall be deprived of life, *liberty*, or property *without due process of law.*" Such are some of the essential elements of a "republican form of government," which cannot be disowned by us without disowning the very muniments of our liberties; and it is these which the United States are bound to guarantee. But all these make slavery impossible. It is idle to say that this result was not anticipated. It would be, then, only another illustration that our fathers "builded wiser than they knew."

4. But, independent of the clause of guaranty, there is the clause just quoted, which in itself is a source of power; "*no person* shall be deprived of life, *liberty*, or property *without due process of law.*" This was a part of the amendments to the Constitution proposed by the first Congress, under the popular demand for a Bill of Rights. Brief as it is, it is in itself alone a whole Bill of Rights. Liberty can be lost only by "due process of law," words borrowed from the old liberty-loving common law.

Such is the protection which is thrown by the Constitution over every "person," without distinction of race or color, class or condition. There can be no doubt about the universality of this protection. Its natural meaning is plain; but there is an incident of history which makes it plainer still, excluding all possibility of misconception. A clause of this character was originally recommended as an amendment by two slave States —North Carolina and Virginia—but it was restrained by them to *freemen*, thus: "No *freeman* ought to be deprived of his life, *liberty*, or property but by the *law of the land.*" But when the recommendation came before Congress the word "person" was substituted for "freeman," and the more searching

phrase, "due process of law," was substituted for "the law of the land." In making this change, rejecting the recommendation of two slave States, the authors of this amendment revealed their purpose, that *no person* wearing the human form should be deprived of *liberty* without due process of law; and the proposition was adopted by the votes of Congress and then of the States as a part of the Constitution. Clearly on its face it is an express guaranty of personal liberty and an express prohibition against its invasion anywhere.

In the face of this guaranty and prohibition—for it is both —how can any "person" be held as a slave? But it is sometimes said that this provision must be restrained to places within the exclusive jurisdiction of the National Government. Let me say frankly that such formerly was my own impression, often avowed in this Chamber; but I never doubted its complete efficacy to render slavery unconstitutional in all such places, so that "no person" could be held as a slave at the national capital or in any national territory. Constitutionally slavery has always been an outlaw wherever that provision of the Constitution was applicable. Nobody doubted that it was binding on the national courts, and yet it was left unexecuted—a dead letter, killed by the predominant influence of slavery, until at last Congress was obliged by legislative act to do what the courts had failed to do, and to put an end to slavery in the national capital and national Territories.

But there are no words in this guaranty and prohibition by which they are restrained to any exclusive jurisdiction. They are broad and general as the Constitution itself; and since they are in support of human rights they cannot be restrained by any interpretation. There is no limitation in them, and nobody now can supply any such limitation without encountering the venerable maxim of law, *Impius ac crudelis qui libertati non favet*—"Impious and cruel is he who does not favor liberty." Long enough courts and Congress have merited this condemnation. The time has come when they should merit it no longer. The Constitution should become a living letter under the predominant influence of freedom. It is this conviction which has brought petitioners to Congress, during the present session, asking that the Constitution shall be simply executed against slavery and not altered. Ah! sir, it would be a glad sight to see that Constitution, which we have all sworn to support, interpreted generously, nobly, gloriously for freedom, so that everywhere within its influence the chains should drop from the slave. If it be said that this was not antici-

pated at the adoption of the Constitution, I remind you of the words of Patrick Henry at the time when he said, "the paper speaks to the point." No doubt. It does speak to the point. Cicero preferred to err with Plato rather than to think right with other men. And pardon me if, on this occasion, when my country is in peril from slavery, and when human rights are to be rescued, I prefer to err with Patrick Henry, the contemporary of the Constitution, rather than to think right with Senators who hesitate against slavery.

But all these provisions are something more than powers; *they are duties also.* And yet we are constantly and painfully reminded in this Chamber that pending measures against slavery are unconstitutional. Sir, this is an immense mistake. *Nothing against slavery can be unconstitutional.* It is only hesitation which is unconstitutional.

And yet slavery still exists—in defiance of all these requirements of the Constitution; nay, more, in defiance of reason and justice, which can never be disobeyed with impunity—it exists, the perpetual spoiler of human rights and disturber of the public peace, degrading master as well as slave, corrupting society, weakening government, impoverishing the very soil itself, and impairing the natural resources of the country. Such an outrage, so offensive in every respect, not only to the Constitution, but also to the whole system of order by which the universe is governed, is plainly a *national nuisance,* which, for the general welfare and in the name of justice, ought to be abated. But at this moment, when it menaces the national life, it will not be enough to treat slavery merely as a nuisance; for it is much more. It is a public enemy and traitor wherever it shows itself, to be subdued, in the discharge of solemn guaranties of Government and of personal rights, and in the exercise of unquestionable and indefeasible rights of *self-defence.* All now admit that in the rebel States it is a *public enemy and traitor,* so that the rebellion may be seen in slavery, and slavery may be seen in the rebellion. But slavery throughout the country, everywhere within the national limits, is a *living unit, one and indivisible*—so that even outside the rebel States it is the same public enemy and traitor, lending succor to the rebellion, and holding out "blue lights" to encourage and direct its operations. But whether regarded as national nuisance or as public enemy and traitor, it is obnoxious to the same judgment, and must be abolished.

If, in abolishing slavery, any injury were done to the just interests of any human being or to any rights of any kind,

there might be something "to give us pause," even against these irresistible requirements. But nothing of the kind can ensue. No just interests and no rights can suffer. It is the rare felicity of such an act, as well outside as inside the rebel States, that, while striking a blow at the rebellion, and assuring future tranquillity, so that the Republic shall no longer be a house divided against itself, it will add at once to the value of the whole fee simple wherever slavery exists, will secure individual rights, and will advance civilization itself.

There is another motive to abolish slavery at this time. Embattled armies now stand face to face, on the one side fighting for slavery. The gauntlet that has been flung down we have yet taken up only in part. In abolishing slavery entirely we take up the gauntlet entirely. Then can we look with confidence to the blessings of Almighty God upon our arms. So long as we sustain slavery, so long as we hesitate to strike at it, the heavy battalions of our armies will fail in power. Sir Giles Overreach[1] found his sword, as he attempted to draw it, "glued with orphans' tears." Let not our soldiers find their swords "glued" with the tears of the slave.

There is one question and only one which rises in our path; and this only because the national representatives have so long been drugged and drenched with slavery, which they have taken in all forms, whether of dose or douche, that, like a long-suffering patient, they are not yet emancipated from its influence. I refer, of course, to the question of compensation under the shameful assumption that there can be property in man. Sir, there was a moment when I was willing to pay money largely, or at least to any reasonable amount, for emancipation; but it was *as ransom,* and never as compensation. Thank God! that time has now passed, never to return; and simply because money is no longer needed for the purpose. Our fathers under Washington never paid the Algerines for the emancipation of our enslaved fellow citizens, except as ransom, and they ceased all such tribute when emancipation could be had without it. Such must be our rule now. Any other rule would be to impoverish the treasury for nothing. The time has come for the old tocsin to sound, "Millions for defence, not a cent for tribute." Ay, sir; millions of dollars—with millions of strong arms also—to defend our country against slave-masters; but not a cent for tribute to slave-masters.

But if money is to be paid as compensation, clearly it cannot go to the master who for generations has robbed the slave

[1] A character in "A New Way to Pay Old Debts," by Philip Massinger.

of his toil and all its fruits, so that, in justice, he may be regarded now as the trustee of accumulated earnings with interest which he has never paid over. Any money paid as compensation must belong, every dollar of it, to the slave. If the case were audited in Heaven's chancery, there must be another allowance for the denial of inestimable rights. The loss of wages may be estimated, but where is the tariff or price-current by which those other losses which have been the lot of every slave shall be determined? Mortal arithmetic is impotent to assess the fearful sum total. In presence of this infinite responsibility the whole question must be referred to that other tribunal where master and slave will be equal, while infinite wisdom tempers justice with mercy.

But the proposition of compensation is founded on the intolerable assumption of property in man, an idea which often intrudes into these debates, sometimes from its open vindicators and sometimes from others who reluctantly recognize it, but allow it to influence their conduct which is thus "sicklied o'er" with slavery. Sir, parliamentary law must be observed; but if an outburst of indignant hisses were ever justifiable in a parliamentary assembly it ought to break forth at every mention of this proposition, whatever form it may take—whether of daring assumption or the mildest suggestion, or equivocation even. Impious toward God and insulting toward man, it is disowned alike by the conscience and the reason; nor is there any softness of phrase or argument by which its essential wickedness can be disguised. The fool hath said in his heart that there is no God; but it is kindred folly to say that there is no man. The first is atheism, and the second is like unto the first.

Again, we are brought by learned Senators to the Constitution, which requires that there shall be "just compensation" where "private property" is taken for public use. But plainly on the present occasion the requirement of the Constitution is absolutely inapplicable, for there is no "private property" to take. Slavery is but a bundle of barbarous pretensions, from which certain persons are to be released. At what price shall these pretensions be estimated? How much shall be paid for the controlling pretension of property in man? How much shall be allowed for that other pretension to shut the gates of knowledge and keep the victim from the book of life? How much shall be expended to redeem the pretension to rob a human being of all the fruits of his toil? And, sir, what "just compensation" shall be voted for the renunciation of that

Heaven-defying pretension, too disgusting to picture in its details, which despoils the slave of wife and child, and hands them over to lust or avarice? Let these pretensions be renounced, and slavery ceases to exist; but there can be no "just compensation" for any such renunciation. The human heart, reason, religion, the Constitution itself, rise in judgment against it. As well vote "just compensation" to the hardened offender who renounces his disobedience to the Ten Commandments and promises that he will cease to steal, that he will cease to commit adultery, and that he will cease to covet his neighbor's wife. Ay, sir, there is nothing in the Constitution to sanction any such outrage. Such an appropriation would be unconstitutional.

Putting aside, then, all objections that have been interposed, whether proceeding from open opposition or from lukewarm support, the great question recurs, that question which dominates this whole debate, How shall slavery be overthrown? The answer is threefold: first, by the courts, declaring and applying the true principles of the Constitution; secondly, by Congress, in the exercise of the powers which belong to it; and, thirdly, by the people, through an amendment to the Constitution. Courts, Congress, people, all may be invoked, and the occasion will justify the appeal.

1. Let the appeal be made to the courts. But, alas! one of the saddest chapters in our history has been the conduct of judges who have lent themselves to the support of slavery. Injunctions of the Constitution, guaranties of personal liberty, and prohibitions against its invasion have all been forgotten. Courts which should have been asylums of liberty have been changed into *barracoons,* and the Supreme Court of the United States, by a final decision of surpassing infamy, became the greatest *barracoon* of all. It has been part of the calamity of the times that, under the influence of slavery, justice, like Astræa of old, had fled. But now at last, in a regenerated Republic, with the power of slavery waning, and the people rising in judgment against it, let us hope that the judgments of courts may be reconsidered, and that the powers of the Constitution in behalf of liberty may be fully exercised, so that the blessed condition shall be fulfilled when

> "Ancient frauds shall fail,
> Returning justice lift aloft her scale."

Sir, no court can afford to do an act of wrong. Its business is justice; and when under any apology it ceases to do justice

it loses those titles to reverence which otherwise are so willingly bestowed. There are instances of great magistrates who have openly declared their disobedience to laws "against common right and reason," and their names are mentioned with gratitude in the history of jurisprudence. There are other instances of men holding the balance and the sword, whose names have been gathered into a volume, as "atrocious judges." If our judges, who have cruelly interpreted the Constitution in favor of slavery, do not come into the latter class, they clearly can claim no place among those others who have stood for justice like the rock on which the sea breaks in idle spray. Doubtless the model decision of the American bench, destined to be quoted hereafter with the most honor, because the boldest in its conformity with the great principles of humanity and social order, was that of the Vermont judge who refused to surrender a fugitive slave *until his pretended master should show a title deed from the Almighty.*

But the courts have no longer any occasion for such boldness. They need not step outside the Constitution. It is only needed that they should follow just principles in its interpretation. Let them be guided by a teacher like Edmund Burke, who spoke as follows:

"Men cannot covenant themselves out of their rights and their duties; nor by any other means can arbitrary power be conveyed to any man. *Those who give to others such rights perform acts that are void as they are given."* . . . "Those who give and those who receive arbitrary power are alike criminal, and there is no man but is bound to resist it to the best of his power, wherever it shall show its face in the world. It is a crime to bear it where it can be rationally shaken off."—*Speech on Impeachment of Warren Hastings.*

Or let them be guided by that other teacher, Lord Chatham, when he said:

"With respect to the decisions of the courts of justice I am far from denying their due weight and authority; yet, placing them in the most respectable view, I will consider them, not as law, but as an evidence of the law; and, before they can arrive even at that degree of authority, it must appear that they are founded in, and confirmed by, reason; that they are supported by precedents, taken from good and moderate times; that they do not contradict any positive law; that they are submitted to without reluctance by the people; that they are unquestioned by the legislature (which is equivalent to a tacit confirmation); *and, what in my judgment is by far the most important, that they do not violate the spirit of the constitution."—Speech of Lord Chatham in 1770, with regard to the proceeding on the Middlesex election.*

If courts were thus inspired, it is easy to see that slavery would disappear under their righteous judgments.

2. But unhappily the courts will not perform the duty of the hour, and we must look elsewhere. An appeal must be made to Congress; and here, as has been fully developed, the powers are ample, unless in their interpretation you surrender in advance to slavery. By a single brief statute Congress may sweep slavery out of existence.

But, even if Congress be not prepared for that single decisive measure which shall promptly put an end to this whole question and strike slavery to death, there are other measures by which this end may be hastened. The towering Upas may be girdled, even if it may not be felled at once to the earth.

The Fugitive Slave bill, conceived in iniquity and imposed upon the North as a badge of subjugation, may be repealed.

The coastwise slave trade may be deprived of all support in the statute book.

The traffic in human beings, as an article of "commerce among States," may be extirpated.

And, above all, that odious rule of evidence, so injurious to justice and discreditable to the country, excluding the testimony of colored persons in national courts, may be abolished.

Let these things be done. In themselves they will be much. But they will be more as the assurance of the overthrow sure to follow.

3. But all these will not be enough. The people must be summoned to confirm the whole work. It is for them to put the cap-stone upon the sublime structure. An amendment of the Constitution may do what courts and Congress decline to do, or, even should they act, it may cover their action with its panoply. Such an amendment in any event will give completeness and permanence to emancipation, and bring the Constitution into avowed harmony with the Declaration of Independence. Happy day, long wished for, destined to gladden those beatified spirits who have labored on earth to this end, but died without the sight.

The founder of political science in modern times, writer as well as statesman, Machiavelli, in his most instructive work, the "Discourses on Livy," has a chapter entitled, "To have long life in a republic, it is necessary to draw it back often to its origin"; and in the chapter he shows how the original virtue in which a republic was founded becomes so far corrupted that, in the process of time, the body-politic must be destroyed; as in the case of the natural body, where, according to the

doctors of medicine, there is something added daily which perpetually requires cure. He teaches under this head that republics are brought back to their origin, and the principles in which they were founded, by pressure without or prudence within, and he affirms that the destruction of Rome by the Gauls was necessary that the republic might have a new birth, and thus acquire new life and new virtue, all of which ensued when the barbarians had been driven back. The illustration, perhaps, is fanciful, but there is wisdom in the counsel, and now the time has come for its application. The Gauls are upon us, not, however, from a distance, but domestic Gauls; and we, too, may profit by the occasion to secure for the Republic a new birth, that it may acquire a new life and new virtue. Happily, in our case the way is easy, for it is only necessary to carry the Republic back to its baptismal vows, and the declared sentiments of its origin. There is the Declaration of Independence: let its solemn promises be redeemed. There is the Constitution: let it speak, according to the promises of the Declaration.

The amendment to the Constitution was passed by a vote of 38 to 6 (more than the two-thirds required), the negative votes being cast by Lazarus W. Powell and Garrett Davis, of Kentucky; Willard Saulsbury and George R. Riddle, of Delaware; James A. McDougall, of California, and Thomas A. Hendricks, of Indiana.

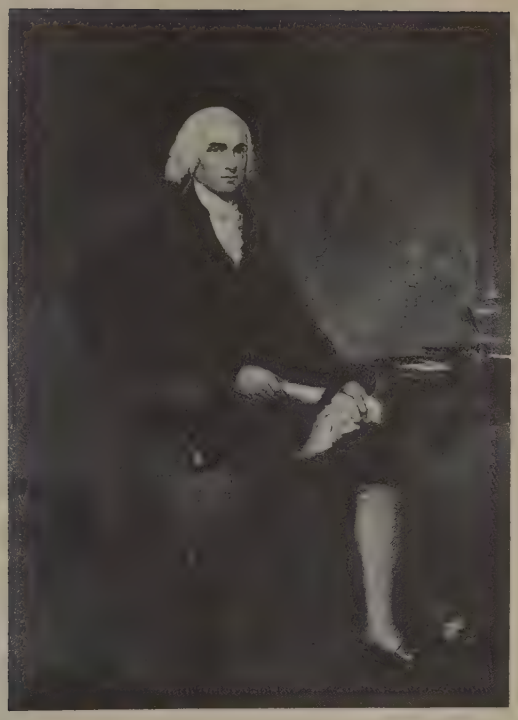
Upon announcement of the vote Senator Saulsbury rose in his seat "simply to say" that he now "bade farewell to any hope of the reconstruction of the American Union."

Senator McDougall objected to the decision of the Vice-President that the resolution had passed, saying that a two-thirds majority of a full Senate, counting two votes from each of the seceded States, was in his opinion necessary to pass a measure in which all the States were vitally concerned under the Constitution. The chair overruled the objection, and Senator McDougall did not contest the overruling.

The Senate resolution came before the House on May 31, and a motion to reject it was voted down by 55 yeas to 76 nays. It was thoroughly debated (the arguments being largely repetitions of those in the Senate)

until June 15, when it was put to the vote, with the result of 93 yeas and 65 nays, 23 Representatives not voting. The measure thus failed of passage, not receiving the two-thirds majority required by the Constitution. It was not brought forward again during this session.

The subject was brought forward at the next session and, after considerable debate in which few new arguments were presented, a joint resolution submitting the amendment to the States for ratification was passed by Congress on January 31, 1865, and approved by the President on February 1. Upon ratification by the requisite three-fourths majority of the States it went into effect by proclamation on December 18, 1865.



James Madison

GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764–1765) to the Debates in Congress at the Close of the Taft Administration (1912–1913)

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Editor of "The Life and Works of Abraham Lincoln," etc.

IN FOURTEEN VOLUMES

EACH DEALING WITH A SPECIFIC SUBJECT, AND CONTAINING A SPECIAL INTRODUCTION BY A DISTINGUISHED AMERICAN STATESMAN OR PUBLICIST

VOLUME SEVEN

CIVIL RIGHTS: PART ONE

With an Introduction by WOODROW WILSON, LL.D.
President of the United States

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INTRODUCTION

The Constitutional Results of Reconstruction[1]

THE first practical result of reconstruction under the acts of 1867 was the disfranchisement, for several weary years, of the better whites, and the consequent giving over of the Southern governments into the hands of the negroes. And yet not into their hands, after all. They were but children still; and unscrupulous men, "carpetbaggers,"—men not come to be citizens, but come upon an expedition of profit, come to make the name of Republican forever hateful in the South—came out of the North to use the negroes as tools for their own selfish ends; and succeeded to the utmost fulfillment of their dreams. Negro majorities for a little while filled the Southern legislatures, but they won no power or profit for themselves beyond a pittance here and there for a bribe. Their leaders, strangers and adventurers, got the lucrative offices, the handling of the State moneys raised by loan, and of the taxes spent no one knew how. Here and there an able and upright man cleansed administration, checked corruption, served them as a real friend and an honest leader; but not for long. The negroes were exalted; the States were misgoverned and looted in their name; and a few men, not of their number, not really of their interest, went away with the

[1] Adapted from an article on "The Reconstruction of the Southern States," in the *Atlantic Monthly*, January, 1901.

overwhelmed. It was that which gave an epic breadth and majesty to the awful clash between bodies of men who were in all things else of one strain and breeding; it was that which brought the bitterness of death upon the side which lost, and the dangerous intoxication of an absolute triumph upon the side which won. But it unmistakably uncovered the foundations of force upon which the Union rested.

It did more. The sentiment of union and nationality, never before aroused to full consciousness or knowledge of its own thought and aspirations, was henceforth a new thing, aggressive and aware of a sort of conquest. It had seen its legions and felt its might in the field. It saw the very Constitution, for whose maintenance and defence it had acquired the discipline of arms, itself subordinated for a time to the practical emergencies of war, in order that the triumph might be the more unimpeded and complete; and it naturally deemed nationality henceforth a thing above law. As much as possible—so far as could be without serious embarrassment—the forms of the fundamental law had indeed been respected and observed; but wherever the law clogged or did not suffice, it had been laid aside and ignored. It was so much the easier, therefore, to heed its restrictions lightly when the war was over and it became necessary to force the Southern States to accept the new model. The real revolution was not so much in the form as in the spirit of affairs. The spirit and temper and method of a Federal Union had given place, now that all the spaces of the air had been swept and changed by the merciless winds of war, to a spirit which was consciously national and of a new age.

It was this spirit which brushed theories and technicalities aside and impressed its touch of revolution on the law itself. And not only upon the law, but also upon the processes of lawmaking and upon the relative positions of the President and Congress in the general constitutional scheme of the government, seeming to change its very administrative structure. While the war lasted the President had been master. The war ended and Mr. Lincoln gone, Congress pushed its

gains. They were left to carry the discredit and reap the consequences of ruin when at last the whites who were real citizens got control again.

But we are here less concerned with that dark chapter of history than with the far-reaching constitutional and political influences and results of reconstruction. That it was a revolutionary process is written upon its face throughout; but how deep did the revolution go? What permanent marks has it left upon the great structure of government, federal, republican, a partnership of equal States and yet a solidly coherent national power which the Fathers erected?

First of all, it is clear to everyone who looks straight upon the facts, every veil of theory withdrawn and the naked body of affairs uncovered to meet the direct question of the eye, that civil war discovered the foundations of our government to be in fact unwritten, set deep in a sentiment which constitutions can neither originate nor limit. The law of the Constitution reigned until war came. Then the stage was cleared and the forces of a mighty sentiment, hitherto unorganized, deployed upon it. A thing had happened for which the Constitution had made no provision. In the Constitution were written the rules by which the associated States should live in concert and union, with no word added touching days of discord or disruption; nothing about the use of force to keep or to break the authority ordained in its quiet sentences, written, it would seem, for lawyers, not for soldiers. When the war came, therefore, and questions were broached to which it gave no answer, the ultimate foundation of the structure was laid bare: physical force, sustained by the stern loves and rooted predilections of masses of men, the strong ingrained prejudices which are the fiber of every system of government. What gave the war its passion, its hot energy as of a tragedy from end to end, was that in it sentiment met sentiment, conviction conviction. It was the sentiment, not of all, but of the efficient majority, the conviction of the major part, that won. A minority, eager and absolute in another conviction, devoted to the utmost pitch of self-sacrifice to an opposite and incompatible ideal, was crushed and

way to the front and began to transmute fact into law, law into fact. In some matters it treated all the States alike. The Thirteenth, Fourteenth, and Fifteenth amendments bound all the States at once, North and West as well as South. But that was, after all, a mere equality of form. The amendments were aimed, of course, at the States which had had slaves and had attempted secession, and did not materially affect any others. The votes which incorporated them in the Constitution were voluntary on the part of the States whose institutions they did not affect, involuntary on the part of the States whose institutions they revolutionized. These States were then under military rule. Congress had declared their whole political organization to be illegal; had excluded their representatives from their seats in the Houses; and yet demanded that they assent, as States, to the amendment of the Constitution as a condition precedent to their reinstatement in the Union! No anomaly or contradiction of lawyers' terms was suffered to stand in the way of the supremacy of the lawmaking branch of the general government. The Constitution knew no such process as this of reconstruction, and could furnish no rules for it. Two years and a half before the Fifteenth Amendment was adopted by Congress, three years and a half before it was put in force by its adoption by the States, Congress had by mere act forced the Southern States, by the hands of military governors, to put the negroes upon the roll of their voters. It had dictated to them a radical revision of their constitutions, whose items should be framed to meet the views of the Houses rather than the views of their own electors. It had pulled about and rearranged what local institutions it saw fit, and then had obliged the communities affected to accept its alterations as the price of their reinstatement as self-governing bodies politic within the Union.

It may be that much, if not all, of this would have been inevitable under any leadership, the temper of the times and the posture of affairs being what they were; and it is certain that it was inevitable under the actual circumstances of leadership then existing at Washington. But to assess that matter is to reckon with causes.

For the moment we are concerned only with consequences, and are neither justifying nor condemning, but only comprehending. The courts of the United States have held that the Southern States never were out of the Union; and yet they have justified the action of Congress throughout the process of reconstruction, on the ground that it was no more than a proper performance by Congress of a legal duty under the clause of the Constitution which guarantees to every State a republican form of government. It was making the Southern governments republican by securing full standing and legislative representation as citizens for the negroes. But Congress went beyond that. It not only dictated to the States it was reconstructing what their suffrage should be, it also required that they should never afterward narrow that suffrage. It required of Virginia, Texas, and Mississippi that they should accord to the negroes not only the right to vote but also the right to hold political office; and that they should grant to all their citizens equal school privileges and never afterward abridge them. So far as the right to vote was concerned, the Fifteenth Amendment subsequently imposed the same disability with regard to withholding the suffrage upon all the States alike; but the Southern States were also forbidden by mere Federal statute to restrict it on any other ground; and in the cases of Virginia, Mississippi, and Texas Congress assumed the right, which the Constitution nowhere accorded it, to regulate admission to political office and the privileges of public education.

South Carolina and Mississippi, Louisiana and North Carolina have since changed the basis of their suffrage, notwithstanding; Virginia and Mississippi and Texas might now, no doubt, reorganize their educational system as they pleased without endangering their status in the Union or even meeting rebuke at the hands of the Federal courts. The temper of the times has changed; the Federal structure has settled to a normal balance of parts and functions again; and all the States are in fact unfettered except by the terms of the Constitution itself. It is marvelous what healing and oblivion peace has wrought, how the traces of reconstruction have worn

away. But a certain deep effect abides. It is within, not upon the surface. It is of the spirit, not of the body. A revolution was carried through when war was done which may be better comprehended if likened to England's subtle making over, that memorable year 1688. Though she punctiliously kept to the forms of her law, England then dismissed a king, almost as, in later years, she would have dismissed a minister, though she preserved the procedure of her constitution intact. She in fact gave a final touch of change to its spirit. She struck irresponsible power away and made her government once for all a constitutional government. The change had been insensibly a-making for many a long age; but now it was accomplished consciously and at a stroke. Her constitution, finished, was not what it had been until this last stroke was given—when silent forces had at last found sudden voice, and the culminating change was deliberately made.

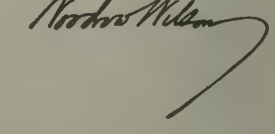
Nearly the same can be said of the effect of the war and of the reconstruction of the Southern States upon our own government. It was a revolution of consciousness—of mind and purpose. A government which had been in its spirit federal became, almost of a sudden, national in temper and point of view. The national spirit had long been a-making. Many a silent force which grew quite unobserved from generation to generation in pervasiveness and might, in quiet times of wholesome peace and mere increase of nature, had been breeding these thoughts which now sprang so vividly into consciousness. The very growth of the nation, the very lapse of time and uninterrupted habit of united action, the mere mixture and movement and distribution of populations, the mere accretions of policy, the mere consolidation of interests, had been building and strengthening new tissue of nationality the years through, and drawing links stronger than links of steel round about the invisible body of common thought and purpose which is the substance of nations. When the great crisis of secession came, men knew at once how their spirits were ruled, men of the South as well as men of the North—in what institutions and conceptions of government their blood was fixed to run; and a great and instant readjustment took

place, which was for the South, the minority, practically the readjustment of conquest and fundamental reconstruction, but which was for the North, the region which had been transformed, nothing more than an awakening.

It cannot be said that the forms of the Constitution were observed in this quick change as the forms of the English constitution had been observed when the Stuarts were finally shown the door. There were no forms for such a business. For several years, therefore, Congress was permitted to do by statute what, under the long-practiced conceptions of our Federal law, could properly be done only by constitutional amendment. The necessity for that gone by, it was suffered to embody what it had already enacted and put into force as law into the Constitution, not by the free will of the country at large, but by the compulsions of mere force exercised upon a minority whose assent was necessary to the formal completion of its policy. The result restored, practically entire, the forms of the Constitution; but not before new methods and irregular, the methods of majorities but not the methods of law, had been openly learned and practiced and learned in a way not likely to be forgot. Changes of law in the end gave authentic body to many of the most significant changes of thought which had come, with its new consciousness, to the nation. A citizenship of the United States was created; additional private civil rights were taken within the jurisdiction of the general Government; additional prohibitions were put upon the States; the suffrage was in a measure made subject to national regulation. But the real change was the change of air—a change of conception with regard to the power of Congress, the guiding and compulsive efficacy of national legislation, the relation of the life of the land to the supremacy of the national law-making body. All policy thenceforth wore a different aspect.

We realize it now, in the presence of novel enterprises, at the threshold of an unlooked-for future. It is evident that empire is an affair of strong government and not of the nice and somewhat artificial poise or of the delicate compromises of structure and authority characteristic of a mere federal partnership. Undoubt-

edly the impulse of expansion is the natural and wholesome impulse which comes with a consciousness of matured strength; but it is also a direct result of that national spirit which the war between the States cried so wide awake, and to which the process of reconstruction gave the subtle assurance of practically unimpeded sway and a free choice of means. The revolution lies there, as natural as it was remarkable and full of prophecy. It is this which makes the whole period of reconstruction so peculiarly worthy of our study. Every step of the policy, every feature of the time, which wrought this subtle transformation, should receive our careful scrutiny. We are now far enough removed from the time to make that scrutiny both close and dispassionate. A new age gives it a new significance.



CHAPTER I

Naturalization

Naturalization Law of 1790—New Law of 1794; Debate On It in the House: in Favor of Stringent Requirements, Theodore Sedgwick [Mass.], William Vans Murray [Md.]; Opposed, John Page [Va.], James Madison [Va.], John Nicholas [Va.], Samuel Dexter [Mass.], Abraham Baldwin [Ga.]: in Favor of Renunciation of Titles of Nobility, William B. Giles [Va.], Mr. Madison, Mr. Page; Opposed, William L. Smith [S. C.], Mr. Dexter, Richard Bland Lee [Va.], Fisher Ames [Mass.], Mr. Murray: in Favor of Ten Years' Residence, Samuel Smith [Md.]; in Favor of Five Years, Mr. Baldwin, Thomas Fitzsimons [Pa.].

THE chief problems after the assurance of the triumph of Union arms in the Civil War were the civil rights of the negro and the reconstruction of the governments of the seceded States in such a manner as to protect him in these rights. Before introducing the debates on this question it will be necessary to revert to earlier ones connected with the general subject of citizenship and its special phases, such as Naturalization, Rights of Aliens, etc.

In 1790 the first Congress established a uniform rule of naturalization, by which aliens, being free white persons who should have resided two years in the United States, might be admitted as citizens thereof under certain regulations and restrictions.

In his address at the opening of Congress, on November 18, 1794, President Washington spoke of the need of "affectionate vigilance" on the part of native Americans "over that precious depository of American happiness, the Constitution," especially as an example to "those who from every clime are daily seeking a dwelling in our land."

This allusion was occasioned by the great influx of

by the laws. He hoped that good schools would soon be spread over all the States, and, hence, that good sense and virtue will be so generally diffused among us that emigrants will be unable to corrupt our manners. Even at present, he relied so much on the virtue and discernment of his fellow citizens, the power of the law, and the energy of Government as to apprehend no danger from emigration in the United States.

Mr. Sedgwick.—America, if her political institutions should, on experience, be found to be wisely adjusted, and she shall improve her natural advantages, had opened to her view a more rich and glorious prospect than ever was presented to man. She had chosen for herself a government which left to the citizen as great a portion of freedom as was consistent with a social compact. All believed the preservation of this government, in its purity, indispensable to the continuance of our happiness. The foundation on which it rested was general intelligence and public virtue; in other words, wisdom to discern, and patriotism to pursue, the general good. He had pride in believing his countrymen more wise and virtuous than any other people on earth; hence he believed them better qualified to administer and support a Republican government. This character of Americans was the result of early education, aided, indeed, by the discipline of the Revolution. In that part of the country with which he was best acquainted, the education, manners, habits, and institutions, religious and civil, were republican. The community was divided into corporations, in many respects resembling independent republics, of which almost every man, the qualifications were so small, was a member. They had many important and interesting concerns to transact. They appointed their executive officers, enacted by-laws, raised money for many purposes of use and ornament. Here, then, the citizens early acquired the habits of temperate discussion, patient reasoning, and a capacity of enduring contradiction. Here the means of education and instruction are instituted and maintained; public libraries are purchased and read; these are the proper schools for the education of republican citizens; thus are to be planted the seeds of republicanism. If you will cultivate the plants which are to be reared from these seeds you will gather an abundant harvest of long-continued prosperity.

Much information might be obtained by the experience of others if, in despite of it, we were not determined to be guided only by a visionary theory. Behold the ancient republics of Greece and Rome; see with what jealousy they guarded the rights of citizenship against adulteration by foreign mixture.

immigrants from the war-racked countries of Europe. Upon what terms to admit them became a pressing matter with Congress, and early in the session a bill was presented in the House of Representatives to establish a more stringent rule of naturalization than that of 1790. Its provisions were substantially those which prevail to-day. It was debated off and on, from December 22, 1784, until January 8, 1795, when it was passed and sent to the Senate, where certain amendments were proposed, which were accepted by the House on January 26, 1795. In the debate in the House general principles of citizenship were presented which are of interest to-day, as well as certain principles applicable to the conditions of the time, which strikingly present the temper of our early statesmen. In the debate on general principles John Page [Va.], James Madison [Vt.], John Nicholas [Vt.], Samuel Dexter [Mass.], and Abraham Baldwin [Ga.] were opposed to stringent requirements in the way of oaths and attestations, and Theodore Sedgwick [Mass.], and William Vans Murray [Md.] in favor of them.

On the specific question of the renunciation of titles to nobility William B. Giles [Va.], Mr. Madison, and Mr. Page were in favor of renunciation, and William L. Smith [S. C.], Mr. Dexter, Richard Bland Lee [Va.], Fisher Ames [Mass.], and Mr. Murray were opposed to it.

Upon the question of duration of residence Samuel Smith [Md.] advocated a term of ten years and Mr. Baldwin and Thomas Fitzsimons [Pa.] a term of five years.

On Naturalization

House of Representatives, December 22, 1794–January 8, 1795

Mr. Page disliked the requirement of an oath of allegiance by the applicant for citizenship. He trusted that a Constitution much admired, and with such wholesome laws, will be an inducement to many good men to become citizens, and that, should bad men come among us, they will be discountenanced by the more virtuous class of citizens and, if necessary, be punished

The Swiss nation in modern times had not been less jealous on the same subject. Indeed, no example could be found in the history of man to authorize the experiment which had been made by the United States. It seemed to have been adopted by universal practice as a maxim that the republican character was no way to be formed but by early education. In some instances, to form this character, those propensities which are generally considered as almost irresistible, were opposed and subdued. And shall we alone adopt the rash theory that the subjects of all governments—despotic, monarchical, and aristocratical—are, as soon as they set foot on American ground, qualified to participate in administering the sovereignty of our country? Shall we hold the benefits of American citizenship so cheap as to invite, nay, almost bribe, the discontented, the ambitious, and the avaricious of every country to accept them?

It was said, in support of what was termed our liberal policy, that our country wanted commercial capital; that we had an immense tract of vacant territory; and that we ought not, with the avarice of a miser, to engross to ourselves the exclusive enjoyment of our political treasures; but he had never been convinced that we ought to make so great a sacrifice of principle for the rapid accumulation of commercial capital. He had never been convinced that, by an improvement of our own resources, it would not accumulate as fast as might be for the public benefit. We heard much of equality. Property was, in some sense, power; and the possession of immense property generated daring passions which scorned equality, and with impatience endured the restraints of equal laws. Property was undoubtedly to be protected as the only sure encouragement of industry, without which we should degenerate into savages. But he had never been convinced that the anxiety with which we wished an accumulation of capital, in the hands of individuals, was founded on correct republican reflection. The ardent ambition inspired by the possession of great wealth, and the power of gratifying it which it conferred, had, in many instances, disturbed the public peace, and, in not a few, destroyed liberty.

The vacant lands, which some, with so much avidity, wished to see in the occupation of foreigners, he considered as the best capital stock of the future enjoyment of Americans; as an antidote against the poison of luxury; as the nursery of robust and manly virtue; and as a preventive of a numerous class of citizens becoming indigent and, therefore, dependent. Whenever the time should arrive (and may that period be very distant) when there should no longer be presented to the poor a

decent competence and independence, as the effect of industry and economy (which would generally be the case when lands were no longer to be obtained on their present easy and reasonable terms), then that description of men, now perhaps the most happy and virtuous, would become miserable to themselves and a burden to the community.

He considered America as in possession of a greater stock of enjoyment than any other people on earth. That it was our duty to husband it with care; yet he could not altogether exclude such virtuous individuals as might fly here, as to an asylum, against oppression. On the one hand, he would not dissipate our treasures with the thoughtless profusion of a prodigal; nor would he, on the other, hoard them, as in the unfeeling grasp of a miser. Our glorious fabric has been cemented by the richest blood of our country, and may it long continue to shelter us against the blasts of poverty, of anarchy, and of tyranny.

Mr. Madison, like Mr. Page, was opposed to the requirement of the oath of allegiance. It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think monarchy or aristocracy better, and yet be honestly determined to support this Government as he finds it.

Mr. Nicholas opposed the word "moral" in an amendment requiring that the applicant for citizenship furnish attestations of his "good moral character." This word might be hereafter implied to mean something relative to religious opinions.

Mr. Sedgwick remarked that the word "moral" is opposed to "immoral" and has no particular reference whatever to religion, or whether a man believes anything or nothing. It has no reference to religious opinions. We can everywhere tell, by the common voice of the world, whether a man is moral or not in his life without difficulty. In some States of the Union adultery is not punishable by law, yet it is everywhere said to be an immoral action.

Mr. Madison spoke on the resolution that if an American citizen chose to expatriate himself he should not be allowed to enter into the list of citizens again without a special act of Congress and of the State from which he had gone.

He said that he did not think that Congress, by the Constitution, had any authority to readmit American citizens at all. It was granted to them to admit only aliens.

Mr. Dexter held that a man cannot expatriate himself without the express consent of the nation of which he is a subject.

Mr. Murray would infer that this country had a right to naturalize foreigners, because she has naturalized them; and that this country, by its laws, having accepted the allegiance of an alien, the alien had a right to offer that allegiance. The very proviso to naturalize an alien, without inquiry as to the consent of his own country having been previously obtained, seems to be predicated on the principle for which he contended—that a man has the right to expatriate himself without leave obtained: if he has not, all our laws of this sort, by which we convert an alien into a citizen completely, must be acknowledged to be a violation of the rights of nations. How far a man, after having been naturalized at a period of life when his reason enabled him to choose, and to enter into a solemn obligation, and, after he has expressly entered into it, has a right, without the consent of the society, to quit that society, might be another question. After a citizen throws off his allegiance to this country, by leaving it and entering into a new obligation to some other nation, though he may have a right so to do, he has no right to return to his allegiance here without the consent of this society; and it is not a question of right, but of policy, how far we will readmit him to citizenship. It was, however, necessary that a man, casting off the allegiance of one country, must complete the act of dissolution in another. Therefore he considered that law of Virginia a strange solecism which provides for the throwing off allegiance within the community. The consequences of such a principle are not only destructive to the very form and body of civil society, but are unnatural. They present a civilized being belonging to no civil society on earth; for, in the intermediate state in which he stands, between the allegiance and country he has just disowned, and the allegiance and country to which he may intend to pledge himself, he is in the imaginary state of nature, which is, in reality, an unnatural state, for a being whose every faculty and quality constitute him a moral agent, surrounded by essential relations, and, of course, impel him to discharge duties of a social nature.

The British Government, by a want of conformity between their first principle, as laid down in their law books, and the practice of Parliament, have shown us a singular mixture of old principles which the nation has outgrown. It is a maxim with them that allegiance cannot be dissolved by any change of time or place, nor by the oath of a subject to any foreign power; yet

they naturalize by act of Parliament. They accept what they declare, by their theory of civil law, cannot be rightfully offered: nay, for one century the throne of England has presented monarchs who were foreigners. William of Orange was a Prince, but he was a subject, too, of a foreign power; and George the First was a member of the Germanic body. There is little danger that citizens, who are worthy of being so, will throw off their allegiance from the United States. The amendment which prohibits their readmission to a participation of all the rights of citizenship will be a sufficient penalty, if any be necessary. Though they may have a right to expatriate themselves, there cannot be inferred a right of returning; for every body politic must have the right of saying upon what terms they will accept any addition of aliens to their numbers; and the expatriated man, no longer belonging to this society, and being an alien, the Government may choose whether he ever shall enjoy its privileges again.

Mr. Baldwin expressed the strongest disapprobation at the idea of expatriating all those of our citizens who may have become subjects or citizens of another country. Many of them had been made citizens without any solicitation of their own and merely as a mark of esteem from the government under which they lived. They had no design whatever of renouncing their country. Yet the House of Representatives, all at once, declares them incapable of returning to their former situation.

Mr. Giles proposed a new clause which was, in substance, that all such aliens who had borne any hereditary titles, or titles of nobility in other countries, should make a renunciation of such titles before they can enjoy any right of citizenship. Mr. G. said if we did anything to prevent an improper mixture of foreigners with the Americans this measure seemed to him one that might be useful.

Mr. W. Smith was entirely opposed to the motion. The mind of the public is completely guarded against the introduction of titles and they will never be current here. You cannot hinder a man from calling another a viscount. You cannot declare this a crime.

He doubted whether the House had, by the Constitution, any right of making such a law. They were directed not to grant any titles, but their authority did not extend to the taking away of titles from persons who were not born in the country. The Marquis de Lafayette has been distinguished all over the Continent by the title of Marquis. Mr. S. hoped that he would one

day be again in America and then he would very likely be called Marquis again. By this law it would be illegal.

Why might there not be an interdiction against persons connected with the Jacobin Club? Why not forbid the wearing of certain badges of distinction used by Jacobins?

Mr. Madison approved of the motion. He regarded it as exactly to the business in hand, to exclude all persons from citizenship who would not renounce forever their connection with titles of nobility. The propriety of the thing would be illustrated by this reflection: that, if any titled orders had existed in America before the Revolution, they would infallibly have been abolished by it.

We have been reminded of the Marquis de Lafayette. He had the greatest respect for that character; but, if he were to come to this country, this very gentleman would be the first to recommend and acquiesce in the amendment on the table. He had urged the necessity of utterly abolishing nobility in France, even at a time when he thought it necessary for the safety of the state that the King should possess a considerable portion of power.

Mr. Giles declared that the requirement was in conformity with the Constitution, which declared no titled character admissible to any civil rank. The measure is a proper safeguard.

A revolution is now going onward to which there is nothing similar in history. A large portion of Europe has already declared against titles, and when the innovations are to stop no man can presume to guess. There is at present no law in the United States by which a foreigner can be hindered from voting at elections, or even from coming into this House; and, if a great number of these fugitive nobility come over, they may soon acquire considerable influence. The tone of thinking may insensibly change in the course of a few years and no person can say how far such a matter may spread.

Mr. Dexter opposed the resolution. He imagined that, by the same mode of reasoning, we might hinder His Holiness the Pope from coming into this country. And why not? priestcraft had done more mischief than aristocracy.

Mr. Madison said that the question was not perhaps so important as some gentlemen supposed; nor of so little consequence as others seemed to think it. It is very probable that the spirit of republicanism will pervade a great part of Europe. It is hard to guess what numbers of titled characters may, by such an event, be thrown out of that part of the world. What can be more reasonable than that, when crowds of them come

here, they should be forced to renounce everything contrary to the spirit of the Constitution?

Mr. Page was for the motion. It did not become that House to be afraid of introducing democratical principles. Titles only give a particular class of men a right to be insolent, and another class a pretence to be mean and cringing. The principle will come in by degrees and produce mischievous effects here as well as elsewhere. If such men do come here, nothing can be more grateful to a republican than to see them renounce their titles. This does not amount to any demand of making them renounce their principles. If they do not aspire to be citizens they may assume as many titles as they think fit. Equality is the basis of good order and society, whereas titles turn everything wrong. Mr. P. said that a scavenger was as necessary to the health of a city as any one of its magistrates. It was proper, therefore, not to lose sight of equality and to prevent, as far as possible, any opportunities of being insolent. He did not want to see a duke come here and contest an election for Congress with a citizen.

Mr. Lee.—As to mere empty names, as to sounds, we must be very corrupt, we must be very ignorant, if we could be alarmed by them. And in this free country every man had a right to call himself by what name or title he pleased; and, if the mover thought proper to change his name for any other name, sound, or title, it would neither add to nor diminish his real worth and importance; it would not give qualities to his heart which he had not before, nor detract from those he had. What were the mischiefs experienced in Europe from privileged orders? They did not flow from the names by which those orders were distinguished; they arose from the exclusive preference and privileges which those orders possessed in political rights and in property. Without these their titles would have been mere empty gewgaws, ridiculous in the extreme, and unworthy of the acceptance of any man of common sense. Titles, then, did not produce the mischiefs; but the privileges annexed to titles. In this country every citizen was equal to his fellow-citizen in political rights; and the laws of the respective States had wisely provided that property could not be accumulated in such a degree in the hands of individuals as to give them an improper influence in society. By the equal distribution of estates individuals are prevented from being so rich as to trample upon the necks of their equals. Great accumulations of property are more likely, in fact, to introduce the effects of aristocracy than are the ridiculous names by which individuals

may be distinguished. If it was the corrupting relation of lord and vassal which rendered a foreigner an unfit member of an equal republican government, he feared that this reasoning applied to the existing relation of master and slave in the Southern country (rather a more degrading one than even that of lord and vassal) would go to prove that the people of that country were not qualified to be members of our free republican Government. But he knew that this was not the case. Though in that House the members from the State of Virginia held persons in bondage, he was sure that their hearts glowed with a zeal as warm for the equal rights and happiness of men as gentlemen from the other parts of the Union where such degrading distinctions did not exist. He rejoiced that notwithstanding the unfavorable circumstances of his country in this respect, the virtue of his fellow-citizens shone forth equal to that of any other part of the nation.

Mr. Dexter would vote for the resolution if the gentleman would agree to an amendment, which was: "And, also, in case any such alien shall hold any person in slavery, he shall renounce it and declare that he holds all men free and equal."

Mr. Giles realized the sarcastic purpose of the gentleman's amendment, but deprecated it as an ungenerous fling at the members from the Southern States, who were contending as best they could with a local evil. As for himself, he lamented and detested slavery; but, from the existing state of the country, it was impossible at present to help it. He himself owned slaves. He regretted that he did so, and, if any member could point out a way in which he could be properly freed from that situation, he should rejoice in it. The thing was reducing as fast as could prudently be done.

Mr. Madison mentioned regulations adopted in Virginia for gradually reducing the number of slaves. None were allowed to be imported into the State. The operation of reducing the number of slaves was going on as quickly as possible. The mention of such a thing in the House had, in the mean time, a very bad effect on that species of property, otherwise he did not know but what he should have voted for the amendment of Mr. Dexter. It had a dangerous tendency on the minds of these unfortunate people.

Mr. Ames.—Can the advocates of Mr. Giles's amendment even affect apprehensions that there is any intention to introduce a foreign nobility as a privileged order? If they can, such diseases of the brain were not bred by reasoning and cannot be cured by it. Still less should we give effect by law to chimerical

whimsies. For what is the tendency of this counterfeit alarm? Is it to rouse again the sleeping apparitions which have disturbed the back country? Is it to show that the mock dangers which they have pretended to dread are real? Or, is it to mark a line of separation between those who have the merit of maintaining the extremes of political opinions and those whom this vote would denounce as stopping at what they deem a wise moderation? If that is the case, it seems that the amendment is intended rather to publish a creed than to settle a rule of naturalization.

Mr. Murray had no alarming apprehensions of nobility. There had once been in this House a baronet. He was there for two years before it was known, and it was then discovered that a baronet was a thing perfectly harmless. As for titles of nobility, he believed that all the sensible part of the community looked upon the whole as stuff. When Mr. M. contemplated this subject it reminded him of Holbein's "Dance of Death." He saw nothing in this country but the ghosts of nobility.

The amendment of Mr. Giles, relative to forswearing nobility, and that of Mr. Dexter, relative to forswearing slavery, were both voted down.

Mr. Murray then moved to extend the period of residence from *five* to *ten* years.

Mr. Baldwin said this was opposed to the Constitution which required a Senator to have lived only *nine* years in the country.

Mr. S. Smith was for the longer term, that the prejudices which the aliens had imbibed under the government from whence they came might be effaced, and that they might, by communication and observance of our laws and government, have just ideas of our Constitution and the excellence of its institution before they were admitted to the rights of a citizen.

Mr. Fitzsimons thought that ten years were much too long a time for keeping an alien from being a citizen—it would make this class of people enemies to your Government. He was firmly of opinion that emigrants deserved to be encouraged; and to discourage them was an idea which till this day he had never heard either in or out of the House. Nature seems to have pointed out this country as an asylum for the people oppressed in other parts of the world. It would be wrong, therefore, to first admit them here, and then treat them for so long a time so harshly.

Mr. Murray's amendment was negatived.

CHAPTER II

The Alien Laws

Resolutions of the Committee for the Defence of the Country, Giving President John Adams Power to Deport Aliens, Who Are Natives of Nations at War with the United States—Debate on the Resolution: in Favor, John Rutledge, Jr. [S. C.], John Allen [Ky.], Samuel Sewall [Mass.]; Opposed, Joseph McDowell [N. C.], and Albert Gallatin [Pa.]—The Resolutions Are Passed—Resolution of the Committee for Defence for Punishing Citizens Who Should Harbor Aliens—Debate on the Resolution: in Favor, Mr. Sewall, Nathaniel Smith [Conn.], Harrison Gray Otis [Mass.]; Opposed, James A. Bayard, Sr. [Del.], Mr. Gallatin, Robert Williams [N. C.]; the Resolution Is Passed—The Senate Passes a Bill Empowering the President to Banish Such Aliens as He Deems Suspicious Persons—The House Debates the Bill: in Favor, Mr. Otis, Robert G. Harper [S. C.], Jonathan Dayton [N. J.]; Opposed, Mr. Gallatin, Mr. Williams, Edward Livingston [N. Y.]—The Bill Is Passed.

DURING the Administration of John Adams the dominant Federalists took a partisan advantage of the general fear of foreign invasion due to the French war scare by attempting more stringently to restrict naturalization and thereby to cut off recruits from the Republicans, since the emigrants, fleeing in those revolutionary days from European or monarchical tyranny, naturally allied themselves with the radical and anti-Admistration party in their new home. A number of the emigrants, indeed, were educated Irish and Scottish radicals, who had taken up journalism in this country and had excited the special animosity of the Federalists by scurrilous abuse of the Administration and by open and unqualified indorsement of the French revolutionists.

On May 1, 1798, Samuel Sewall [Mass.], chairman of the Committee for the Defence of the Country, reported drastic resolutions (1) for the increase of the

term of residence required for naturalization; (2) for the registry of aliens; and (3) for the deportation, at the pleasure of the President, of alien males over the age of fourteen who were natives of countries at war with the United States.

Leading advocates of these resolutions were: John Rutledge, Jr. [S. C.], John Allen [Ky.], Mr. Sewall; leading opponents were: Joseph McDowell [N. C.] and Albert Gallatin [Pa.].

On Debarring Aliens from Citizenship

House of Representatives, May 2–21, 1798

The committee rose and reported the resolutions. The two first were concurred in, but, on the question being put on the third,

Mr. McDowell said it ought to be remembered that inducements had been held out to foreigners to come to this country, and many of them had come with a view of becoming citizens of this country, and many, he believed, were as good as any among us. It has been said our population was now sufficient, and that the privileges heretofore allowed to foreigners might now be withdrawn. In some parts of the country this might, in some degree, be the case; but he knew there were other parts which wanted population.

Mr. Rutledge said, in the situation of things in which we are now placed, the President should have the power of removing such intriguing agents and spies as are now spread all over the country. What, said Mr. R., would be the conduct of France if in our situation? In twenty-four hours every man of this description would either be sent out of the country or put in jail, and such conduct was wise. Was there nothing, Mr. R. asked, to admonish us to take a measure of this kind? Yes, there was. A gentleman from Kentucky [Mr. Davis] had said that a person was in that State delivering commissions into the hands of every man who was so abandoned as to receive them. Other means were also taken to alienate the affection of our citizens; and are we still, said he, to say we will not send these persons out of the country until a declaration of war is made? If these persons are suffered to remain France will never declare war, as she will consider the residence of these men among us as of

greater consequence than the lining of our seaboard with privateers or covering our coasts with men.

Mr. Allen said he would move an amendment which would supersede that under consideration by making the resolution extend to *all aliens* in this country. He wished to retain none of the restraints which are in the present resolution. The proposition goes upon the supposition that none but the citizens of a particular nation can be dangerous to this country; whereas he believed that there are citizens of several other countries who are as dangerous, who have dispositions equally hostile to this country with the French—he believed more so. He believed the whole country was aware of this. Mr. A. alluded to the vast number of naturalizations which lately took place in this city to support a particular party in a particular election. It did not appear to him necessary to have the exercise of this power depend upon any contingency, such as a threatening of invasion, or war, before it could be exercised. He wished the President to have it at all times. He moved an amendment to this effect, which went to enable the President to remove at any time the citizen of any foreign country whatever, not a citizen, regarding the treaties with such countries. If gentlemen took a view of the different states of Europe which had been subdued by the French, Mr. A. said, they would not think it either wise or prudent to wait for an invasion, or threatened invasion, before this power was put in execution. Venice, Switzerland, and Rome had been overcome by means of the agents of the French nation at a time when they were in a much less alarming situation than we are at present; and the first disturbance in those countries was made the pretext of open hostility. This has been the effect of *diplomatic agency;* of emissaries, within and without, who have bred quarrels for the purpose of forming pretexts for measures which have led to the subjugation of those countries. He believed there were citizens in this country who would be ready to join a foreign power in assisting to subjugate their country.

Mr. Sewall said civil policy regarded aliens in two lights, viz.: alien friends and alien enemies. He did not contemplate the making of this country a wall against all aliens whatever; or that no alien should come here without being subject to an arbitrary authority, such as is known only to the French Directory. If the existence of such a power as shall be able to place every alien in the country in a dungeon was necessary to quiet the fears and apprehensions of the gentleman from Connecticut, he should not be willing to grant it.

What, said Mr. S., is to be feared from the residence of aliens among us? Anything to ruin the country? He acknowledged many inconveniences arose from this circumstance, but more from our own unnatural children, who, in the bosom of their parent, conspired her destruction. But did the gentleman wish to increase the evil by saying that persons born in foreign countries, however regular and orderly their conduct may be, shall be liable to be imprisoned or sent out of the country, but that citizens of this country, however reprehensible their conduct, shall have nothing to fear? Unless the United States were inclined to assume the character of the Turks or Arabs, such a regulation as was recommended by the gentleman from Connecticut could not be adopted.

Mr. Gallatin would suggest that a part of the Constitution might be in the way of this motion.

By turning to the 9th section of the Constitution, it is found that the migration of such persons as any of the States shall think proper to admit shall not be prohibited by Congress prior to the year 1808. He understood it, however, to be a sound principle that alien enemies might be removed, although the emigration of persons be not prohibited by a principle which existed prior to the Constitution, and was coeval with the law of nations. The question was, therefore, whether the citizens or subjects of nations in actual hostility can be considered as alien enemies. The term "actual hostility" is vague in its nature and would introduce doubt as to its true import.

The resolutions were recommitted to the Committee for the Defence of the Country. On May 21 Mr. Sewall, the chairman of the committee, made its report, which was (1) that the term of residence required of applicants for citizenship be extended to fourteen years, and (2) no alien coming from a country at war with us shall be admitted to citizenship while such war continues. The first resolution was passed by a vote of 41 to 40, and the second agreed to without division.

When the Republicans came into power they repealed this bill (April 14, 1802), and reëstablished the former conditions of naturalization.

On May 22, 1798, there was presented to the House the third of the original resolutions of the Committee for the Defence of the Country, that respecting the deportation, at the pleasure of the President and by his proclamation, of aliens who were born in a country which was either at war with the United States or was threatening invasion. To the original resolution was added a section by which the execution of the act, in relation to these aliens and *all who shall harbor them,* was committed to all the judicial and ministerial officers of the Federal and State governments.

The debate on this resolution was long and animated. The chief speakers in its favor were Mr. Sewall, Nathaniel Smith [Conn.], Harrison Gray Otis [Mass.]; its leading opponents: James A. Bayard, Sr. [Del.], Albert Gallatin [Pa.], and Robert Williams [N. C.].

On Punishing Harborers of Aliens

House of Representatives, May 22–June 26, 1798

Mr. Bayard said the last section of this bill contained a principle contrary to all our maxims of jurisprudence, viz.: to provide punishment for a crime by a law to be passed after the fact is committed. Whether the crime to be punished is to amount to treason, misprision of treason, or be only a misdemeanor is left uncertain. It was his opinion that laws could not be too definite; but it would be impossible in this case for the person committed to know what crime he had committed, or to what punishment he was liable. He moved, therefore, to amend the bill by making the crime a misdemeanor, punishable by fine and imprisonment.

Mr. Sewall acknowledged there was a good deal of uncertainty in that part of the bill mentioned, but the select committee did not see any way of remedying the evil without making the law too mild in its operation. In some cases the offence would amount to high treason, the punishment for which is death; in others, to misprision of treason, the punishment for which is imprisonment not exceeding seven years and a fine not exceeding one thousand dollars. As the offence might, therefore, sometimes amount to high treason, there would be an impropriety in making it uniformly a misdemeanor.

If an alien should have resided here for a number of years and he should turn out to have been a spy, and a citizen of the United States should have harbored and concealed the said alien, knowing him to have been a spy, he would be chargeable with high treason for aiding and abetting the enemies of the

United States within its territory, or, at least, a misprision of treason.

But the gentleman from Delaware was mistaken in his idea that it was intended to try an offender by a law passed after the offence was committed. By the expression "as by law is or shall be declared" was meant only such law as should be passed between the present time and the time of committing any offence.

The question of Mr. Bayard's amendment was put and carried, 44 to 25.

On motion of Mr. Bayard the blank for containing the amount of the penalty in the amendment just carried was filled with one thousand dollars.

Mr. N. Smith hoped this amendment would not be agreed to. He believed the penalty might, in some cases, be too severe, and, in others, by far too mild. This being the condition of things, to make an uniform punishment for all cases, whether highly criminal or no crime at all, cannot be proper.

Mr. Bayard hoped the amendment would be agreed to. He did not know that a greater misfortune could happen to any man than to live in a country where the laws are so indefinite that a person cannot ascertain when he commits an offence, or what is the penalty of an offence when it is committed. The fact was of a definite nature and a definite punishment ought to be made for it. What is the fact? It is the harboring and concealing of an alien enemy after the proclamation of the President. Gentlemen say this offence may amount to treason, misprision of treason, or other offence. If the offence could amount to treason he owned he did not understand the bill, because the crime of treason is defined by the Constitution, and could not be varied by any law of Congress. If, then, the fact amount to treason, it will not be included in this law. If gentlemen wished to punish persons in exact conformity to their degree of offence they ought to prepare a scale of offence for that purpose.

Mr. Sewall said this bill declares that a person harboring an alien enemy shall be a suspected person; but the crime and punishment must be ascertained by other laws; and by these offenders are to be punished agreeably to their offences, whether they be great or small.

Mr. Gallatin said, if he understood the gentleman from Massachusetts, it was not the object of this bill to define the

nature of the offence of which a person shall be guilty or the punishment for it, for harboring and concealing an alien enemy, but only that certain circumstances should render a man a suspected person. This, to him, was altogether a new legislation.

If he understood the bill as it stood rightly, a person may be apprehended and imprisoned on account of his having harbored and concealed alien enemies; yet the gentleman from Massachusetts says this is in itself no crime; for, if it were a crime, it ought to be punished in the way proposed by the gentleman from Delaware, but he states it to be only a sufficient ground of suspicion. This, Mr. G. said, was not only contrary to every principle of justice and reason, but to the provisions of the Constitution. The Constitution says: "That no person shall be deprived of life, limb, or property without due process of law." But here certain persons may be deprived of their liberty without any process of law, or being guilty of any crime. Yet the gentleman from Massachusetts says that this bill does not define a crime or award a punishment. But, Mr. G. said, this assertion was not correct; for there was a new crime instituted, which was that of being a suspected person, and the overt act which is to be evidence of that crime is the harboring and concealing of an alien enemy, and the punishment is to be apprehension and imprisonment until it shall be found what law the prisoner has offended.

Mr. G. said he was ready to acknowledge that, where a man commits an offence, he ought to be punished; but he could not consent to punish any man on suspicion merely. He therefore moved to recommit the bill. He did this because he thought the whole of the bill vague in its nature. He wished it to be more in detail, and that the offences to be punished should be defined; for it was remarkable that every section of the bill concluded with these singular words: "Subject, nevertheless, to the regulations which the Congress of the United States shall thereafter agree and establish." So that, instead of deciding what the law should be, it gives the President the power of saying what it is; subject to the after-regulations of Congress. He wished now to make the law to declare what the offence should be, and what the punishment, and not leave it to the President to make what regulations he shall think proper. If not, the whole of the bill might as well be in two or three words, viz.: "The President of the United States shall have the power to remove, restrict, or confine alien enemies and citizens whom he may consider as suspected persons." When Congress attempted to legislate they ought not to do it in this way. When

the resolution was agreed to, authorizing this bill to be reported, he expected the committee would have defined the nature of offences and their punishments, and not reported the bill in the vague way in which it is before the House, especially as this appears not to be meant for a temporary, but a permanent, law.

If gentlemen examine the third section of the bill it will be found that all judges, justices, marshals, sheriffs, and other officers, and all the good people of the United States are bound to do—what? Not to execute any law; but to carry into effect any proclamation, or other public act, of the President. So that, instead of the judicial and any other officers of the United States, and the people at large, being obedient to the laws, they are to be obedient to the will of the President.

The last clause of the bill, which does not relate to aliens, but to our own citizens, is very objectionable. It is in the shape of a penal law, and the crime it defines is the harboring and concealing of alien enemies. Now, it is said that this crime may amount to high treason by its being construed that an offender has adhered to the enemies of the United States, knowing them to be such, or it may be no offence at all. But the provision is general; and a man guilty of no offence is liable to be apprehended and imprisoned equally with the highest offender under this law.

Mr. Sewall said that it is necessary to provide for the public safety, and in all countries there is a power lodged somewhere for taking measures of this kind. In this country this power is not lodged wholly in the Executive; it is in Congress. Perhaps, if war was declared, the President might then, as Commander-in-Chief, exercise a military power over these people; but it would be best to settle these regulations by civil process. They would be regulated by the treaties as well as by the laws of nations. The intention of this bill is to give the President the power of judging what is proper to be done, and to limit his authority in the way proposed by this bill.

Mr. Otis said that, unless gentlemen were disposed to suffer a band of spies to be spread through the country from one end of it to the other, who, in case of the introduction of an enemy into our country, may join them in their attack upon us and in their plunder of our property, nothing short of the bill like the present can be effectual.

He was willing to say that, in a time of tranquillity, he should not desire to put a power like this into the hands of the Executive; but, in a time of war, the citizens of France ought

to be considered and treated and watched in a very different manner from citizens of our own country.

As to the objection made by the gentleman from Pennsylvania, that the bill provides a punishment for suspected persons and that the word "suspected" was indefinite, Mr. O. asked whether men are not usually arrested on suspicion? When information is lodged against a man for committing an offence he is suspected of being guilty and imprisoned until he can be examined.

Mr. Nathaniel Macon [N. C.] made a motion to recommit the whole bill, which was negatived—37 to 36.

Mr. Gallatin then made a motion to recommit the third section, which was negatived by the casting vote of the Speaker, there being 38 votes for it and 38 votes against it.

The bill was read the third time when—

Mr. R. Williams moved a recommitment of the bill. He said his objections did not lie so much against the provisions respecting aliens, as to the power proposed to be given to the President of issuing proclamations, which are to be binding on the judges and other officers with respect to our own citizens. He would wish to designate every offence and its adequate punishment, as far as it could be done. In order to effect this he made his motion.

Mr. Sewall said the gentleman from North Carolina seemed not to object to the powers given to the President by the first and second sections of the bill, but he did not wish him to have any officers to execute his powers. If the President is authorized to issue orders, he must be authorized to require the aid of proper persons to execute them.

Mr. Gallatin called for the yeas and nays upon this question, which, being agreed to, he hoped this bill would be recommitted. He had no doubt that the committee, by paying due attention to the subject, instead of this general and vague bill might report such rules and regulations as would be proper to be adopted on this occasion. He recollected seeing a bill from the Senate on this subject in which something of this kind was done [see the following debate]; and, though he did by no means approve of that bill, yet it showed that the thing was not impossible. The objection made against a recommittal of this bill was that it was necessary to do something to provide means for securing and removing alien enemies, which did not apply as an argument against the recommitment of the bill. It was a good reason why a bill should be passed, but no reason why it should pass in its present form. The present bill, Mr. G. said,

was grounded upon the principle that the President of the United States shall have the power to do by proclamation what ought only to be done by law.

The power of the President, Mr. G. said, did not stop at aliens; it extended to all the citizens of the United States. The object of the last section provides that justices, judges, marshals, sheriffs, and the people at large shall perform a duty which is undefined. But the gentleman from Massachusetts says this is right, because the power given to the Executive by this bill is also undefined. This is the foundation of all the objection made to this bill; it is to the want of legislation in it, which leaves not only alien enemies, but citizens of the United States, to the will of the President.

He could conceive that the House might take into consideration the nature of the powers vested in the President and inquire what will be the duties required to be performed by the several officers of the Government to carry into effect those powers. Those powers are to apprehend, restrain, secure, and remove alien enemies and to sequester their property. As to the removal of aliens, he could not see what justices and judges had to do with it; but, if they had anything to do with it, Congress ought to say what.

The last part of the third section, he said, was as objectionable as any other. It defines the crime in two words: "harboring and concealing," and the penalty, if the accused is found guilty of this vague and uncertain charge, is imprisonment not exceeding seven years and a fine not exceeding one thousand dollars. So that, if a person be found guilty of harboring and concealing an alien enemy, however trifling the expense may be, his punishment will be left wholly to the discretion of the court. The only power of the jury will be to decide on the fact; and, if a citizen has harbored for one night, however undesignedly, an alien enemy, he must be found guilty, leaving it altogether to the court to judge of the criminality of the act and to affix the degree of punishment. He thought this part of the law ought to be more clearly defined. It ought to distinguish between cases of misdemeanor and those cases which might arise merely from ignorance and in which no offence at all might exist. He hoped, therefore, that the bill would be recommitted.

The question on recommitting the bill was put and carried, 46 to 44.

The bill was modified by the committee in a way to

remove the objections of its opponents, and passed on June 26 by a vote of 56, the negative not being taken.

Before the passage of the preceding bill one was received from the Senate, empowering the President to order such aliens as he deemed dangerous to depart from the country, and, upon their failure to do so, to imprison them for three years and debar them thereafter from becoming citizens. If any alien should return after banishment he was to be imprisoned, with hard labor, for life. Ship captains were ordered to report all aliens on their vessels, on pain of a fine of $300.

In the discussion which ensued in the House on this bill many of the arguments of the preceding debate were, naturally, repeated.

The discussion, however, soon lifted from the particular issue as to the President's power over aliens to the general ones of all his powers and the powers of Congress under the Constitution. For the first time in American politics the line was clearly drawn between the *strict* and *loose* construction of the Constitution, the Democratic Republicans adhering to the letter of the Federal charter and the Federalists construing it to permit presidential and congressional authority over matters not specifically granted therein.

The leading speakers in the House in support of the Senate bill were Mr. Otis, Robert Goodloe Harper [S. C.], and Jonathan Dayton [N. J.]. Those opposing it were Mr. Gallatin, Mr. Williams, and Edward Livingston [N. Y.].

Strict and Loose Construction of the Constitution

House of Representatives, June 8–June 21, 1798

Mr. Gallatin said it has been declared by the gentleman from Massachusetts [Mr. Sewall] that this power over aliens is included in the power given to Congress to regulate commerce; the gentleman from Delaware [Mr. Bayard] believes it to be contained in that clause of the Constitution which gives to Congress the power to lay and collect taxes, by which he argues power is also given to provide for the common defence

and general welfare; but another gentleman from Massachusetts [Mr. Otis] and a gentleman from Connecticut [Mr. Dana] drew this power from that which they say every government must have to preserve itself.

Mr. G. said he would offer a few remarks upon each of these reasons. In the first place, the power was said to be included in the power to regulate commerce. But this bill is not intended for any commercial purpose; it is wholly of a political nature, intended to effect political ends, and does not relate to aliens as merchants. If Congress has any power which they can exercise on the persons of aliens, it might relate only to merchants, to them as merchants—to their professions, not to their existence as men.

With respect to the clause of the eighth section, contended for by the gentleman from Delaware, it was in the following words: "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States," and that no gentleman contended that its meaning was to give power to Congress, in the first place, to lay taxes, and, in the next place, to provide for the common defence and general welfare of the United States. But the obvious and universally received meaning of the last words was not to give a general power altogether unconnected with the remaining part of the sentence, but to define the purpose for which taxes should be laid. Had the construction of the gentleman from Delaware been intended, the power would have been given in a distinct paragraph, in the same manner as all the other powers are given, instead of placing the words in this way in the middle of a paragraph relating to a quite different subject. If this new construction was adopted there would have been no need to have enumerated the powers given to Congress in this and other sections, because such a broad power as that contended for would have embraced every other.

Nor is this all. The twelfth [1] amendment of the Constitution seems to have apprehended some improper use being made of the sweeping clause by taking it as a ground for power never intended to be given, and, therefore, it declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; but, if the construction now spoken of were to prevail, this amendment could have no application; for, if all the powers are delegated to Congress by that clause, how

[1] Now the tenth.

could it be said that the powers not delegated were reserved to the States?

To show that, at the time the Constitution was adopted, no such opinion as this prevailed Mr. G. referred to the debates had upon it in the Pennsylvania convention. He particularly quoted the sentiments of Mr. Wilson, who spoke of this provision for raising taxes as being necessary for the common defence and general welfare. Mr. Wilson expressed himself as follows: "Certainly Congress should possess the power of raising revenue from their constituents for the purpose mentioned in the eighth section of the first article, that is, to pay the debts and provide for the common defence and general welfare of the United States"; and again: "I think it would be very unwise in this convention to refuse to adopt this Constitution, because it grants Congress power to lay and collect taxes for the purpose of providing for the common defence and general welfare of the United States." Mr. G. also quoted from "The Federalist," written by the members of the Federal convention in defence of the Constitution before its adoption.

Mr. G. said he was well informed that those words had originally been inserted in the Constitution as a limitation to the power of laying taxes. After the limitation had been agreed to, and the Constitution was completed, a member of the convention [1] (he was one of the members who represented the State of Pennsylvania), being one of a committee of revisal and arrangement, attempted to throw these words into a distinct paragraph so as to create, not a limitation, but a distinct power. The trick, however, was discovered by a member from Connecticut,[2] now deceased, and the words restored as they now stand. So that, Mr. G. said, whether he referred to the Constitution itself, to the most able defenders of it, or to the State conventions, the only rational construction which could be given to that clause was that it was a limitation, and not an extension, of powers.

Another gentleman from Massachusetts [Mr. Otis] has taken a kind of general ground, supposing that there must exist certain general powers in Congress which are equal to meet any possible case. He could not say that he rightly understood the meaning of that gentleman. If he meant that all power should be vested in Government, because it is possible that occurrences may arise which will call for the exercise of them, he would not hesitate to say that doctrine is contrary to the Constitution, for that has put limits to the powers of the Government, and has

[1] Gouverneur Morris is referred to.

[2] Roger Sherman is referred to.

said certain things shall not be done by it. For instance, it might be thought necessary, though neither an invasion nor a rebellion had taken place, to suspend the habeas corpus act, as had been the case in Great Britain some time ago. It was there represented that a dangerous conspiracy existed against the Government, and that, in order to meet it with effect, it was necessary to suspend the habeas corpus act. Reasoning on the same ground, the gentleman from Massachusetts might say that a dangerous conspiracy now exists here, that he has got hold of the threads of that plot which the gentleman from South Carolina [Mr. Harper] has pledged himself to this House a few days ago to pursue through all its ramifications, and move for a suspension of the habeas corpus act. But the Constitution would be directly against such a motion, as it is there said "it shall not be suspended but in cases of actual rebellion or invasion." So that this Government cannot do everything which the gentleman may suppose necessary to be done. Or did the gentleman mean that Congress ought to exercise all the powers that may be vested in Government in this country? Such a sentiment is also flatly contradicted by the Constitution, as it recognizes a division of powers between the general and State governments. Thus, in the instance before the committee, Congress has the power to declare war and to punish any persons guilty of treasonable practices, but what relates to aliens as suspicious characters the Government of the United States has no cognizance of. It is a matter which remains with the State governments; and, if there was any necessity for passing a law on the subject, there could be no doubt it would be done by the proper constitutional authority—the State governments. Or did gentlemen mean that the power for providing for the common defence should absorb all other powers, and that, if this power was limited, the Constitution is not worth a farthing? Did he wish, except the Constitution would authorize an act of this sort, it should be overset? Did he like the Constitution only for the powers it gave, and not for the restraints it put on power? Did he intend to declare himself an enemy to every part of the Constitution which restrains the power of the general Government? He could not suppose that this was his opinion; and, if it was not, he did not understand what he meant.

As to the general declaration contained in the preamble of the Constitution, he would remark that the Articles of Confederation under the old Congress had several expressions of the same nature. The power was there said to be given for the general defence, showing that to have been the object of

the Union. The same articles gave power to Congress to declare war, and several other powers of a general nature in which such a power might equally be supposed to be included; and it was on this account that he stated that the old Congress never acted on this subject, merely because the general powers of both governments being nearly similar, the opinion of the old Congress, in relation to their own authority, was applicable to the present instance.

In opposing this bill it might not be supposed to be necessary to go further than to show that the power of passing a law like the present had not been given to this Government. But it so happened that, supposing he was mistaken in that position, another clause expressly prohibited the exercise of that power for the present, even if it did exist at all. He would, therefore, proceed to notice some of the objections which had been urged against his observations on the ninth section of the first article of the Constitution, which says that Congress shall not prohibit the migration of such persons as the States choose to admit.

Mr. G. took it for granted that, whatever is not prohibited is permitted; and, so long as no law of any State prohibits the admission of aliens, he supposed all are admitted. Indeed, the admission is recognized by laws in every State.

Again, it was said that this clause relates solely to slaves, as an exception granted of the power to regulate commerce. In answer to this he said that the word *migration*, as contradistinguished from the word *importation*, could apply only to a free act of the will, and to the voluntary arrival of free persons coming to this country, in the same manner as the word *importation* could apply only to slaves brought into the United States without their consent; and the word *persons* was of the most general acceptation, and could by no means exclude free emigrants. That this even was well understood at the time of the adoption of the Constitution, he would prove by the following quotation from James Wilson's speech in the debates of the Pennsylvania convention: "The gentleman [Mr. Findley] says that it is unfortunate in another point of view; it means to prohibit the introduction of white people from Europe, as this tax may deter them from coming among us; a little impartiality and attention will discover the care that the convention took in selecting their language. The words are the *migration* or *importation* of such persons shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such *importation;* it is observable here that the term *migration* is dropped, when a tax or duty is mentioned; so that Con-

gress have power to impose the tax only on those imported."

The argument, therefore, stood thus: Either the general power of preventing the migration of aliens is included in the powers given by the Constitution to Congress, or it is not. If it is not included, and that was his decided opinion, the present bill is unconstitutional. But if, by implication, it may be derived from any of the specific powers given to Congress, whether that of regulating commerce, of declaring war, or of any other, or if it be included in a supposed general power of providing for the common defence and general welfare, even, in that case, its exercise is prohibited to Congress by this clause till the year 1808, and, on this ground, the present bill is also unconstitutional.

Mr. G. thought when a constructive power of this kind was claimed it was time that a stand should be made against it. He looked upon the provision not only as unconstitutional, but as of a most arbitrary nature, grounded upon a supposition which has not been proved, and upon another which does not exist. The supposition is not proved that the measure is necessary on account of danger to be apprehended, from there being aliens resident in the country dangerous to its peace. The persons from whom this danger is apprehended are either alien friends or alien enemies. So far as relates to the latter they are provided for in another bill. The whole of the arguments on this bill, therefore, are applicable only to alien friends. And here he must take notice that, although Congress has not the power to remove alien friends, it cannot be inferred, as had been objected, that it had not the power to remove alien enemies; this last authority resulted from the power to make all laws necessary to carry into effect one of the specific powers given by the Constitution. Among these powers is that of declaring war, which includes that of making prisoners of war and of making regulations with respect to alien enemies, who are liable to be treated as prisoners of war. By virtue of that power, and in order to carry it into effect, Congress could dispose of the persons and property of alien enemies as it thinks fit, provided it be according to the laws of nations and to treaties.

No facts had appeared, with respect to alien friends, which require these arbitrary means to be employed against them. If there are gentlemen possessed of facts of this kind, it is their duty to lay them before the House. But, while these proofs are held back, gentlemen have a right to say no necessity exists for such a measure. He supposed gentlemen who spoke with so much confidence on this subject must be possessed of facts unknown

to him, otherwise they would be unjustifiable in creating a groundless alarm; but the House had a right to inquire what the facts are, if they did exist, and whether they relate to alien friends or alien enemies.

He would not only say that this bill was founded on a supposition which was not proved, but, also, that it took for granted another position which did not exist. If there be any danger, it is certainly such as may be punished by the laws of our country, without adopting a measure of this kind. The laws of the United States will reach alien friends, if guilty of seditious or treasonable practices, as well as citizens. And, if the law is not at present sufficient to reach every case, it might be amended. He wished all crimes and punishments to be accurately defined; and he hoped gentlemen who profess to be warm supporters of this Government and Constitution, will not say that it is not in our power to reach the object. And, if it be necessary to send certain persons out of the country on account of their malpractices, he trusted laws would be framed for the purpose of punishing them, and that they would not be left without trial, subject to the arbitrary control of one man only.

This bill not only was grounded upon a supposed necessity which did not exist, but it appeared to him that if it was passed, a bill of a similar nature might be brought in in relation to citizens of the United States. This bill is called a bill concerning aliens; but in its consequences it affects citizens as much as aliens; for he called upon the supporters of this bill to show him a single clause in the Constitution which has been referred to in support of this bill, which would not equally justify a similar measure against citizens of the United States. And, so far as relates to the necessity of the bill, the plea may be equally made against citizens as against aliens; for what is the ground upon which this power is claimed? It is by virtue of the power vested in Congress to regulate commerce. And what is this power? It is "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." Therefore, if, by virtue of the power of Congress to regulate commerce with foreign nations, they can remove foreigners from the country by the same reasoning (bad reasoning he knew it was), they had a similar power of removing citizens of the several States. And, when another gentleman tells us that the power is claimed under certain powers given to Congress to provide for the common defence and general welfare, would it not apply to citizens as well as aliens? It certainly would, since they might argue that seditious and turbulent citizens might be as

dangerous to the peace of the country as aliens of a similar description; and, when gentlemen are disposed to treat the Constitution in this way to come at aliens, he had no doubt they will be equally ready to do it against citizens whenever they shall wish to do so.

Or will gentlemen say that the Constitution affords a security to citizens which it does not extend to aliens? He knew the rights of aliens are limited; but, if we can dispense with the law toward them, we may also do it with respect to citizens. The trial by jury does not speak of citizens, but of persons. What security, said Mr. G., can citizens have when they see a bill like the present pass into a law?

Again, with respect to the writ of habeas corpus, what do gentlemen say? They say it is only to prevent any man from being imprisoned in an arbitrary manner; and that, as the present bill describes the cases in which a man is liable to arrestation and imprisonment, it cannot be a suspension of that law; that is to say, the writ of habeas corpus is designed to prevent arbitrary imprisonment, or what the gentleman calls illegal imprisonment; but, according to this doctrine, if you give, by law, the power to the President of arbitrary imprisonment, that power, being thus given by law, is on that account no longer illegal nor arbitrary. That was the kind of security which citizens might expect to derive from the clause of the Constitution which related to the writ of habeas corpus. That privilege was to be done away by a legal distinction.

By the seventh amendment[1] to our Constitution, it is provided that "no person shall be deprived of life, liberty, or property without due process of law." According to the doctrine of the gentleman, Congress may give, by law, the power to the President, or anyone else, to deprive a citizen of his liberty or property, and the act of giving that power by law will be called the due process of law contemplated by the Constitution.

A gentleman had said that States must claim only local powers, general ones being placed in the general Government. But the present bill was more of a local than of a general nature. Those States whose population is full, and to which few migrations take place, are little concerned in this question, unless, indeed, to check the population of other States and to keep a preponderance in their hands be an object with them. It was of consequence only to those States whose population is thin and whose policy it has always been to encourage emigration. Among

[1] Now the fifth.

these he placed the State of Pennsylvania. Indeed, he had always thought it was the general policy of this country; he believed it had only been the violence of party which had created any difference of opinion on the subject. It had been an established principle in Pennsylvania, from its first establishment to the present time, and every encouragement had been held out to emigrants of all nations. On this account, if this bill passes, there will be ten times the number of people under its operation, and the arbitrary power of the President, in this State than there will be in all the New England States put together. Emigration, he said, had been very useful to Pennsylvania. It is owing to it that its population had, within a little more than a century, reached its present extent. Nor had the mixture of emigration from Great Britain and Germany produced any bad effect upon the policy of the State. He believed it could boast of civil establishments as wise and as good as any of her sister States. And, in such a bill, assuming a power belonging to herself and not to the United States, and affecting her population and prosperity to such an extent, Pennsylvania was immediately and deeply concerned.

Let it be remembered that the Declaration of Independence, in the enumeration of the complaints of America against the King of Great Britain, states that "he has endeavored to prevent the population of these States, for that purpose obstructing the laws for the naturalization of foreigners, refusing to pass others to encourage their migration hither," etc. The present bill related not to any political rights; it affected the civil rights, the personal liberty, the property of aliens. It subjects them to a removal, upon suspicion, and that at the will of one man. It was not only a refusal to encourage migrations, it was a bill to prevent migrations.

Mr. Otis said it could not be denied that it was the design of the Federal Constitution to embrace all our exterior relations. The great objects of peace and war, negotiations with foreign countries, the general peace and welfare of the United States, must be provided for and maintained by the national Government; no other authority is competent to these great duties; no other can judge of the necessity of measures preparatory to the national defence nor enforce such measures with general effect.

If Congress has the right to defend the Union it has certainly the right to prepare for defence. And, if any specific power had been claimed by the individual States which was inconsistent with this general power, it must vanish before the

obligation of the general Government to provide for the common defence.

But he did not think the power of admitting foreigners, which it was contended for by the gentleman from Pennsylvania remained with the States, was inconsistent with the right of expelling dangerous persons, which he claimed for the general Government. That gentleman, Mr. O. said, had interrogated him in a very extraordinary manner. He has asked whether he wished to overturn the Constitution? He should certainly answer: No; he did not wish to overturn it, but to preserve it against the attempts of insidious and dangerous aliens, and he thought this bill necessary for that purpose. He considered and followed the Constitution as a lamp to his path; whereas the gentleman from Pennsylvania [Mr. Gallatin] would make the Constitution a mere *ignis fatuus,* calculated to bewilder and mislead.

Mr. O. agreed that the construction was just that which the gentleman put upon the first article of the eighth section of the Constitution, and that to provide for the common defence and general welfare was the end of the powers recited in the first part of that section, and that the powers were merely the means. But this is equally the end of all the other powers given to Congress by all the articles of this section, so that these words might, with propriety, be understood as if they were added to every clause in it, and thus, from the whole section, it appeared clear that Congress has a right to make war for the common defence and general welfare, and, of course, to do everything which is necessary to prepare for such a state. And shall we, said Mr. O., allow that the States have a right to defeat this power? If we find men in this country endeavoring to spread sedition and discord; who have assisted in laying other countries prostrate; whose hands are reeking with blood; and whose hearts rankle with hatred toward us—have we not the power to shake off these firebrands? Certainly we have. They were admitted here under the rights of hospitality, exercised by nations toward friendly strangers; but, when they become dangerous and hostile, we certainly have a right to send them away. What will be our situation if any one of the States may retain a number of men whose residence shall be provably dangerous to the safety of the United States? If such State should judge proper to make regulations on the subject it could only banish a person from its territory. So that persons of this description, stamped with infamy in their own country and plotting treasons against ours, may remain in some part of the territory of the United States,

while Congress has not the power to get rid of them until all the States concur in the same object.

If this was the dilemma into which we are reduced by the Federal compact, it might as well have never been made, for a government that is prevented from exercising an authority which may be necessary to its existence is not better than no government at all; and, if the individual States have the means of frustrating the views of the general Government in the exercise of its powers, the present Constitution would have no advantage over the old Confederation. The simple ground on which the question stood was this: Can the right of expulsion be exercised by the United States without infringing the right of admission which is reserved to the individual States? And, gentlemen, to demonstrate the collision of these powers, put an extreme case, and suppose that Congress may send out of the country all the aliens who should be admitted by any State, and thus render nugatory the right of importation reserved to the States. But this is the old-fashioned way of arguing from a presumed abuse of power. It is one thing to banish all aliens indiscriminately and a very different thing to banish a few individuals of suspicious character. It is in the nature of a punishment for supposed offences, and there is no fear of involving innocence with guilt. Aliens do not claim an exemption from punishment for offences against the United States—when found guilty of crimes the courts can sentence them to be imprisoned or to be punished with death. And yet the gentleman from Pennsylvania might as well say that such sentences are unconstitutional, because the courts might imprison or hang up aliens as fast as they are admitted into any State.

Mr. O. contended that the limitation of the power of admitting aliens, which is reserved to the States till the year 1808, implied that Congress might prohibit the migration of foreigners after that time, so that this ninth section of the Constitution is only an exception from the general power, and must be construed strictly. If the United States have not this right they cannot authorize the President to send away a public minister who should threaten to convulse the nation, but a State might retain such a minister contrary to the wishes and interests of the United States.

Mr. O. wished gentlemen to inquire whether or not it is now necessary to exercise this power. Gentlemen call for evidence of any alien's acting improperly in this country. If, he said, proof positive and direct could be adduced the laws of the country might be sufficient to punish them; but is there not

sufficient reason to be alarmed on this subject, not only from the fate of other countries, but from what has happened under our own eyes. Do we not know, said he, that the French nation have organized bands of aliens, as well as of their own citizens, in other countries to bring about their nefarious purposes. It is well known that their object is to divide and command; and they furnish the most dreadful commentaries upon this old maxim. By these means they have overrun all the republics in the world but our own. Do we not, said he, read the history of their dark maneuvers in the fate of Holland and Switzerland? And may we not expect the same means to be employed against this country? We certainly might.

Mr. O. said that this diplomatic agency had been in full motion in the United States; he might mention names; but it was well known to every gentleman of this committee that a Frenchman of a literary and intriguing character, who was formerly a member of the Club Breton, and was doubtless in the confidence of the Directory, who has for a long time sojourned in Pennsylvania, who had explored the Indian country and traveled through other States, had lately taken flight. It was also well known that a citizen of Pennsylvania, conspicuous for his attachment to the French, had followed him. It was lately discovered that another Frenchman who resided at New York and who, he believed, was naturalized, is in the constant habit of corresponding with the Directory, a man, who, though holding no known agency under them at present, has heretofore agitated the Continent by his intrigues and may be looked upon as in their employ. And the same kind of correspondence is traced up to our own citizens.

Mr. O. concluded by saying the times are full of danger and it would be the height of madness not to take every precaution in our power. The right contended for was of inestimable value to the United States, but to the individual States it would be of no importance. The provisions of the Constitution were plain and adequate to all the exigencies of the nation, and it was wrong to waste that time in nice and unnecessary arguments which ought to be employed in the most active preparations and decisive measures. He hoped, therefore, the section would be retained.

Mr. Harper said it was not without difficulty that he could prevail upon himself to believe that the objections to this measure, on Constitutional grounds, were serious. He could not help being reminded, when he heard these objections urged, of the saying of a witty writer upon a book still more sacred

than the Constitution, viz.: "That it was a rich field into which all parties sent their troops to forage." Mr. H. said if it be wished to restrain a foreign enemy, or domestic traitors, and effectual means are proposed, the House is told, by a novel discovery, that we have not the power of self-defence; though we see the knife of the traitor held to our throats, we are to wait until the State governments will come in and snatch it away. Strange would it be if the Government could thus exist; strange would it be if it had not the power of suppressing domestic traitors!

It was said that State governments only had cognizance over aliens; but have these governments any knowledge of what relates to our foreign relations, or the common defence of the Union? Certainly not. By admitting the doctrine which these gentlemen advocate, what is the result? One State might expel persons as dangerous, but an adjoining State might be of opinion that the person ought not to be expelled; and, of course, such a person would remain at liberty to act against the Government and people of the United States; and, if the safety of the Government of the Union is to depend upon the discordant wills of sixteen States, deplorable and debased indeed would be its situation.

Mr. H. allowed that the States have a right to admit such foreigners as they think proper till a certain period; but the general Government is, in the meantime, charged with the common defence and welfare of the United States, and, in pursuance of those objects, it certainly has a right to pass all necessary laws, and, if any of these laws should require certain aliens to be sent out of the country, what has appeared to be necessary for the general welfare cannot be carried into effect if the States have a right to insist upon keeping their aliens.

The first paragraph of the ninth section of the Constitution does not say Congress shall never have the power specified, but that it shall not exercise the power until the year 1808, which makes it pretty evident that the provision had relation only to slaves. If it had related to emigrants it would have been without any limitation of time. If Africans, or slaves, had been inserted by name, the thing could not, in his opinion, have been more clear.

With respect to citizens, we know they cannot be proceeded against in this way. To argue the abuse of power from its existence was a common subterfuge of gentlemen, which, if not disregarded, would prevent the giving any power whatever, and he desired no better principle to completely stop the wheels of

Government, and to lay it prostrate at the feet of its external and internal foes.

But it was said no necessity exists for this measure, and gentlemen call for proof of any danger to be apprehended from the description of persons mentioned in this bill. Are we to wait, then, said Mr. H., until a judicial process can be entered upon? To stay until the dagger is plunged into our bosoms before we take any means of defence?—Until the thief breaks into our house before we bar the door? He believed no one would say this would be good policy.

Suppose, said Mr. H., a person had good information that a set of thieves meant to break into his house on a certain night, what would be thought of the conduct of any individual who should say to him: "You need not prepare to defend yourself; there is no occasion to bar the doors—there are no thieves in the neighborhood?" Such a person certainly would be deemed a partner in the burglary. The allegory, Mr. H. said, was applicable to the fate of many nations whose governments have been overturned by France. Mr. H. referred to the animating picture of French intrigue given by the gentleman from Massachusetts. He trusted the bill would be passed. He wished no traitors should be left in the country to paralyze all our efforts for its defence and, when the enemy appeared, give him possession of it.

The zeal shown in this House, and in other places, against this bill evinces the deadly hatred of certain persons toward it. But it was well known that those European nations which have escaped being overcome by the domineering spirit of France owe their safety to a bill like this; and, unless we follow their example and crush the viper in our breast, we shall not, like them, escape the scourge which awaits us.

Mr. Dayton (the Speaker) most unequivocally reprobated the idea of Congress being confined to the strict letter of the Constitution in the nature, extent, and exercise of the authority vested in it. He said that a construction so narrow would be absurd, and would go to deprive the legislature of the power of making provisions upon the most common or most necessary cases merely because they were not specified. He adduced instances to prove that they might legislate with a view to "the general welfare," and, particularly, that, where a State, or part of a State, should be overwhelmed by the sea, or otherwise rendered uninhabitable from some extraordinary convulsion, a grant might be made to the people who were saved from the deluge either of money from the national treasury or of a part of the

vacant public lands. He cited many acts that had already been passed under that very general power of providing for the common defence and general welfare, and asserted that, though the Constitution was very useful in giving general directions, yet it was not capable of being administered under so rigorous and so mechanical a construction as had been sometimes contended for.

Mr. R. Williams said the gentleman last up is anxious to know whether the Federal Government has not the power to provide for the general welfare? Within the limits of the Constitution it certainly has the right; but it might require all power to do this; and then it would not, for if the general Government had all this power nothing would be left for the State governments to act upon. He wished gentlemen would mark the line of distinction and say whether the individual States do not possess some power to be employed for the general welfare as well as the general Government, and whether the benefits thence arising are not equally as serviceable to the public as when exercised by the general Government?

The gentleman from South Carolina supposes States may admit foreigners into their society, but may not be inclined to punish them for breaches of their laws. Could so absurd an opinion ever exist? Besides, if States choose to act contrary to each other in their internal policy, surely Congress has not the power to make them uniform. One State may punish a man with death for stealing a horse, and another may inflict upon him imprisonment. Yet this they have a right to do, without the interference of Congress.

In supporting this bill against aliens the gentleman from South Carolina has shown its operation upon citizens, which proves to him that the principle is intended to be carried further than it appears at present. If we look into the history of other countries we shall find that, whenever governments have wished to make inroads upon the liberties of the people, nothing has been more common than to institute an alarm of danger of some kind or other. No such maneuver, however, should ever induce him to grant an arbitrary power to the President of the United States, or to any other man. It is not sufficient to say that the general welfare requires a thing to be done; because, if it be a subject which belongs to the States, however necessary it may be to be done, Congress cannot do it.

Mr. Harper, after some observations showing the impropriety of treating persons confined for offences under this act as common felons, moved to strike out the words "and confined to

hard labor for and during life" and insert, in their place, "during the pleasure of the United States."

The question on the amendment was put and carried, there being 53 votes for it. The question of the passage of the bill now came forward.

Mr. Livingston, referring to the number of similar bills on the exclusion of aliens, said: This circumstance gave me a suspicion the principles of the measure were erroneous. Truth marches directly to its end by a single undeviating path. Error is either undetermined on its object or pursues it through a thousand winding ways; the multiplicity of propositions, therefore, to attain the same general but doubtful end led me to suspect that neither the object nor the means proposed to attain it were proper and necessary. These surmises were confirmed by a more minute examination of the act. In the construction of statutes it is a received rule to examine what was the state of things when they passed, and what were the evils they were intended to remedy; as these circumstances would be applied in the construction of the law it might be well to examine them minutely in framing it. The state of things, if we are to judge from the complexion of the bill, must be that a number of aliens, enjoying the protection of our Government, were plotting its destruction; that they are engaged in treasonable machinations against a people who have given them an asylum and support, and that there is no provision to provide for their expulsion and punishment. If these things are so, and no remedy exists for the evil, one ought speedily to be provided, but, even then, it must be a remedy that is consistent with the Constitution under which we act; for, as by that instrument all powers not expressly given by it to the Union are reserved to the States, it follows that, unless an express authority can be found vesting us with the power, be the evil ever so great, it can be remedied only by the several States who have never delegated the authority to Congress.

We must legislate upon facts, not on surmises; we must have evidence, not vague suspicions, if we meant to legislate with prudence. What facts have been produced? What evidence has been submitted to the House? I have heard, sir, of none. We have, indeed, been told that the fate of Venice, Switzerland, and Batavia was produced by the interference of foreigners. But the instances were unfortunate; because all those powers have been overcome by foreign force, or di-

vided by domestic faction, not by aliens who resided among them, and, if any instruction was to be gained from those republics, it would be that we ought to banish not aliens, but all those who did not approve of the Executive acts. This, he believed, gentlemen were not ready to avow; but, if this measure prevailed, he should not think the other remote; but, if it had been proved that these governments were destroyed by the conspiracies of aliens, it yet remains to show that we are in the same situation; or that any such plots have been detected, or are even reasonably suspected here. Nothing of this kind has been yet done. A modern Theseus, indeed, has told us he has procured a clue that will enable him to penetrate the labyrinth and destroy this monster of sedition. Who the fair Ariadne is, who so kindly gave him the ball, he has not revealed; nor, though several days have elapsed since he undertook the adventure, has he yet told us where the monster lurks. No evidence, then, being produced, we have a right to say that none exists, and yet we are about to sanction a most important act; and on what ground? Our individual suspicions, our private fears, our overheated imaginations. Seeing nothing to excite those suspicions, and not feeling those fears, I could not give my assent to the bill even if I did not feel a superior obligation to reject it on other grounds.

Our Government, sir, is founded on the establishment of those principles which constitute the difference between a free Constitution and a despotic power; a distribution of the legislative, executive, and judiciary powers into several hands; a distribution strongly marked in the three first and great divisions of the Constitution; by the first, all legislative power is given to Congress, the second vests all legislative functions in the President, and the third declares that the judiciary powers shall be exercised by the Supreme and Inferior Courts. Here, then, is a division of the governmental powers strongly marked, decisively pronounced, and every act of one or all of the branches that tends to confound these powers, or alter this arrangement, must be destructive of the Constitution. Examine, then, sir, the bill on your table and declare whether the first section does not confound these fundamental powers of government, vest them all in the more unqualified terms in one hand, and thus subvert the basis on which our liberties rest.

Legislative power prescribes the rule of action; the judiciary applies that general rule to particular cases, and it is the province of the Executive to see that the laws are carried into full effect. In all free governments these powers are exercised by

different men, and their union in the same hand is the peculiar characteristic of despotism. If the same power that makes the law can construct it to suit his interest and apply it to gratify his vengeance; if he can go further and execute, according to his own passions, the judgment which he himself has pronounced upon his own construction of laws which he alone has made, what other features are wanted to complete the picture of tyranny? Yet all this, and more, is proposed to be done by this act; by it the President alone is empowered to make the law, to fix in his mind what acts, what words, what thoughts or looks shall constitute the crime contemplated by the bill, that is, the crime of being "suspected to be dangerous to the peace and safety of the United States." He is not only authorized to make this law for his own conduct, but to vary it at pleasure, as every gust of passion, every cloud of suspicion shall agitate or darken his mind. The same power that formed the law, then, applies it to the guilty or innocent victim, whom his own suspicions, or the secret whisper of a spy, have designated as its object. The President, then, having made the law, the President having construed and applied it, the same President is, by the bill, authorized to execute his sentence, in case of disobedience, by imprisonment during his pleasure. This, then, comes completely within the definition of despotism—an union of legislative executive, and judicial powers. But this bill, sir, does not stop here; its provisions are a refinement upon despotism and present an image of the most fearful tyranny. Even in despotisms, though the monarch legislates, judges, and executes, yet he legislates openly; his laws, though oppressive, are known; they precede the offence and every man who chooses may avoid the penalties of disobedience. Yet he judges and executes by proxy, and his private interests or passions do not inflame the mind of his deputy.

But here the law is so closely concealed in the same mind that gave it birth—the crime is "exciting the suspicions of the President," but no man can tell what conduct will avoid that suspicion—a careless word, perhaps misrepresented, or never spoken, may be sufficient evidence; a look may destroy, an idle gesture may insure punishment; no innocence can protect, no circumspection can avoid the jealousy of suspicion; surrounded by spies, informers, and all that infamous herd which fatten under laws like this, the unfortunate stranger will never know either of the law, of the accusation, or of the judgment until the moment it is put in execution; he will detest your tyranny and fly from a land of desolators, inquisitions, and spies.

This, sir, is a refinement of the detestable contrivance of the Decemvirs; they hung the tables of their laws so high that few could read them. A tall man, however, might reach them, a short one might climb and learn their contents, but here the law is equally inaccessible to high and low. Safely concealed in the breast of its author, no industry or caution can penetrate this recess and obtain a knowledge of its provisions; nor, even if they could, as the rule is not permanent, would it at all avail.

Having shown that this act is at war with the fundamental principles of our Government, I might stop here in the certain hope of its rejection. But I can do no more; unless we are resolved to pervert the meaning of terms, I can show that the Constitution has endeavored to "make its surety doubly sure, and take a bond of fate," by several express prohibitions of measures like that you now contemplate. One of these is contained in the ninth section of the first article; it is at the head of the articles which restrict the powers of Congress, and declares "that the emigration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited prior to the year 1808." Now, sir, where is the difference between a power to prevent the arrival of aliens and a power to send them away as soon as they shall arrive? To me they appear precisely the same. The Constitution expressly says that Congress shall not do this, and yet Congress are about to delegate this prohibited power and say that the President may exercise it as often as pleasure may direct.

I am informed that an answer has been attempted to this argument by saying that the article, though it speaks of "persons," only relates to slaves. But a conclusive reply to this answer may be drawn from the words of the section; it speaks of migration and importation. If it relates only to slaves "importation" would have been sufficient; but how can the other word apply to slaves? Migration is a voluntary change of a country; but who ever heard of a migration of slaves? The truth is both words have their appropriate meaning, and were intended to secure the interests of different quarters of the Union. The Middle States wished to secure themselves against any laws that might impede the emigration of settlers. The Southern States did not like to be prohibited in the importation of slaves; and so jealous were they of this provision that the fifth article was introduced to declare that the Constitution should not be amended so as to do it away.

But, even admit, said Mr. L., the absurdity that the word "migration" has no meaning, or one foreign to its usual accepta-

tion, and that the article relates only to slaves. Even this sacrifice of common sense will not help gentlemen out of their dilemma; slaves probably always, but certainly on their first importation, are aliens; many people think they are always "dangerous to the peace and safety of the United States!" If the President should be of this opinion, he not only can, but, by the terms of this law, is obliged to, order them off; for the act creates an obligation on him to send away all such aliens as he may judge dangerous to the peace or safety of the United States. Thus, according to the most favorable construction, every proprietor of this species of property holds at the will and pleasure of the President—and this, too, in defiance of the only article of the Constitution that is declared to be unalterable. But, let us, sir, for a moment imagine, if we can, that the States intended to restrict the general Government from preventing the arrival of persons whom they were yet willing to suffer that general Government to ship off as soon as they should arrive; grant all this and they will be as far from establishing the constitutionality of the bill as they were at the first moment it was proposed; for, in the third article, it is provided that all "judicial power shall be vested in the Supreme and Inferior Courts, that the trial of all crimes shall be by jury," except in case of impeachment; and, in the seventh and eighth amendments,[1] this provision is repeated and enforced by others which declare that "no man shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of a grand jury"; that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defence." Now, sir, what minute article in these several provisions of the Constitution is there that is not violated by this bill? All the bulwarks which it opposed to encroachments fall before personal liberty, fall before this engine of oppression.

Judiciary power is taken from courts and given to the Executive, the previous safeguard of a presentment by a grand inquest is removed; the trial by jury is abolished; the "public trial" required by the Constitution is changed into a secret and worse than inquisitorial tribunal; instead of giving "informa-

[1] Now the fifth and sixth.

tion on the nature and cause of the accusation," the criminal, ignorant of his offence and the danger to which he is exposed, never hears of either until the judgment is passed and the sentence is executed; instead of being "confronted with his accusers" he is kept alike ignorant of their names and their existence; and even the forms of trial being dispensed with, it would be a mockery to talk of "proofs for witnesses," or the "assistance of counsel for defence"—thus are all the barriers which the wisdom and humanity of our country had placed between accused innocence and oppressive power at once forced and broken down. Not a vestige even of their form remains. No indictment; no jury; no trial; no public procedure; no statement of the accusation; no examination of the witnesses in its support; no counsel for defence; all is darkness, silence, mystery, and suspicion. But, as if this were not enough, the unfortunate victims of this law are told in the next section that if they can convince the President that his suspicions are unfounded he may, if he pleases, give them a license to stay; but, how remove his suspicions, when they know not on what act they were founded? Miserable mockery of justice! appoint an arbitrary judge armed with legislative and executive powers added to his own! let him condemn the unheard, the unaccused object of his suspicion; and, then, to cover the injustice of the scene, gravely tell him, you ought not to complain—you need only disprove facts that you have never heard—remove suspicions that have never been communicated to you; it will be easy to convince your judge, whom you shall not approach, that he is tyrannical and unjust; and, having done this, we give him the power he had before, to pardon you, if he pleases.

So obviously do the constitutional objections present themselves that their existence cannot be denied, and two wretched subterfuges are resorted to to remove them out of sight. First, it is said, the bill does not contemplate the punishment of any crime; and, therefore, the provisions in the Constitution relative to criminal proceedings and judiciary powers do not apply. But have the gentlemen who reason thus read the bill; or is everything forgotten in our zealous hurry to pass it? What are the offences upon which it is to operate? Not only the offence of being "suspected of being dangerous to the peace and safety of the United States," but also that of being "concerned in any treasonable or secret machinations against the Government thereof." And this, we are told, is no crime! a treasonable machination against the Government is not the subject of criminal jurisprudence! Good Heaven! to what absurdities does an

overzealous attachment to particular measures lead us! In order to punish a particular act we are forced to say that treason is no crime, and plotting against our Government is no offence! And, to support this fine hypothesis, we are obliged to plunge deeper in absurdity and say that, as the acts spoken of in the bill are no crimes, so the penalty contained in it is no punishment, it is only a prevention; that is to say, we invite strangers to come among us; we declare solemnly that Government shall not prevent them; we entice them over by the delusive prospect of advantage; in many parts of the Union we permit them to hold lands, and give them other advantages, while they are waiting for the period at which we have promised a full participation of all our rights. An unfortunate stranger, disgusted with tyranny at home, thinks he shall find freedom here; he accepts our conditions; he puts faith in our promises; he vests his whole property in our hands; he has dissolved his former connections, and made your country his own. But, while he is patiently waiting the expiration of the period that is to crown the work, and entitle him to all the rights of a citizen, the tale of a domestic spy, or the calumny of a secret enemy, draws on him the suspicions of the President, and, unheard, he is ordered to quit the spot which he selected for his retreat, the country which he had chosen for his own, perhaps the family which was his only consolation in life, he is ordered to retire to a country whose government, irritated by his renunciation of its authority, will receive only to punish him; and all this, we are told, is no punishment.

Again, we are told that the constitutional compact was made between citizens only, and that, therefore, its provisions were not intended to extend to aliens, and that this, acting only on them, is, therefore, not forbidden by the Constitution. But, unfortunately, neither common law, common justice, nor the practice of any civilized nation will permit this distinction. It is an acknowledged principle of the common law, the authority of which is established here, that alien friends (and permit me to observe that they are such only whom we contemplate in this bill, for we have another before us to send off alien enemies), residing among us, are entitled to the protection of our laws, and that during their residence they owe a temporary allegiance to our Government. If they are accused of violating this allegiance the same laws which interpose in the case of a citizen must determine the truth of the accusation, and if found guilty they are liable to the same punishment. This rule is consonant with the principles of common justice, for who would ever resort to another country if

he alone was marked out as the object of arbitrary power? It is equally unfortunate, too, for this argument that the Constitution expressly excludes any idea of this distinction; it speaks of all "judicial power," "all trials for crimes," all "criminal prosecutions," all "persons accused." No distinction between citizen and alien, between high or low, friends or opposers to the executive power, republican and royalist. All are entitled to the same equal distribution of justice, to the same humane provision to protect their innocence; all are liable to the same punishment that awaits their guilt. How comes it, too, if these constitutional provisions were intended for the safety of the citizen only, that our courts uniformly extend them all, and that we never hear it inquired whether the accused is a citizen, before we give him a public trial by jury?

I have seen measures carried in this House which I thought militated against the spirit of the Constitution; but never before have I been witness to so open, so wanton, and undisguised an attack. I have now done, sir, with the act, and come to consider the consequences of its operation.

One of the most serious has been anticipated, when I described the blow it would give to the Constitution of our country. We should cautiously beware of the first act of violation. Habituated to overleap its bounds, we become familiarized to the guilt, and disregard the danger of a second offence, until, proceeding from one authorized act to another, we at length throw off all restraint which our Constitution has imposed; and very soon not even the semblance of its form will remain.

But if, regardless of our duty as citizens, and our solemn obligation as representatives; regardless of the rights of our constituents; regardless of every sanction, human and divine; if we are ready to violate the Constitution we have sworn to defend—will the people submit to our unauthorized acts? Will the States sanction our usurped power? Sir, they ought not to submit; they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine that the evil is to stop here, that a few unprotected aliens only are to be affected by this inquisitorial power. The same arguments which enforce those provisions against aliens apply with equal strength to enacting them in the case of citizens. Unless we can believe that treasonable machinations, and the other offences described in the bill are not "crimes"; that an alien is not a "person"; and that one charged with treasonable practices is not "accused"; unless we can believe all this, in contradiction to our understanding, to received opinions, and the

uniform practice of our courts, we must allow that all these provisions extend equally to aliens and natives, and that the citizen has no other security for his personal safety than is extended to the stranger who is within his gates. If, therefore, this security is violated in one instance, what pledge have we that it will not in the other? The same plea of necessity will justify both. Either the offences described in the act are crimes, or they are not. If they are, then all the humane provisions of the Constitution forbid the mode of preventing them, or punishing their doers, equally as relates to aliens and citizens. If they are not crimes, then the citizen has no more safety by the Constitution than the alien has; for all those provisions apply only to *crimes*. So that, in either event, the citizen has the same reason to expect a similar law to the one now before you; which subjects his person to the uncontrolled despotism of a single man. You have already been told of plots and conspiracies; and all the frightful images that were necessary to keep up the present system of terror and alarm were presented to you. But who were implicated by these dark hints—these mysterious allusions? They were our own citizens, sir, not aliens. If there is then any necessity for the system now proposed it is more necessary to be enforced against our own citizens than against strangers; and I have no doubt, that either in this or some other shape this will be attempted. I now ask, sir, whether the people of America are prepared for this? Whether they are willing to part with all the means which the wisdom of their ancestors discovered, and their own caution so lately adopted, to secure their own persons? Whether they are ready to submit to imprisonment or exile whenever suspicion, calumny, or vengeance shall mark them for ruin? Are they base enough to be prepared for this? No, sir; they will, I repeat it, they will resist this tyrannic system; the people will oppose it—the States will not submit to its operation. They ought not to acquiesce, and I pray to God they never may.

My opinions, sir, on this subject are explicit, and I wish they may be known; they are that, whenever our laws manifestly infringe the Constitution under which they were made, the people ought not to hesitate which they should obey. If we exceed our powers we become tyrants, and our acts have no effect. Thus, sir, one of the first effects of measures such as this, if they be not acquiesced in, will be disaffection among the States, and opposition among the people to your Government—tumults, violations, and a recurrence to first revolutionary principles. If they are submitted to, consequences will be worse. After such manifest violation of the principles of our Constitution the form will not

long be sacred; presently, every vestige of it will be lost and swallowed up in the gulf of despotism. But, should the evil proceed no further than the execution of the present law, what a fearful picture will our country present! The system of *espionage* being thus established, the country will swarm with informers, spies, delators, and all that odious reptile tribe that breed in the sunshine of despotic power; that suck the blood of the unfortunate, and creep into the bosom of sleeping innocence, only to awake it with a burning wound. The hours of the most unsuspecting confidence, the intimacies of friendship, or the recesses of domestic retirement afford no security. The companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber are all tempted to betray your imprudence or unguarded follies; to misrepresent your words; to convey them, distorted by calumny, to the secret tribunal where jealousy presides—where fear officiates as accuser, and suspicion is the only evidence that is heard.

These, bad as they are, are not the only ill consequences of these measures. Among them we may reckon the loss of wealth, of population, and of commerce. Gentlemen who support the bill seemed to be aware of this when, yesterday, they introduced a clause to secure the property of those who might be ordered to go off. They should have foreseen the consequences of the step they have been taking. It is now too late to discover that large sums are drawn from the banks, and that a great capital is taken from commerce. It is ridiculous, even, to observe the solicitude they show to retain the wealth of these dangerous men, whose persons they are so eager to get rid of. If they wish to retain it, it must be by giving them security to their persons, and assuring them that, while they respect the laws, the laws will protect them from arbitrary power. It must be, in short, by rejecting the bill on your table. I might mention many other inferior considerations; but I ought, sir, rather to entreat the pardon of the House for having touched on this topic, to which, compared with the breach of our Constitution, and the establishment of arbitrary power, every other topic is trifling. Arguments of convenience sink into nothing; the preservation of wealth, the interest of commerce, however weighty on other occasions, here lose their importance. When the fundamental principles of freedom are in danger we are tempted to borrow the impressive language of a foreign speaker, and exclaim, "Perish our commerce, let our Constitution live!" Perish our riches, let our freedom live!—this, sir, would be the sentiment of every American were the alternative between submission and

wealth. But here, sir, it is proposed to destroy our wealth in order to ruin our commerce—not in order to preserve our Constitution, but to break it—not to secure our freedom, but to abandon it.

I have now done, sir; but, before I sit down, let me entreat gentlemen seriously to reflect before they pronounce the decisive vote that gives the first open stab to the principles of our Government. Our mistaken zeal, like that of the patriarch of old, has bound one victim; it lies at the foot of the altar. A sacrifice of the first-born offspring of freedom is proposed by those who gave it birth. The hand is already raised to strike, and nothing, I fear, but the voice of Heaven can arrest the impious blow.

Let not gentlemen flatter themselves that the fervor of the moment can make the people insensible to these aggressions. It is an honest, noble warmth, produced by an indignant sense of injury. It will never, I trust, be extinct while there is a proper cause to excite. But the people of America, sir, though watchful against foreign aggression, are not careless of domestic encroachment; they are as jealous, sir, of their liberties at home as of the power and prosperity of their country abroad; they will awake to a sense of their danger. Do not let us flatter ourselves, then, that these measures will be unobserved or disregarded. Do not let us be told, sir, that we excite a fervor against foreign aggression only to establish tyranny at home; that, like the arch traitor, we cry *"Hail Columbia!"* at the moment we are betraying her to destruction; that we sing out *"Happy land!"* when we are plunging it in ruin or disgrace; and that we are absurd enough to call ourselves *"free and enlightened,"* while we advocate principles that would have disgraced the age of Gothic barbarity, and establish a code compared to which the ordeal is wise, and the trial by battle is merciful and just.

The question was put on the passage of the bill, and on the yeas and nays being taken there were 46 votes for it and 40 against it.

No prosecutions took place under the act.

CHAPTER III

The Sedition Law

The Senate Passes a Law against Seditious Utterances and Publications—It Is Debated in the House: in Favor, John Allen [Ky.], Robert G. Harper [S. C.], Harrison Gray Otis [Mass.], and Samuel W. Dana [Conn.]; Opposed, John Nicholas [Va.], Edward Livingston [N. Y.], Nathaniel Macon [N. C.], Joseph McDowell [N. C.], and Albert Gallatin [Pa.]—It Is Passed with Amendments—Professor Alexander Johnston on the Sedition Law.

ON June 26, 1798, the bill against seditious practices, which Mr. Harper in the preceding debate had intimated would be brought forward, was introduced in the Senate by Mr. Lloyd, of Maryland. It was passed on July 4 by a vote of 18 to 6, and on the 5th was introduced in the House. It provided that persons conspiring to oppose any measure of the Government, or to impede its operation, or to intimidate a Federal officer from exercising his trust, should be punished by fine and imprisonment. Any person who, by writing, speaking, or printing should threaten a Federal officer with damage to his character, or should incite, whether successfully or not, an insurrection or riot, was to be fined a sum not exceeding $5,000 and imprisoned for a term not less than six months nor exceeding five years. If his offence was traducing Congress, the President, or the Federal judiciary in particular by imputing motives hostile to the Constitution, he was to be fined a sum not exceeding $2,000 and be imprisoned for not more than two years. The bill was debated until July 10, when it was passed by a vote of 44 to 41.

The chief speakers in favor of the bill were: John Allen [Ky.], Robert G. Harper [S. C.], Harrison Gray Otis [Mass.], and Samuel W. Dana [Conn.]; its leading

opponents were: John Nicholas [Va.], Edward Livingston [N. Y.], Nathaniel Macon [N. C.], Joseph McDowell [N. C.], and Albert Gallatin [Pa.].

On the Sedition Act

House of Representatives, July 5–July 10, 1798

Mr. Livingston moved to reject the bill.

Mr. Allen.—I hope this bill will not be rejected. If ever there was a nation which required a law of this kind it is this. Let gentlemen look at certain papers printed in this city and elsewhere and ask themselves whether an unwarrantable and dangerous combination does not exist to overturn and ruin the Government by publishing the most shameless falsehoods against the Representatives of the people of all denominations, that they are hostile to free governments and genuine liberty, and of course to the welfare of this country; that they ought, therefore, to be displaced, and that the people ought to raise an *insurrection* against the Government.

I say, sir, a combination, a conspiracy against the Constitution, the Government, the peace and safety of this country, is formed, and is in full operation. It embraces members of all classes; the Representative of the people on this floor, the wild and visionary theorist in the bloody philosophy of the day, the learned and ignorant. Permit me to read a paragraph from *The Time-Piece,* a paper printed in New York:

"When such a character attempts by antiquated and exploded sophistry, by Jesuitical arguments, to extinguish the sentiment of liberty, 'tis fit the mask should be torn off from this meaner species of aristocracy than history has condescended to record; where a person without patriotism, without philosophy, without a taste for the fine arts, building his pretensions on a gross and indigested compilation of statutes and precedents, is jostled into the Chief Magistracy by the ominous combination of old Tories with old opinions, and old Whigs with new, 'tis fit this mock monarch, with his court, composed of Tories and speculators, should pass in review before the good sense of the world. Monarchies are seen only with indignation and concern; at sight of these terrible establishments, fears accompany the execrations of mankind; but when the champion of the well-born, with his serene court, is seen soliciting and answering addresses, and pronouncing anathemas against France, it shall be my fault if other emotions be not excited; if to tears and execrations be not added derision and contempt."

Gentlemen contend for the liberty of opinions and of the press. Let me ask them whether they seriously think the liberty of the press authorizes such publications?

If this be not a conspiracy against Government and people, I know not what to understand from the "threat of tears, execrations, derision, and contempt." Because the Constitution guarantees the right of expressing our opinions, and the freedom of the press, am I at liberty falsely to call you a thief, a murderer, an atheist? Because I have the liberty of locomotion, of going where I please, have I a right to ride over the footman in the path? The freedom of the press and opinions was never understood to give the right of publishing falsehoods and slanders, nor of exciting sedition, insurrection, and slaughter, with impunity. A man was always answerable for the malicious publication of falsehood; and what more does this bill require?

In the *Aurora,* of last Tuesday, is this paragraph:

"Where a law shall have been passed in violation of the Constitution, making it criminal to expose the crimes, the official vices or abuses, or the attempts of men in power to usurp a despotic authority, is there any alternative between an abandonment of the Constitution and resistance?"

The gentleman [Mr. Livingston] makes his proclamation of war on the Government in the House on Monday, and this infamous printer [Bache] follows it up with the tocsin of insurrection on Tuesday. He declares what is unconstitutional, and then invites the people to "resistance." This is an awful, horrible example of "the liberty of opinion and freedom of the press." Can gentlemen hear these things and lie quietly on their pillows? Are we to see all these acts practiced against the repose of our country, and remain passive? Are we bound hand and foot that we must be witnesses of these deadly thrusts at our liberty? Are we to be the unresisting spectators of these exertions to destroy all that we hold dear? Are these approaches to revolution and Jacobinic domination to be observed with the eye of meek submission? No, sir, they are indeed terrible; they are calculated to freeze the very blood in our veins. Such liberty of the press and of opinion is calculated to destroy all confidence between man and man; it leads to a dissolution of every bond of union; it cuts asunder every ligament that unites man to his family, man to his neighbor, man to society, and to Government. God deliver us from such liberty, the liberty of vomiting on the public floods of falsehood and hatred to everything sacred, human, and divine! If any gentleman doubts the effects of such a liberty let me direct his attention across the water; it has there made slaves of thirty millions of men.

At the commencement of the Revolution in France those loud and enthusiastic advocates for liberty and equality took special

care to occupy and command all the presses in the nation; they well knew the powerful influence to be obtained on the public mind by that engine; its operations are on the poor, the ignorant, the passionate, and the vicious; over all these classes of men the freedom of the press shed its baneful effects, and they all became the tools of faction and ambition, and the virtuous, the pacific, and the rich were their victims. The Jacobins of our country, too, sir, are determined to preserve in their hands the

CONGRESSIONAL PUGILISTS

"The Era of Bad Feelings" (1798)

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same weapon; it is our business to wrest it from them. Hence this motion so suddenly made, and so violently supported by the mover, to reject this bill without even suffering it to have a second reading; hence this alarm for the safety of "the freedom of speech and of the press."

I wish there were no other species of writings which aim at the overthrow of this Government, and calculated to excite the deeds of death. But, sir, members of this body are in the habit of writing to their constituents things which they cannot justify. The committee will pardon me for reading a part of one which appeared in the *Aurora* a few days ago. It is entitled,

"Interesting Letter from a Member of Congress from Virginia to His Constituents."

After many comparisons of our Government with that of England, the learned writer says:

"Nor are we left altogether to conjectural events, arising out of a comparison of the general structure of the Government of England with that of the United States; there are special facts in our own affairs that evidently imply a tendency to similar abuses in the conduct of our government.

"The public debt has been studiously augmented and funded, according to the mystery and intricacy of English finances; we have been annually familiarized to the system of loans and funds; and we have a bank connected with government in its being and in its transactions. The nature of these institutions, and their political effects, already discernible in this country, and brought to full form and maturity in England, plainly prove their great fitness and agency in producing a dangerous preponderance of executive power; the Executive is regularly supported by a party in both Houses of Congress on every questionable case respecting its powers or its projects for expense," &c.

A Representative of the people has committed to him a trust of the highest nature; his obligations are of the most solemn kind; an awful responsibility rests upon him to deal with his constituents in the sincerity of his heart. How could a member of this House seriously inform his constituents that "the public debt has been studiously augmented"? He knew the reverse to be true; how he could say anything else this letter contains I cannot imagine. His object must be to inflame his constituents against the Government, though at the expense of all truth.

If these things are true; if we have so betrayed the interests of our constituents; if we are so seeking to bring a despotism on this country, we ought to be hurled from our seats, and give place to better men; we ought to be hurled to that punishment which would most justly await us. No gentleman believes them, however; no gentleman believes that every sense of moral obligation is set at naught in this House, and that we forget all that we owe to our constituents. Such representations are outrages on the national authority, which ought not to be suffered; and I have no doubt that Congress have power to remedy the evil. If it be determined that we have not this power the people will certainly vest it in the Congress, for no government can exist without it; it is inherent in every government, because it is necessary to its preservation.

Mr. Harper said that he had often heard in this place, and elsewhere, harangues on the liberty of the press, as if it were to swallow up all other liberties; as if all law and reason, and every

right, human and divine, were to fall prostrate before the liberty of the press; whereas, the true meaning of it is no more than that a man shall be at liberty to print what he pleases, provided he does not offend against the laws, and not that no law shall be passed to regulate this liberty of the press.

The rational liberty of the press will not be restricted by a well-defined law, provided persons have a fair trial by jury; but that liberty of the press which those who desire, who wish to overturn society, and trample upon everything not their own, ought not to be allowed, either in speaking or writing, in any country.

While this abuse was confined to certain newspapers in the United States, it excited in him no alarm; but, when he heard a gentleman on the floor of this House, whose character and connections gave him weight with the people, pronouncing an invective against the Government, and calling upon the people to rise against the law, the business put on a very serious appearance; he thought so, not because he should wish to have that gentleman muzzled (for he knew he had the liberty of uttering as much treason as he pleased, and that, if his own sense of propriety and decorum was not sufficient to check him, there was no other check upon him), but because this speech may have a very different effect from the filthy streams of certain newspapers; it may gain a credit with the community, and produce consequences which all former abuse has failed to do. It is time, therefore, for the Government to take alarm; the long forbearance which it has shown ought to come to an end, since all its acts are represented in the vilest and foulest colors; and now they are sanctioned by the assertions of a person high in respectability (he meant as to his situation in life), and a law ought to pass to prevent such invitations as had been given to the people from producing their intended effects. It was for this reason that he wished a law to pass to punish treasonable and seditious writings.

Mr. Nicholas said: If the declarations of the gentlemen from Connecticut and South Carolina were attended to it would be found they are most afraid of the speeches and letters of gentlemen in this House. They acknowledge, however, they cannot prevent members from speaking what they please here. What, then, is their aim? Do they mean to prevent the publication of their sentiments to their constituents and to the world? If this was not their intention he could not tell what it was?

There was one general view of this subject, which Mr. N. took to be the most momentous that this country ever saw. He

was ready to go with gentlemen into measures for affording a liberal support to the war, which it appears must be gone into; but he was not ready to create a *domestic tyranny*. The people of this country are competent judges of their own interests, and he was desirous that the press should remain perfectly free to give them every information relative to them; and to restrict it would be to create a suspicion that there is something in our measures which ought to be kept from the light. It was striking at the root of free republican government to restrict the use of speaking and writing.

Mr. Livingston said, after receiving the chastisement of the gentleman from Connecticut on one cheek, he, like a good Christian, had turned the other to the gentleman from South Carolina, and received the stripes of both. He expressed his acknowledgments to these gentlemen, however, if not for their chastisement, for the insight which they have given the House into this bill. They have said its design is not only to restrict the liberty of the press, which is secured by the Constitution, but the liberty of speech on this floor. The gentleman from South Carolina did not say explicitly that he wished this; but he said he was regardless of what was said in the public papers, either of private or personal slander, or of a slander on the Government, until he heard a certain speech delivered in this House; and, though he said he did not intend to restrict the liberty of speech in this House, he must have had something of the kind in view. [Mr. Harper said it was not his intention to restrict the freedom of speech on that floor, but the consequences of it out of doors.] Then, said Mr. L., he will either restrict the members from speaking, or, in some way, prevent the people from knowing what has been said. How is this to be done? By shackling newspapers, and preventing that free communication of sentiment which has heretofore been expressed on public topics.

Mr. L. avowed with pride the sentiments which he had uttered in the House, and to which gentlemen objected. He could not see how acts made contrary to the Constitution could be binding upon the people; unless gentlemen say Congress may act in contravention to the Constitution. [Mr. Otis asked who were to be the judges?] Mr. L. answered, the people of the United States. We, said he, are their servants; when we exceed our powers, we become their *tyrants!*

This is one object of complaint; the other is against newspaper publications. The gentleman from South Carolina has said that, provided the law be clear and well defined, and the trial by jury be preserved, he knew of no law which could in-

fringe the liberty of the press. If this be true, Congress might restrict all printing at once. We have, said he, nothing to do but to make the law precise, and then we may forbid a newspaper to be printed, and make it death for any man to attempt it!

If this be the extent to which this bill goes it is not only an abridgment of the liberty of the press, which the Constitution has said shall not be abridged; but it is a total annihilation of the press. Were he then to withdraw his motion he should consider himself guilty of treason; by his consent so unconstitutional a measure should not progress an inch. However unsuccessful he might be, he would oppose it in every stage.

Mr. Otis believed there was nothing in the bill contrary to the common law of the several States of the Union.

Mr. Macon had no doubt on his mind that this bill was in direct opposition to the Constitution; and that if a law like this was passed, to abridge the liberty of the press, Congress would have the same right to pass a law making an establishment of religion, or to prohibit its free exercise, as all are contained in the same clause of the Constitution; and, if it be violated in one respect, it may as well be violated in others. Several laws had been passed which he thought violated the spirit, but none before this which directly violated the letter of the Constitution; and, if this bill was passed, he should hardly think it worth while in future to allege against any measure that it is in direct contradiction to the Constitution.

Laws of restraint, like this, Mr. M. said, always operate in a contrary direction from that which they were intended to take. The people suspect something is not right when free discussion is feared by government. They know that truth is not afraid of investigation.

If, said Mr. M., the people are so dissatisfied with government as some gentlemen would have it believed, but which he did not credit, by passing a law like the present you will force them to combine together; they will establish corresponding societies throughout the Union, and communications will be made in secret, instead of publicly, as had been the case in other countries. He believed the people might be as safely trusted with free discussion as they whom they have chosen to do their business.

The gentleman from Massachusetts [Mr. Otis] has said this bill is conformable to the common law. He knew persons might be prosecuted for a libel under the State governments; but if

this power exist in full force at present, what necessity can there be for this bill?

Much had been said about a certain paper printed in this city. He believed if anything appeared which was unfounded in that paper it would always be contradicted in another. It is well known there are papers on both sides of the question, and if you say you have read one you are generally asked if you have seen the other?

Mr. McDowell was in hopes that, when the third article[1] of the amendments to the Constitution had been read, the unconstitutionality of this bill would have been so evident that it would have been rejected without debate.

Mr. Gallatin said: The manner in which the principle of the bill had been supported was perhaps more extraordinary still than the bill itself. The gentleman from Connecticut [Mr. Allen], in order to prove the existence of a combination against the Constitution and Government, had communicated to the House—what? a number of newspaper paragraphs; and even most of those were such as would not be punishable by the bill as it now stands. The object of that gentleman in wishing a bill of this nature to pass extended far beyond the intention of the Senate who had sent down this bill; far beyond, he would venture to say, the idea of any other member upon this floor, besides himself. His idea was to punish men for stating facts which he happened to disbelieve, or for enacting and avowing opinions, not criminal, but perhaps erroneous.

The gentleman from Connecticut had also quoted an extract of a letter said to be written by a member of Congress from Virginia, and published in last Saturday's *Aurora*. The style and composition of that letter did the highest honor to its writer. It contained more information and more sense, and gave more proofs of a sound understanding and strong mind, than ever the gentleman from Connecticut had displayed, or could display, on this floor. He was altogether at a loss to know what was criminal in it, though he might easily see why it was obnoxious. Was it erroneous or criminal to say that debts and taxes were the ruinous consequences of war? Or that some members in both Houses of Congress uniformly voted in favor of an extension of the powers of the Executive, and of every proposed expenditure of money? Was it not true? Gentlemen of that description avow that, in their opinion, the executive is the weakest branch of government; and they act upon the ostensible principle that, on that account, its influence and powers must be increased.

[1] Now the first.

Look at the laws passed during this session. Look at the alien bill, at the provisional army bill, look at the prodigious influence acquired by so many new offices, and then deny that the powers of the Executive have not been greatly increased. As to the increased rate of expenditure, and the propensity of these gentlemen to vote money, they would not themselves deny it. Was it criminal to say that the Executive is supported by a party, when gentlemen declared that it must be supported by a party? When the doctrine had been avowed on this floor that men of a certain political opinion alone ought to be appointed to offices; and when the Executive had now adopted and carried into practice that doctrine in its fullest extent?

Was the gentleman afraid, or, rather, was Administration afraid, that error could not be successfully opposed by truth? The American Government had heretofore subsisted, it had acquired strength, it had grown on the affection of the people, it had been fully supported without the assistance of laws similar to the bill now on the table. It had been able to repel opposition by the single weapon of argument. And at present, when out of ten presses in the country nine were employed on the side of Administration, such is their want of confidence in the purity of their own views and motives that they even fear the unequal contest, and require the help of force in order to suppress the limited circulation of the opinions of those who did not approve all their measures. One of the paragraphs says that it will soon become a question whether there will be more liberty at Philadelphia or Constantinople. The gentleman from Connecticut bitterly complains of this, as insinuating that some persons in Government intend to establish a despotic power; and in order to convince the writer of his error that gentleman not only supports the bill, but avows principles perfectly calculated to justify the assertions contained in the paragraph.

This bill and its supporters suppose, in fact, that whoever dislikes the measures of Administration and of a temporary majority in Congress, and shall, either by speaking or writing, express his disapprobation and his want of confidence in the men now in power, is seditious, is an enemy, not of Administration, but of the Constitution, and is liable to punishment. That principle, Mr. G. said, was subversive of the principles of the Constitution itself. If you put the press under any restraint in respect to the measures of members of Government; if you thus deprive the people of the means of obtaining information of their conduct, you in fact render their right of electing nugatory; and this bill must be considered only as a weapon used by

a party now in power, in order to perpetuate their authority and preserve their present places.

The gentleman from South Carolina [Mr. Harper] had stated that he did not apprehend any serious mischief from the present licentiousness of the press until he had heard the speech of a member from New York [Mr. Livingston] inviting the people to resist a law of Congress. That gentleman had forgotten that the bill which he now meant to support could suppress and punish only that licentiousness of which he declared he was not afraid, and could not reach speeches of members of Congress, which, by the Constitution, could not be noticed out of these walls. This was the first attack made upon a speech delivered in this House, but what, from the gentleman from South Carolina, he had for some time expected; for, in his career, after having grossly attacked members first for writing circular letters, and then on account of their private correspondence, the next step must be to make their speeches the foundation of a sedition law. As to the speech itself, so far as he had heard the expressions alluded to, it was not an invitation to the people, or an opinion that the people should oppose the alien bill itself as unconstitutional; but merely a general position that they had a right to resist, and would resist unconstitutional and oppressive laws. He believed that doctrine to be strictly correct, and neither seditious nor treasonable. The opposite doctrines of passive obedience and non-resistance had long been exploded. America had never received them. America had asserted the right of resisting unconstitutional laws, and the day we were celebrating yesterday (4th of July) is a monument of that right. It is a right to which the people of America may, perhaps, in the course of events be again obliged to resort. God forbid that we should ever see that day! But it is above all in the power of Government to avert such an evil by refraining from unconstitutional and arbitrary laws.

Mr. Dana said: The bill has been condemned as violating one of the articles adopted as amendments to the Constitution. Could the framers of the Constitution intend to guarantee, as a sacred principle, the liberty of lying against the Government? What do gentlemen understand by "the freedom of speech and of the press"? Is it a license to injure others or the Government, by calumnies, with impunity?

Let it be remembered that the uttering of malicious falsehoods, to the injury of the Government, is the offence which it is now intended to restrain; for, if what is uttered can be proved true, it will not, according to this bill, be punished as libelous.

What, then, is the rational, the honest, the constitutional idea of freedom of language or of conduct? Can it be anything more than the right of uttering and doing what is not injurious to others? This limitation of doing no injury to the rights of others undoubtedly belongs to the true character of real liberty. Indeed can it, in the nature of things, be one of the rights of freemen to do injury? For himself, Mr. D. wanted not the liberty of calumny or of conspiracy, and was in favor of the principle of the bill.

The question on rejecting the bill was taken by yeas and nays—yeas 36, nays 47.

Mr. Harper then offered an amendment to the bill, which was intended to obviate the objections against it upon the score of indefiniteness of mode of determining the crimes and trying the accused. The amendment provided that trial under the act should take place in the Federal courts in the State in which it was charged that the crime had been committed, and be conducted under the common law of libel and before juries formed according to the practice of the State.

This amendment was adopted by the casting vote of the Speaker (Jonathan Dayton, of New Jersey), the vote having been 40 to 40. The debate was then continued with special bearing on the new issue injected by the amendment, namely, the enlargement of the powers of the Federal judiciary by recognition of its common law jurisdiction in criminal matters, in which matters the Republicans claimed that the State courts had sole authority save in the cases of crimes expressly enumerated in the Constitution: treason, counterfeiting Federal coin or securities, and piracy and other offences against international law.

Mr. Nicholas said: It has been the object of all regulations with respect to the press to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government. If this bill be passed into a law the people will be deprived of that information on public measures which they have a right to receive, and which is the life and support of a free government; for, if printers are to be subject to prosecution for every paragraph which appears in their papers, that the eye of a jealous government can torture

into an offence against this law, and to the heavy penalties here provided, it cannot be expected that they will exercise that freedom and spirit which it is desirable should actuate them; especially when they would have to be tried by judges appointed by the President, and by juries selected by the marshal, who also receives his appointment from the President, all whose feelings would, of course, be inclined to commit the offender if possible. Under such circumstances it must be seen that the printers of papers would be deterred from printing anything which should be in the least offensive to a power which might so greatly harass them. They would not only refrain from publishing anything of the least questionable nature, but they would be afraid of publishing the truth, as, though true, it might not always be in their power to establish the truth to the satisfaction of a court of justice. This bill would, therefore, go to the suppression of every printing press in the country which is not obsequious to the will of Government.

Mr. N. again asked, what are the bounds which gentlemen would draw between the liberty and licentiousness of the press? The Senate had sent them the project of one law which made it criminal to attribute bad motives to Government, even where the facts were not questionable; the House had now another project, which describes a number of other offences, all restricting the use of the press. The Constitution has not defined the bounds here spoken of. He had heard something said out of doors on the subject of common law; that the offences created by this bill are offences under it; but two gentlemen who advocate the bill had denied that the common law made any offences against the United States.

Mr. Harper said, if any expression of his was alluded to, he never said that no common law offence could be committed against the United States. He had said that there was no common-law jurisdiction in the courts of the United States; but he believed the common-law doctrine of libels as applicable to the Government of the United States as any other government.

Mr. Nicholas hoped there was no necessity for examining the opinions of the gentleman from South Carolina as to the common law being part of the law of the United States. He should like to know how the United States had adopted the common law. He should be glad to know where gentlemen found an account of their having so adopted it. Do gentlemen suppose that, in adopting the Constitution, the United States adopted the common law of all the States, which is so various, that he would venture to say no man perfectly knew it at the time, nor did he

believe that any one gentleman who seems in this House to entertain that opinion is acquainted with the common law of all the States. The common law of England has undergone various improvements and modifications in the several States, which it could not be supposed would be rejected by the convention who formed the Constitution in silence. Indeed, it was to him one of the most absurd ideas imaginable. If the common law was not adopted by the Constitution, and does not form a part of it, where is the rule by which to ascertain where the liberty of the press ends and its licentiousness begins? If gentlemen say it is adopted by the Constitution, it must remain unchangeable, and there could be no authority for passing this law.

And yet, in direct opposition to the clause of the Constitution which says "Congress shall pass no law to abridge the freedom of the press," Congress is now about to pass such a law. For it is vain to talk about the licentiousness of the press, the prohibition is express, "shall pass no law to abridge," etc.

Mr. N. said he was as sensible as any other gentleman that some of our printers had abused the liberty of the press, but, notwithstanding he saw this, he was far from being convinced of either the propriety or necessity of legislative interference in the matter. Falsehoods issued from a press are not calculated to do any lasting mischief. Falsehoods will always depreciate the press from whence they proceed. He was persuaded that the publication of one falsehood in a paper would do it more mischief than the abuse of its enemies. Every publisher of a newspaper who consults his own interest and respectability will, as far as he is able to do it, make it a vehicle of correct information.

Mr. N. wished gentlemen, before they gave a final vote on this bill, to consider its effects; and, if they did this, he thought they would consent to stop here. He desired them to reflect on the nature of our Government; that all its officers are elective, and that the people have no other means of examining their conduct but by means of the press, and an unrestrained investigation through it of the conduct of the Government. Indeed, the heart and life of a free Government is a free press; take away this, and you take away its main support.

If members of the legislature are charged falsely they are in as good situations as they could wish to be to refute the charge; and it is better, according to their understanding of the matter (and he owned he concurred with them in opinion), that fifty slanderers should escape punishment than that a single oppression, with respect to the liberty of the press, should take place. More mischief would be done to the press by a single act of this

kind than any possible amount of slander could do harm. Mr. N. concluded by saying that, it having been seen that, in England, when in the greatest possible state of alarm, there was no disposition to protect their representative characters against examination in the public prints, he trusted the Representatives of this free country would not consent to pass laws by which the free public examination of their own conduct will be prohibited.

Mr. Otis said: The people of the individual States brought with them as a birthright into this country the common law of England, upon which all of them have founded their statute law. If it were not for this common law many crimes which are committed in the United States would go unpunished. No State has enacted statutes for the punishment of all crimes which may be committed; yet in every State he presumed there was a superior court which claimed cognizance of all offences against good morals, and which restrained misdemeanors and opposition to the constituted authorities, under the sanction merely of the common law. When the people of the United States convened for the purpose of framing a Federal compact they were all habituated to this common law, to its usages, its maxims, and its definitions. It had been more or less explicitly recognized in the constitution of every State, and in that of Maryland it was declared to be the law of the land. If, then, we find in an instrument digested by men who were all familiarized to the common law not only that the distribution of power, and the great objects to be provided for, are congenial to that law, but that the terms and definitions by which those powers are described have an evident allusion to it, and must otherwise be quite inexplicable, or at best of a very uncertain meaning, it will be natural to conclude that, in forming the Constitution, they kept in view the model of the common law, and that a safe recourse may be had to it in all cases that would otherwise be doubtful. Thus we shall find that one great end of this compact, as appears in the preamble, is the establishment of justice, and for this purpose a judicial department is erected, whose powers are declared "to extend to all cases in law and equity, arising under the Constitution, the laws of the United States," etc. Justice, if the common-law ideas of it are rejected, is susceptible of various constructions, but agreeably to the principles of that law it affords redress for every injury, and provides a punishment for every crime that threatens to disturb the lawful operations of Government. Again, what is intended by "cases at law and equity arising under the Constitution," as distinguished from cases "arising under the laws of the United States"? What

other law can be contemplated but common law; what sort of equity but that legal discretion which has been exercised in England from time immemorial, and is to be learned from the books and reports of that country? If it be answered that these words comprise civil controversies only, though no reason appears for this distinction, yet what is to be done with other terms, with trial, jury, impeachment, etc., for an explanation of all which the common law alone can furnish a standard? It has been said by the gentleman that the Constitution has specified the only crimes that are cognizable under it; but other crimes had been made penal at an early period of the government, by express statute, to which no exception had been taken. For example, stealing public records, perjury, obstructing the officers of justice, bribery in a judge, and even a contract to give a bribe (which last was a restraint upon the liberty of writing and speaking) were all punishable, and why? Not because they are described in the Constitution, but because they are crimes against the United States—because laws against them are necessary to carry other laws into effect; because they tend to subvert the Constitution. The same reasons applied to the offences mentioned in the bill.

Mr. Otis contended that this construction of the Constitution was abundantly supported by the act for establishing the judicial courts. That act, in describing certain powers of the district court, contains this remarkable expression: "saving to suitors in all cases the right of a common-law remedy, where the common law was competent to give it." He could not tell whence this competency was derived, unless from the Constitution; nor did he perceive how this competency applied to civil and not to criminal cases.

It was, therefore, most evident to his mind that the Constitution of the United States, prior to the amendments that have been added to it, secured to the National Government the cognizance of all the crimes enumerated in the bill, and it only remained to be considered whether those amendments divested it of this power. The amendment quoted by the gentleman from Virginia is in these words: "Congress shall make no law abridging the freedom of speech and of the press." The terms "freedom of speech and of the press," he supposed, were a phraseology perfectly familiar in the jurisprudence of every State, and of a certain and technical meaning. It was a mode of expression which we had borrowed from the only country in which it had been tolerated, and he pledged himself to prove that the construction which he should give to those terms should be con-

sonant not only to the laws of that country, but to the laws and judicial decisions of many of the States composing the Union. This freedom, said Mr. O., is nothing more than the liberty of writing, publishing, and speaking one's thoughts, under the condition of being answerable to the injured party, whether it be the Government or an individual, for false, malicious, and seditious expressions, whether spoken or written; and the liberty of the press is merely an exemption from all previous restraints. In support of this doctrine, he quoted Blackstone's "Commentaries," under the head of libels, and read an extract to prove that in England, formerly, the press was subject to a licenser; and that this restraint was afterward removed, by which means the freedom of the press was established. He would not, however, dwell upon the law of England, the authority of which it might suit the convenience of gentlemen to question; but he would demonstrate that, although in several of the State constitutions the liberty of speech and of the press were guarded by the most express and unequivocal language, the legislatures and judicial departments of those States had adopted the definitions of the English law, and provided for the punishment of defamatory and seditious libels. [Mr. Otis here cited laws made by a number of the States.]

In all these instances it is clearly understood that to punish licentiousness and sedition is not a restraint or abridgment of the freedom of speech or of the press.

The gentleman from Virginia had inquired how a line could be drawn between the liberty and licentiousness of the press? He would inform him that an honest jury was competent to such a discrimination, they could decide upon the falsehood and malice of the intention. How, said he, do they draw a line of discrimination in the case of a forgery of public security? This crime is effected through the medium of the press or of the pen. How can they punish the intent when a man offers a bribe to a judge, which may be done by words only? These are offences which the gentlemen would anxiously discountenance. Yet forgery is only the liberty of the press upon his construction, and an offer of bribery is merely freedom of speech. Is it not a restraint upon the freedom of speech that the people in the gallery are not allowed to join in this debate? Yet this would hardly be permitted. Why, then, said Mr. O., are gentlemen so feelingly alive on this subject? Where lies the injury in attempting to check the progress of calumny and falsehood? Or how is society aided by the gross and monstrous outrages upon truth and honor and public character and private peace which inundate the coun-

try? Can there be any necessity of allowing anonymous and irresponsible accusers to drag before the tribunal of public opinion magistrates, and men in office, upon false and groundless charges? There are sixteen legislatures in the United States, in which all the measures of Government are open to investigation. There are two Houses of Congress, in which every accusation and suspicion may have free vent, wherein our jealousies and prejudices may be uttered without restraint, and every man will still be at liberty to print and speak at pleasure; but he must be prepared to prove those charges which bring disgrace upon his fellow-citizens. No reasonable being can desire a greater latitude than this. But the gentleman from Virginia is fearful that an impartial jury will not be found in the present excited state of the public opinion; but if twelve honest men cannot be found to acquit a libellist he ought to be convicted. He urges further that, even in Great Britain, Parliament has never made laws to restrain censorious remarks upon its measures; but, in Great Britain, libels as well against Parliament as other bodies of men are offences at common law. Neither does the present bill restrain a free animadversion upon the proceedings of Congress or the conduct of its members; it merely prohibits calumny and deception.

Mr. Macon proceeded to quote the opinions of the leading members in several of the State conventions, in order to show, from the opinions of the friends of the Constitution, that it was never understood that prosecutions for libels could take place under the general Government; but that they must be carried on in the State courts, as the Constitution gave no power to Congress to pass laws on this subject. Not a single member in any of the conventions gave an opinion to the contrary.

Mr. M. also quoted the opinions of members of Congress at the time the amendments to the Constitution were adopted, to prove the same thing, and inquired how it was come to pass, notwithstanding all the positive opinions which he had quoted to the contrary, that Congress should now conceive that they have power to pass laws on this subject? He could himself find no ground to justify the change.

Gentlemen, Mr. M. said, might call this a harmless bill; but however harmless it may be it is a beginning to act upon forbidden ground, and no one can say to what extent it may hereafter be carried. He thought this subject of the liberty of the press was sacred, and ought to be left where the Constitution had left it. The States have complete power on the subject, and when Congress legislates it ought to have confidence in the States, as

the States ought also to have confidence in Congress, or our Government is gone. This Government depends upon the State legislatures for existence. They have only to refuse to elect Senators to Congress, and all is gone. He believed there was nowhere any complaint of a want of proper laws under the State governments; and though there may not be remedies found for every grievance in the general Government, what it wants of power will be found in the State governments, and there can be no doubt but that power will be duly exercised when necessity calls for it.

Mr. Livingston said that, notwithstanding that kind of accommodating principle which has been set up and reiterated, that the powers of this Constitution extend to every possible case —a principle which goes to the destruction of State authorities, and makes that instrument mean anything or nothing—he should again venture to engage the attention of the House while he endeavored to show that this bill is not only contrary to the spirit, but to the direct letter of the Constitution.

The Constitution declares that "no law shall be passed to abridge the liberty of speech or of the press." Let us inquire, said Mr. L., what was the liberty enjoyed at the time this declaration was agreed to, and see whether citizens will enjoy the same liberty after this law passes that they then enjoyed. Will gentlemen say that the same liberty of writing and speaking did not exist then that now exists? If they will not say this, must they not allow that the Constitution is positive in prohibiting any change in this respect? Gentlemen may call this liberty an evil, if they please; if it be an evil (which he was far from believing) it is an evil perpetrated by the Constitution.

The Constitution seems to have contemplated cases which might arise at a future day. It seems to have foreseen that majorities (far be it from him to believe the present majority is of the number) might be actuated by dispositions hostile to the Government; that it might wish to pass laws to suppress the only means by which its corrupt views might be made known to the people, and therefore says, *no* law shall be passed to abridge the liberty of speech and of the press. This privilege is connected with another dear and valuable privilege—the liberty of conscience. What is liberty of conscience? Gentlemen may tomorrow establish a national religion agreeably to the opinion of a majority of this House, on the ground of an uniformity of worship being more consistent with public happiness than a diversity of worship. The doing of this is not less forbidden than the act which the House are about to do. But, it is said,

will you suffer a printer to abuse his fellow-citizens with impunity, ascribing his conduct to the very worst of motives? Is no punishment to be inflicted on such a person? Yes. There is a remedy for offences of this kind in the laws of every State in the Union. Every man's character is protected by law, and every man who shall publish a libel on any part of the Government is liable to punishment. Not, said Mr. L., by laws which we ourselves have made, but by laws passed by the several States. And is not this most proper? Suppose a libel were written against the President, where is it most probable that such an offence would receive an impartial trial? In a court, the judges of which are appointed by the President, by a jury selected by an officer holding his office at the will of the President, or in a court independent of any influence whatever? The States are as much interested in the preservation of the general Government as we are. We do wrong when we attempt to set up interests independent of the States. They are all desirous of preserving the Constitution as it now stands; and it is, therefore, much more probable that justice will be found in a court in which neither of the parties have influence than in one which is wholly in the power of the President.

But it is said this Government is liable to suffer abuse of the worst kind; the worst motives may be attributed to it, the most false statements made with respect to its conduct, and no hand can be held out to protect it. For his own part, he believed there ought to be no such power. He believed every independent government was equal to the protection of its private or public character; but when gentlemen speak of slanders against the Government, he knew of no such thing. We are charged, for instance, with passing an unconstitutional act—with violating our oaths. What answer is it proposed we should make to the charge? We are not to disprove the fact, and let the public judge between us, but we are immediately to prosecute the man who makes the charge. You may, by thus acting, establish error as soon as truth; you put them both on the same footing; you crush them by force of arms, and not by the force of reason. This is the same system which heretofore lighted the fires of Smithfield, and which has produced so much bloodshed and ruin among mankind.

But even the constitutional objection to this bill, great as it is, is of small importance, when it is considered in another point of view. He looked upon it as a link in a chain of events leading to the most serious consequences—events which he had always opposed and constantly deplored—leading to a practical

change in our Government. Gentlemen may think this is not so. He had frequently heard them speak of weak and rotten parts of the system; they may wish only to strengthen the weak parts, and cut out the rotten. But, Mr. L. said, he admired the Constitution in its present form; he had superadded to this admiration the sanction of an oath. Both inclination and duty, therefore, led him to oppose measures which, in his opinion, went to a radical change of it.

Many writers have amused themselves, and instructed the world, by delineating the means by which free governments gradually become oppressive; and some of them the means by which free governments become despotisms. He would take the liberty of reading an extract out of one of the best writings he had seen on this subject—the best in this view: as it shows how a government, organized like ours, may come to destruction. He would barely read the passage, and, if it did not make an impression on the minds of gentlemen, he should despair of saying anything that would. [Mr. Dana inquired the name of the author.] Mr. Livingston replied the book he alluded to was John Adams's "Defence of the American Constitution." While he read this, he wished it to be recollected that it had been declared on this floor that none but men of a certain political opinion would be chosen by the President to office. Mr. L. then read as follows:

"A few eminent, conspicuous characters will be continued in their seats in the Sovereign Assembly, from one election to another, whatever changes are made in the seats around them. By superior art, address, and opulence; by more splendid birth, reputation, and connections, they will be able to intrigue with the people, and their leaders out of doors, until they worm out most of their opposers and introduce their friends. To this end, they will bestow all offices, contracts, privileges in commerce, and other emoluments, on the latter, and their connections, and throw every vexation and disappointment in the way of the former, until they establish such a system of hopes and fears throughout the State as shall enable them to carry a majority in every fresh election of the House. The judges will be appointed by them and their party, and, of consequence, will be obsequious enough to their inclinations. The whole judicial authority, as well as the executive, will be employed, perverted, and prostituted to the purposes of electioneering. No justice will be attainable, nor will innocence or virtue be safe in the judiciary courts, but for the friends of the prevailing leaders. Legal prosecutions will be instituted and carried on against opposers, to their vexation and ruin; and, as they have the public purse at command, as well as the executive and judicial power, the public money will be expended in the same way. No favors will be attainable but by those who will court the ruling demagogues in the House by voting for their friends and instruments; and pensions and pecuniary rewards and gratifications, as well as honor and offices of every kind, will be voted to friends and par-

tisans. The leading minds and most influential characters among the clergy will be courted, and the views of the youth in this department will be turned upon those men, and the road to promotion and employment in the church will be obstructed against such as will not worship the general idol. Capital characters among the physicians will not be forgotten, and the means of acquiring reputation in the practice of the healing art will be to get the State trumpeters on the side of youth. The bar, too, will be made so subservient that a young gentleman will have no chance to obtain a character, or clients, but by falling in with the views of the judges and their creators. Even the theaters and actors and actresses must become politicians, and convert the public pleasures into engines of popularity for the governing members of the House. The press, that great barrier and bulwark of the rights of mankind, when it is protected in its freedom by law, can now no longer be free; if the authors, writers, and printers will not accept of the hire that will be offered them, they must submit to the ruin that will be denounced against them. The presses, with much secrecy and concealment, will be made the vehicles of calumny against the minority, and of panegyric and empirical applause of the leaders of the majority, and no remedy can possibly be obtained. In one word, the whole system of affairs, and every conceivable motive of hope and fear, will be employed to promote the private interests of a few, and their obsequious majority; and there is no remedy but in *arms!*"

Sad remedy! He hoped the people of this country would never be forced to have recourse to it. If the fatal tendency of certain measures be what is here described (and he believed the representation to be a just one), it behooved us to beware in time.

Mr. L. would be glad if gentlemen would inform the House of any good which would be derived from the passage of this bill —of any evil which it will remedy? If they could not do this, he further entreated them to think of the evils which it may produce. He feared it would lessen the confidence of the people in the Government. By the addresses which we see pour in from every quarter it would seem that this confidence is now possessed, and he hoped Government would be careful not to lose it. But to judge from addresses alone was but a fallacious mode of judging. In proof of this Mr. L. referred to Dalrymple's "History of the Reign of James I," which shows that this monarch was overpowered with the most fulsome addresses, at a time when the people in general were disaffected to his government to the highest degree. This, he said, was a strong historical fact, which ought to have its due weight. The political situation of this country very much resembles that of England at the time alluded to.

The effect of this bill may be to lift a few men into consequence who were never of any before, and to ruin two or three others; but it will be in vain to attempt to hide the misconduct

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of Government from the people. The thing will defeat its own end. They will, besides, be struck with the flagrant breach which it makes in the Constitution, compared with which, he looked upon war, pestilence, and every other calamity as of trifling consequence. Time may remove these, but of an unforgiving, dreary despotism who can see the end? God forbid that we should ever be called upon to employ our talents to the overturning of such a government!

Mr. Gallatin observed: The gentleman from Massachusetts [Mr. Otis] had attempted to prove the constitutionality of the bill by asserting, in the first place, that the power to punish libels was originally vested in Congress by the Constitution, and, in the next place, that the amendment to the Constitution, which declares that Congress shall not pass any law abridging the liberty of the press, had not deprived them of the power originally given. In order to establish his first position the gentleman had thought it sufficient to insist that the jurisdiction of the courts of the United States extended to the punishment of offences at common law, that is to say, of offences not arising under the statutes or laws of the Union—an assertion unfounded in itself, and which, if proven, would not support the point he endeavors to establish. That assertion was unfounded; for the judicial authority of those courts is, by the Constitution, declared to extend to cases of admiralty, or affecting public ministers; to suits between States, citizens of different States, or foreigners, and to cases arising under the Constitution, laws, and treaties, *made* under the authority of that Constitution; excluding, therefore, cases not arising under either—cases arising under the common law. Nor was that gentleman more fortunate in his choice of arguments when he thought he could derive any proofs in support of the supposed jurisdiction of the Federal courts from the number of technical expressions in the Constitution—such as *writ of habeas corpus, levying war,* etc., which, as he supposed, recognized the common law. He had there confounded two very distinct ideas—the *principles* of the common law, and the *jurisdiction* over cases arising under it. That those principles were recognized in the cases where the courts had jurisdiction was not denied; but such a recognition could by no means extend the jurisdiction beyond the specific cases defined by the Constitution. But, had that gentleman succeeded in proving the existence of the jurisdiction of the Federal courts over offences at common law, and more particularly over libels, he would thereby have adduced the strongest argument against the passing of this bill; for, if the jurisdiction did exist, where was the necessity of now

giving it? If the judicial authority of the Federal courts, by the Constitution, extended to the punishment of libels, it was unnecessary to pass this law, which, modified as it is, was intended by its supporters for the sole purpose of enacting into a law of the United States the common law of libels. The question was not whether the courts of the United States had, without this law, the power to punish libels, but whether, supposing they had not the power, Congress had that of giving them this jurisdiction—whether Congress were vested by the Constitution with the authority of passing this bill?

The only clause of the Constitution which can give a color to the authority now claimed is that which gives Congress authority to make all laws which shall be necessary and proper for carrying into execution the power vested by the Constitution in the Government of the United States, or in any department or officer thereof.

But the language here used was strict and precise; it gave not a vague power, arbitrarily, to create offences against Government, or to take cognizance of cases which fall under the exclusive jurisdiction of the State courts. In order to claim any authority under this clause the supporters of this bill must show the specific power given to Congress or to the President, by some other part of the Constitution, which would be carried into effect by a law against libels. They must go further—they must show which of those constitutional powers it was which could not be carried into effect, unless this law was passed. It was in that manner that the authority of Congress had heretofore been exercised; they had passed no penal laws, except such as arose from the necessity of carrying into effect some of the specific powers vested in them. Thus, as they had the exclusive power to establish post roads, they had made it penal to rob the mail; and as they were authorized to lay taxes, they had passed laws to punish frauds of revenue officers, or evasions of the revenue laws. But, until this bill was proposed, Congress had never attempted to define or punish offences generally; and the gentleman from Massachusetts was mistaken when he had stated that forgery was generally punishable by the laws of the United States. It was only in those specific cases defined by the Constitution, or which arose from some power heretofore exercised by Congress, that forgery came under the jurisdiction of the Federal courts.

The bill now under discussion justified the suspicions of those who, at the time of the adoption of the Constitution, had apprehended that the sense of that generally expressed clause might

be distorted for that purpose. It was in order to remove these fears that the amendment, which declares that Congress shall pass no law abridging the freedom of speech or the liberty of the press, was proposed and adopted—an amendment which was intended as an express exception to any supposed general power of *passing laws*, etc., vested in Congress by the other clause. The sense in which he and his friends understood this amendment was that Congress could not pass any law to punish any real or supposed abuse of the press. The construction given to it by the supporters of the bill was that it did not prevent them to punish what they called the licentiousness of the press, but merely forbade their laying any previous restraints upon it. It appeared to him preposterous to say that to punish a certain act was not an abridgment of the liberty of doing that act. It appeared to him that it was an insulting evasion of the Constitution for gentlemen to say, "We claim no power to abridge the liberty of the press; *that* you shall enjoy unrestrained. You may write and publish what you please, but if you publish anything against us we will punish you for it. So long as we do not prevent, but only punish your writings, it is no abridgment of your liberty of writing and printing."

The Government has existed for more than nine years without the assistance of this law. This law is not, then, necessary at all times; indeed, it is intended only to last for three years. Let, then, gentlemen prove that that necessity now exists which heretofore did not exist. It is an obligation laid upon them by the Constitution itself, evidently, to prove that an alteration has taken place in the situation of this country which impels us to pass this law. And yet they are silent. Where is the House to find proofs of that wonderful, yet unknown, change in our circumstances? Will they derive their information from the newspaper scraps with which they had been entertained, the other day, by a member from Connecticut? as if there was anything alarming or novel in paragraphs blaming or attacking certain measures or certain individuals of Government; as if the present Administration felt more afraid of newspaper abuse than former Administrations, or than other men. Or is Congress to receive a conviction of that alteration from the plot which the gentleman from South Carolina [Mr. Harper] had promised to unfold—a plot in which not one member on this floor did believe, when it was announced, and in which he suspected the gentleman himself had long since discovered he had been mistaken? Leaving, however, those ridiculous grounds of alarm (and, ludicrous as it might appear to an indifferent hearer, they were the only ones

that had yet been alleged in support of this bill), Mr. G. would ask whether gentlemen did not believe themselves that at no time had there been less to be apprehended from presses that circulated opinions in opposition to the measures of Government; that no reason could be adduced why this bill should pass, except that a party in the United States, feeling that they had more power, were not afraid of passing such a law, and would pass it, because they felt themselves so strong—so little in need of the assistance of that measure—that they expected to be supported by the people, even in that flagrant attack upon the Constitution?

But if gentlemen believe this bill *necessary* in order to enable this House to do their duty, they must recollect that this House is composed of individuals, and that, according to their own doctrine, in order to insure a conscientious vote in the whole House, every individual, and not a majority of the House, ought to be equally sheltered by this law from the abuse of printers. While, therefore, they support the bill in its present shape, do they not avow that the true object of the law is to enable one party to oppress the other; that they mean to have the power to punish printers who may publish against them, while their opponents will remain alone, and without redress, exposed to the abuse of ministerial prints? Is it not their object to frighten and suppress all presses which they consider as contrary to their views; to prevent a free circulation of opinion; to suffer the people at large to hear only partial accounts, and but one side of the question; to delude and deceive them by partial information, and, through those means, to perpetuate themselves in power?

In vain did those gentlemen attempt to shelter themselves under the different pleas that this bill could only affect the authors of false publications, since any man might justify his writings by giving in evidence the truth of his assertions; and that it created no new offence, but only reënacted what had always been the common law of libels.

It was true that, so far as related merely to facts, a man would be acquitted by proving that what he asserted was true. But the bill was intended to punish solely writings of a political nature, libels against the Government, the President, or either branch of the legislature; and it was well known that writings, containing animadversions on public measures almost always contained, not only facts, but opinions. And how could the truth of opinions be proven by evidence? If an individual thinking, as he himself did, that the present bill was unconstitutional, and that it had been intended, not for the public good, but solely for party purposes, should avow and publish his opin-

ion, and if the Administration thought fit to prosecute him for that supposed individual offence, would a jury, composed of the friends of that Administration, hesitate much in declaring the opinion ungrounded, or, in other words, false and scandalous, and its publication malicious? And by what kind of argument or evidence, in the present temper of parties, could the accused convince them that his opinion was true?

As to the assertion that the bill, under its present modifications, was nothing more than the common law of libels, he would observe that no gentleman could be satisfied that the few lines of which the bill consisted contained the genuine and unadulterated principles of the law of libels—a law which had arisen from the precedents and judicial decisions of three centuries; a law which, like every other branch of the common law of England, had received different modifications in the different States, so as to be now dissimilar in every one. He had not critically examined the bill in that point of view; but he would just notice a mode of expression which, if strictly construed, would introduce a principle now unknown to the common law of libels. By the bill, every person who should write, print, utter, or publish, etc., was guilty; so that a person only writing what might be adjudged a libel, although he neither printed, published, read, nor communicated his work to anyone, and although he did not intend it for publication, might, like Algernon Sidney, be found guilty, under this act, for the offence only of having thrown his ideas on paper.

But, although there might be no change made by this bill in the law of libels, there was an all-important one made by the transfer of jurisdiction. Heretofore the cognizance of offences of this nature had exclusively belonged to the State courts, and the mode of trial was essentially altered by being had before the Federal courts. It was not only by being deprived of the benefits of a trial by a jury of their vicinage that the accused persons were put in a worse situation; the manner of selecting the jury was, in some States, very different in the courts of the United States from what it was in the State courts. In Pennsylvania, if the prosecution was before the State court, the jury would be summoned by the sheriff, but if before the Federal court, the marshal, in that case, would summon the jury. The difference in this case was immense. The sheriff was the officer of the people, the marshal was the creature of the Executive. And, however immaterial this might be in ordinary suits or prosecutions, when the offences were, as under this bill, altogether of a political nature; when the supposed crimes to be punished were a libel

against the Administration, what security of a fair trial remained to a citizen, when the jury was liable to be packed by the Administration, when the same men were to be judges and parties?

After having given this short sketch of the features of this bill Mr. G. said he had intended to make some general remarks on the nature of political libels, or of writings against the measures of the Administration, and on the propriety of interfering at all by law with them. The lateness of the hour prevented him. He would only observe that laws against writings of this kind had uniformly been one of the most powerful engines used by tyrants to prevent the diffusion of knowledge, to throw a veil on their folly or their crimes, to satisfy those mean passions which always denote little minds, and to perpetuate their own tyranny. The principles of the law of political libels were to be found in the rescripts of the worst Emperors of Rome, in the decisions of the Star Chamber. Princes of elevated minds, governments actuated by pure motives, despising the slanders of malice, had ever listened to the animadversions made on their conduct. They knew that the proper weapon to combat error was truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures was to confess that these could not be defended by any other means.

Mr. Harper said, in the first place, gentlemen who oppose the bill had said that hitherto the Government of the United States had existed and prospered without a law of this kind, and then exultingly asked: "What change has now taken place to render such a law necessary?" The change, in his opinion, consisted in this: that, heretofore, we had been at peace and were now on the point of being driven into a war with a nation which openly boasted of its party among us, and its "diplomatic skill," as the most effectual means of paralyzing our efforts and bringing us to its own terms. Of the operations of this skill among us, by means of corrupt partisans and hired presses, he had no doubt; he was every day furnished with stronger reasons for believing in its existence and saw stronger indications of its systematic exertion. We knew its effects in other countries, where it had aided the progress of France much more effectually than the force of her arms. He knew no reason why we should not harbor traitors in our bosom as well as other nations; and he did most firmly believe that France had a party in this country, small, indeed, and sure to be disgraced and destroyed as soon as its designs should become generally known, but active, artful, and determined, and capable, if it could remain concealed, of effect-

ing infinite mischief. This party was the instrument of her "diplomatic skill." By this party she hoped to stop "the wheels of our Government," enchain our strength, enfeeble our efforts, and, finally, subdue us; and, to repress the enterprises of this party he wished for a law against sedition and libels, the two great instruments whereby France and her partisans had worked for the destruction of other countries, and he had no doubt were now working, he trusted unsuccessfully, for the destruction of this.

He could not, therefore, believe that our safety hitherto ought to lull us into security now; unless gentlemen could convince him that, because a person had existed in health for nine years, he ought to refuse medicine when he at length felt the approach of disease; or, when he saw the daggers of assassins everywhere whetted against him, should neglect to put on a coat of mail because for nine years he had not been assailed. The coat of mail which Congress was about to provide in this law might turn away the point of some dagger aimed at the heart of the Government, and, in that case, it would, he said, be matter of rejoicing that the bill had passed. Should no such case occur, then, like a sword, which there has been no occasion to draw, it will have done no harm.

He admitted that there was plausibility in the objection founded on that part of the Constitution which provides that "Congress shall pass no law to abridge the liberty of speech or of the press." He held this to be one of the most sacred parts of the Constitution, one by which he would stand the longest and defend with the greatest zeal. But to what, he asked, did this clause amount? Did this liberty of the press include sedition and licentiousness? Did it authorize persons to throw, with impunity, the most violent abuse upon the President and both Houses of Congress? Was this what gentlemen meant by the liberty of the press? As well might it be said that the liberty of action implied the liberty of assault, trespass, or assassination. Every man possessed the liberty of action; but, if he used this liberty to the detriment of others, by attacking their persons or destroying their property, he became liable to punishment for this licentious abuse of his liberty. The liberty of the press stood on precisely the same footing. Every man might publish what he pleased; but, if he abused this liberty so as to publish slanders against his neighbor, or false, scandalous, and malicious libels against the magistrates or the Government, he became liable to punishment. What did this law provide? That, if "any person should publish any false, scandalous, and malicious

libel against the President or Congress, or either House of Congress, with intent to stir up sedition, or to produce any other of the mischievous and wicked effects particularly described in the bill, he should, on conviction before a jury, be liable to fine and imprisonment." A jury is to try the offence, and they must determine, from the evidence and the circumstances of the case, first, that the publication is *false*, secondly, that it is *scandalous*, thirdly that it is *malicious*, and, fourthly, that it was made with the *intent* to do some one of the things particularly described in the bill. If, in any one of these points, the proof should fail, the man must be acquitted; and it is expressly provided that he may give the *truth* of the publication in evidence as a justification. Such is the substance of this law; and yet it is called a law abridging the liberty of the press! That is to say, that the liberty of the press implies the liberty of publishing, with impunity, false, scandalous, and malicious writings, with intent to stir up sedition, etc. As well might it be said that the liberty of *action* implies the liberty to rob and murder with impunity!

Whence was it, Mr. H. asked, that all confidence in the trial by jury was now discarded by those gentlemen who have heretofore so warmly and so justly sounded its praises? Why are juries, in whose hands the fortunes, the lives, and the reputations of the citizens had been safely deposited by our laws and Constitutions, no longer to be trusted when it is in question to punish those who, with wicked intent, publish false, scandalous, and malicious libels against the President and Congress? Is this offence of so sacred a nature, so dear to gentlemen, that the authors of it cannot be trusted in the hands of a jury of their fellow-citizens?

Such, Mr. H. said, had ever been his impressions concerning the liberty of the press, which he deemed to stand on the same ground, and to be liable to the same restraints by law, as the liberty of action; nor could he be persuaded that the liberty of the press, as understood by the Constitution, could ever be abridged by a law to punish, on conviction before a jury, the publication of false, scandalous, and malicious libels. He was very happy to find his opinions fully supported by those of a most venerable man, whose character was admired and revered by all, and who could never be suspected of wishing to abridge the liberty of the press. He held in his hand a little volume of essays by the late Dr. Franklin, among which there was one entitled "An Account of the Highest Court of Judicature in Pennsylvania, *viz.*: the Court of the Press."

Speaking of "the checks proper to be established against the

abuses of power in the court of the press" the venerable and ingenious author says:

"Hitherto there are none. But since so much has been written and published on the Federal Constitution, and the necessity of checks, in all other parts of good government, has been so clearly and learnedly explained, I find myself so far enlightened as to suspect some check may be proper in this part also; but I have been at a loss to imagine any that may not be construed an infringement of the sacred liberty of the press. At length, however, I think I have found one that, instead of diminishing general liberty, will augment it; which is by restoring to the people a species of liberty of which they have been deprived by our laws; I mean the liberty of the *cudgel!* In the rude state of society, prior to the existence of laws, if one man gave another ill language, the affronted person might return it by a box on the ear; and, if repeated, by a good drubbing; and this without offending against any law; but now the right of making such returns is denied, and they are punished as breaches of the peace, while the right of abusing seems to remain in full force; the laws made against it being rendered ineffectual by the *liberty of the press.*

"My proposal, then, is to leave the liberty of the press untouched, to be executed in its full extent, force, and vigor, but to permit the liberty of the cudgel to go with it, *pari passu.* Thus, my fellow-citizens, if an impudent writer attacks your reputation, dearer to you perhaps than your life, and puts his name to the charge, you may go to him, as openly, and break his head. If he conceals himself behind the printer, and you can nevertheless discover who he is, you may, in like manner, waylay him in the night, attack him behind, and give him a good drubbing. If your adversary hires better writers than himself to abuse you more effectually, you may hire brawny porters, stronger than yourself, to assist you in giving him a more effectual drubbing. Thus far goes my project as to *private* resentment and restitution. But if the government should ever happen to be affronted, as it ought to be, with the conduct of such writers, I would not advise proceeding immediately to these extremities, but that we should, in moderation, content ourselves with tarring and feathering and tossing them in a blanket.

"If, however, it should be thought that this proposal of mine may disturb the public peace, I would then humbly recommend to our legislators to take up the consideration of both liberties, that of the press, and that of the cudgel; and, by an explicit law, mark their extent and limits; and, at the same time that they secure the person of a citizen from assaults, they would likewise provide for the security of his reputation."

Thus we see, continued Mr. H., that this great man, the champion of liberty, who spent his life in promoting her cause, did not think that the liberty of the press would be abridged by an explicit law for curbing its licentiousness. Supported by this great authority, I can never believe that a law to punish the publication of false, scandalous, and malicious libels, on conviction by a jury, is a law "to abridge the liberty of the press," as intended by the Constitution.

The gentleman from New York [Mr. Livingston] has thought proper to quote a very venerable authority, the "Defence of the

American Constitution," by the present President of the United States, in order to prove that this Government is advancing rapidly to a despotism. The passage is very striking, and most forcibly marks the steps of progressing tyranny. Most of those steps, the gentleman declares, have been, or are on the point of being, taken by this Government. But there is one part of the passage which he has forgotten to notice. Let me be permitted to recall it to his attention. The learned and venerable author is treating of the tendency toward despotism which exists in a Government composed of one branch, or whose whole powers are concentrated in one popular assembly; and, in order to warn us of the dangers of such a government, and inculcate the necessity of a division of power for the support of liberty, he tells us how the great men, the heads and leaders of the great and wealthy families, find their way into such an assembly and acquire an absolute influence over its decisions. He then goes on to mark the steps, those very steps, quoted by the gentleman from New York, whereby they render their seats permanent, stifle opposition, subjugate the assembly, usurp its powers, and, at length, establish an oligarchy or a despotism on the ruins of the democracy. Let the House recollect how persevering and vigorous have been the efforts of the gentleman from New York and his political associates to pave the way for this state of things by concentrating gradually, sometimes under one pretext and sometimes under another, all the powers of our Government in this House, by demolishing, piece by piece, the checks established in the Senate and the executive power; and then it will be able to judge to whom his quotation is most applicable; to himself and his friends, or to those who strenuously have opposed, and who do still oppose, these his enterprises; to those who struggle to preserve the division of power and the balance of the Constitution, or to those who exert all their might to destroy them both and reduce the Government to a single representative democracy on which that oligarchy, so earnestly panted after by self-named friends of the people and exclusive patriots, is so speedily and so certainly engrafted.

The bill was then passed—yeas 44, nays 41.

Of the Sedition Law Alexander Johnston remarks in his "American Political History":

"If the doctrine of the Federalists was correct (and it was certainly never contradicted by the Federal courts until fourteen years had passed, and the judiciary, with the other departments

of Government, had fallen into Democratic hands), then the Sedition Law was a very salutary remedial modification of the common law, since it allowed the truth to be given in evidence and laid down bounds of punishment which the judges could not pass. If, on the other hand, the Republican doctrine was correct, the Sedition Law was a pernicious precedent, since, by making a common-law offence statutory, it implied a common-law criminal jurisdiction in the Federal courts, wherever statutes did not interfere. The Republicans had little legal talent in their ranks in 1798 and had made little open opposition to the Federalist claims on this point."

This last statement is surprising, coming as it does from such a distinguished writer on American politics. Certainly the foregoing debate proves the exact contrary of the assertion: the Federalists had no representatives in Congress whose legal ability was at all equal to that of Gallatin and Livingston, and these brilliant and learned debaters certainly made the boldest, strongest, and most thorough opposition to the Federalist claims on the point in question. The only explanation of Professor Johnston's error is that, instead of consulting the original sources, he must have followed Senator Benton's "Abridgment of the Debates of Congress," in which the final exhaustive argument of Gallatin against the encroachment of the Federal judiciary on the jurisdiction of the State courts is entirely omitted, and the argument of Livingston on the same point is too greatly abridged, while space is unnecessarily given to Livingston's argument against the obvious unconstitutionality of the restriction of liberty of the press. Nevertheless Benton gives very fully the arguments against Federal jurisdiction which were presented by Nathaniel Macon, whose legal talent was at least equal to that of any Federalist Representative.

CHAPTER IV

The Kentucky and Virginia Resolutions

Partisan Enforcement of the Sedition Law—Resolutions against the Law Are Adopted by the Kentucky and Virginia Legislatures, Drafted Respectively by Thomas Jefferson and James Madison—Debate in the Virginia Legislature on the Resolutions: Summaries by Sen. Thomas H. Benton [Mo.] of the Arguments—Address to the People by the Virginia Legislature—Address by the Minority of the Virginia Legislature in Favor of the Alien and Sedition Laws—Replies to the Kentucky and Virginia Resolutions by Other State Legislatures—Supplementary Resolutions of the Kentucky Legislature—Madison's Report on the Virginia Resolutions—Supplementary Resolution of the Virginia Legislature—Purposes of Jefferson and Madison in the Resolutions: the Calling of a National Convention of the States to Amend the Constitution by Giving Three-fourths of the States a Veto on Federal Acts, and Arousing Public Opinion against the Federalists—Failure of the First Purpose and Success of the Second—Subsequent Resolutions by Various States on Federal Usurpation—Common Law Jurisdiction of the Federal Courts—Justice Joseph Story Upholds It against the Theory of Madison in the Virginia Resolutions—First Inaugural of President Jefferson: "The Road to Liberty."

AS has been noted no prosecutions were made under the Alien Laws. Those that were instituted under the Sedition Law were plainly partisan in their animus. Thus, as Professor Johnston instances, Hamilton, between whom and Adams enmity had arisen through the political ambition either of one or the other, or of both, published an attack on President John Adams, charging him with "disgusting egotism, distempered jealousy, ungovernable indiscretion, and arrogant pretence to superior and exclusive merit," and yet, because of his prominence in his party, Hamilton was not prosecuted, while certain Republicans were arrested and tried (though unsuccessfully) for the mere circulation of petitions against the law or for the *lèse-majesté* of wishing,

on the occasion of a military salute to the President, that the wadding of a cannon might strike him in the broadest part of his person. Some of the Republican leaders expressed the apprehension that, in the event of their party securing a majority in the next House, the Federalists would attempt to remove enough of their opponents to retain the present control. This fear, however, proved unfounded.

According to a long accepted view, as acknowledged leaders of their party Jefferson and Madison proceeded to procure the overthrow of the obnoxious Sedition Law by organizing a counter-revolution against it in the State legislatures. They very judiciously selected the strongly Republican States of Kentucky and Virginia in which to begin the movement. For the legislature of the former State Jefferson prepared certain resolutions.[1] They were passed by the House on November 10, by the Senate on November 13, and signed by the Governor on November 19, 1798. Their substance is as follows:

The Kentucky Resolutions

Drafted by Thomas Jefferson

1. The union of the States is a *compact* by which each State delegated to the Federal Government definite powers, reserving to itself the residuary mass of right to their own self-government. When, therefore, the Federal Government assumes undelegated powers its acts are void. The Federal Government was not constituted by the compact a final judge of the extent of its delegated powers, since this would have made its discretion, and not the Constitution, the measure of its powers. The Constitution established no common judge between the Federal Government and the State governments, and, according to the practice in all compacts of this kind, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

2. Congress has the right to pass laws for the punishment of no other crimes than those expressly mentioned in the Constitution as under its jurisdiction.

[1] For a recent, and, to the editor's mind, a more acceptable theory of the origin of these resolutions, see the Introduction to Volume V, by President Warfield, on this subject.

3. By the general principle of the compact (the Constitution) power over speech and the press is reserved to the States, and by a specific amendment thereto (No. 1) is expressly prohibited to the Federal Government. Therefore, by 1 and 2, the Sedition Law is void, and, by 1,

4. The Alien Laws are void.

5. The Alien Laws are also void because of Article I, Section 9, Par. 1, of the Constitution, which reserves to the States until 1808 all control over the migration and importation of such persons as they shall think proper to admit.

6. The Alien Laws are void, because they are contrary to the amendments to the Constitution, which provide that "no person shall be deprived of liberty without due process of law" (No. V) and that "in all criminal prosecutions the accused shall enjoy the right of a public trial by an impartial jury," etc. (No. VI), and also because the Alien Laws transfer the jurisdiction of aliens from the courts to the President, contrary to Article III, Section 1 of the Constitution.

7. The broad construction, by the Administration, of Article I, Section 8, Par. 1, of the Constitution: "Congress shall have power to collect taxes, etc., and *provide for the common defence and general welfare,*" and of Par. 18 in the same section: "To make all laws . . . necessary . . . for carrying into execution the . . . powers vested . . . in the Government," is inadmissible, since these powers are subsidiary to the execution of limited powers mentioned in the context, and, if the paragraphs are construed independently as giving unlimited powers, the whole residue of the Constitution will be destroyed. All proceedings under a broad construction of these paragraphs will be a fit and necessary subject for revision at a time of greater tranquillity, and the specific Alien and Sedition Laws call for immediate redress.

8. These resolutions shall be transmitted to the Senators and Representatives from Kentucky, who are enjoined to use their efforts to procure a repeal of the said acts.

9. These resolutions shall be transmitted to the legislatures of the States as an expression of Kentucky's views of the Constitution, and its fears of the destruction of the intent of that instrument and of the rights of the States by the general Government and, especially, the President, who is arrogating to himself powers which may lead to his becoming accuser, counsel, judge, and jury, his suspicions being the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction. A similar assumption of

powers is in process in Congress, which may lead to the exportation or punishment, by the majority, of the minority, and of officers of the various States who oppose their plans. These usurpations, unless arrested on the threshold, may tend to drive the States into revolution and so furnish new arguments for despots against republics. It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: confidence is everywhere the parent of despotism; free government is founded in jealousy, and not in confidence. Hence the limits fixed in our Constitution. Let the honest advocate of confidence read the Alien and Sedition Laws and say if the Constitution was not wise in fixing these limits; let him say what this government is, if it be not a tyranny, when the President of our choice exercises unconstitutional powers over the friendly strangers to whom the mild spirit of our country and its laws had pledged hospitality and protection, and when Senators and Representatives of our choice uphold him in so doing, regarding more the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice.

In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution.

This commonwealth calls on its co-States to declare whether they believe the Alien and Sedition Acts are or are not authorized by the Federal compact, trusting that they will concur in her opinions of them as unconstitutional and as opening the way for the general Government to seize the rights of the States and destroy government by the consent of the governed, and that, recurring to their natural rights not made Federal, they will join with her in requesting the repeal of these acts at the next session of Congress.

Mr. Madison drafted the resolutions for the legislature of Virginia. For the text of these resolutions see the paragraphs in small type in "Madison's Report on the Virginia Resolutions" on page 105 ss. They were passed on December 24, 1798, after an animated debate. The following account of the debate is given by Senator Thomas H. Benton in his "Thirty Years' View":

The principal speakers in the Virginia legislature in opposition to the resolutions were: Mr. George Keith

Taylor, Mr. Magill, Mr. Brooke, Mr. Cowan, Gen. Henry Lee, and Mr. Cureton. Nearly the whole debate turned, not on the abstract propriety or expediency of such resolutions, but on the question whether the acts of Congress which were specially complained of were, in fact, unconstitutional. Beyond the discussion of this point the speakers dwelt only on the supposed "tendency" of such declarations to excite the people to insubordination and non-submission to the law.

Debate on the Virginia Resolutions

Legislature of Virginia, December, 1798

Mr. George K. Taylor complained at the commencement of his speech, that the resolutions "contained a declaration, not of opinion, but of fact"; and he apprehended that "the consequences of pursuing the advice of the resolutions would be insurrection, confusion, and anarchy."

"The members of that Congress which had passed those laws had been, so far as he could understand, since generally reëlected; therefore he thought the people of the United States had decided in favor of their constitutionality, and that such an attempt as they were then making to induce Congress to repeal the laws would be nugatory."

Mr. Brooke thought resolutions "declaring laws which had been made by the Government of the United States to be unconstitutional, null and void," were "dangerous and improper"; that they had a "tendency to inflame the public mind"; to lessen the confidence that ought to subsist between the representatives of the people in the general Government and their constituents; and to "sap the very foundations of the Government by producing resistance to its laws." He was equally opposed to any modification of them that should be "intended as an expression of the general sentiment on the subject, because he conceived it to be an improper mode by which to express the wishes of the people of the State on the subject."

General Henry Lee thought the alien and sedition laws "not unconstitutional"; but, if they were unconstitutional, he "admitted the right of interposition on the part of the General Assembly." But he thought these resolutions showed "indecorum and hostility," and were "not the likeliest way to obtain a repeal of the laws." He "suspected," in fact, that "the repeal of the laws was not the leading point in view," but that they "cov-

ered" the objects of "promotion of disunion and separation of the States." The resolutions "struck him as recommending resistance. They declared the laws null and void. Our citizens thus thinking would disobey the laws." His plan would be, if he thought the laws unconstitutional, to let the people petition, or that the legislature come forward at once, "with a proposition for amending the doubtful parts of the Constitution"; or with a "respectful or friendly memorial, urging Congress to repeal the laws." But he "admitted" the only right which the resolutions assert for the State, namely, the right "to interpose." The remarks of the other opponents to the resolutions were to the same effect.

On behalf of the resolutions the principal speakers were: Mr. John Taylor, of Caroline, who had introduced them; Mr. Ruffin, Mr. Mercer, Mr. Pope, Mr. Foushee, Mr. Daniel, Mr. Peter Johnston, Mr. Giles, Mr. James Barbour.

They obviated the objection of the speakers on the other side that the resolutions "contained a declaration not of opinion, but of fact," by striking out the words which, in the original draft, declared the acts in question to be "null, void, and of no force or effect"; so as to make it manifest, as the advocates of the resolutions maintained, that they intended nothing beyond an expression of sentiment. They obviated another objection which appeared in the original draft, which asserted the States *alone* to be the parties to the Constitution, by striking out the word "alone." They thoroughly and successfully combated both the "suspicion" that they hid any ulterior object of dissension or disunion, and the "apprehension" that the resolutions would encourage insubordination among the people. They acceded to and affirmed that their object was to obtain a repeal of the offensive measures; that the resolutions might ultimately lead to a convention for amending the Constitution, and that they were intended both to express and to affect public opinion; but nothing more.

The minority afterwards published its arguments in an "Address Containing a Vindication of the Constitutionality of the Alien and Sedition Laws." The pamphlet was intended to be an offset to the resolutions passed by the majority and was, like these, sent to the legislatures of the other States.

The majority sent along with its resolutions the following:

Address to the People

By the Virginia Legislature

Fellow-citizens: Unwilling to shrink from our representative responsibilities, conscious of the purity of our motives, but acknowledging your right to supervise our conduct, we invite your serious attention to the emergency which dictated the subjoined resolutions. While we disdain to alarm you by ill-founded jealousies, we recommend an investigation guided by the coolness of wisdom, and a decision bottomed on firmness but tempered with moderation.

It would be perfidious in those intrusted with the guardianship of the State sovereignty, and acting under the solemn obligation of the following oath—"I do swear that I will support the Constitution of the United States"—not to warn you of encroachments, which, though clothed with the pretext of necessity, or disguised by arguments of expediency, may yet establish precedents which may ultimately devote a generous and unsuspicious people to all the consequences of usurped power.

Encroachments springing from a government whose organization cannot be maintained without the coöperation of the States furnish the strongest excitements upon the State legislatures to watchfulness, and impose upon them the strongest obligation to preserve unimpaired the line of partition.

The acquiescence of the States, under infractions of the Federal compact, would either beget a speedy consolidation, by precipitating the State governments into impotency and contempt, or prepare the way for a revolution by a repetition of these infractions until the people are aroused to appear in the majesty of their strength. It is to avoid these calamities that we exhibit to the people the momentous question whether the Constitution of the United Sates shall yield to a construction which defies every restraint and which overwhelms the best hopes of republicanism.

Exhortation to disregard domestic usurpation until foreign danger shall have passed is an artifice which may be forever used; because the possessors of power, who are the advocates for its extension, can never create national embarrassments, to be successively employed to soothe the people into sleep, while that power is swelling silently, secretly, and fatally. Of the same character are insinuations of a foreign influence, which seize upon a laudable enthusiasm against danger from abroad

and distort it by an unnatural application so as to blind your eyes against danger at home.

The Sedition Act presents a scene which was never expected by the early friends of the Constitution. It was then admitted that the State sovereignties were only diminished by powers specifically enumerated or necessary to carry the specified powers into effect. Now, Federal authority is deduced from implication; and, from the existence of State law, it is inferred that Congress possess a similar power of legislation; whence Congress will be endowed with a power of legislation in all cases whatsoever, and the States will be stripped of every right reserved, by the concurrent claims of a paramount legislature.

The Sedition Act is the offspring of these tremendous pretensions which inflict a death-wound on the sovereignty of the States.

For the honor of American understanding we will not believe that the people have been allured into the adoption of the Constitution by an affectation of defining powers, while the *preamble* would admit a construction which would erect the will of Congress into a power paramount in all cases and, therefore, limited to none. On the contrary, it is evident that the objects for which the Constitution was formed were deemed attainable only by a particular enumeration and specification of each power granted to the Federal Government; reserving all others to the people, or to the States. And yet it is in vain we search for any specified power embracing the right of legislation against the freedom of the press.

Had the States been despoiled of their sovereignty by the generality of the preamble, and, had the Federal Government been endowed with whatever they should judge to be instrumental toward the Union, justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers.

All the preceding arguments, arising from a deficiency of constitutional power in Congress, apply to the Alien Act; and this act is liable to other objections peculiar to itself. If a suspicion that aliens are dangerous constitutes the justification of that power exercised over them by Congress, then a similar suspicion will justify the exercise of a similar power over natives; because there is nothing in the Constitution distinguishing between the power of a State to permit the residence of natives and aliens. It is, therefore, a right originally possessed, and never surrendered, by the respective States, and which is rendered dear and valuable to Virginia because it is assailed through

the bosom of the Constitution and because her peculiar situation renders the easy admission of artisans and laborers an interest of vast importance.

But this bill contains other features still more alarming and dangerous. It dispenses with the trial by jury; it violates the judicial system; it confounds legislative, executive, and judicial powers; it punishes without trial; and it bestows upon the President despotic power over a numerous class of men. Are such measures consistent with our constitutional principles? And will an accumulation of power so extensive in the hands of the Executive over aliens secure to natives the blessings of republican liberty?

If measures can mold governments, and if an uncontrolled power of construction is surrendered to those who administer them, their progress may be easily foreseen and their end easily foretold. A lover of monarchy who opens the treasures of corruption by distributing emolument among devoted partisans may, at the same time, be approaching his object and deluding the people with professions of republicanism. He may confound monarchy and republicanism by the art of definition. He may varnish over the dexterity which ambition never fails to display with the pliancy of language, the seduction of expediency, or the prejudices of the times; and he may come at length to avow that so extensive a territory as that of the United States can only be governed by the energies of monarchy; that it cannot be defended except by standing armies; and that it cannot be united except by consolidation.

Measures have already been adopted which may lead to these consequences. They consist—

In fiscal systems and arrangements, which keep a host of commercial and wealthy individuals imbodied and obedient to the mandates of the treasury;—

In armies and navies, which will, on the one hand, enlist the tendency of man to pay homage to his fellow-creature who can feed or honor him; and, on the other, employ the principle of fear by punishing imaginary insurrections under the pretext of preventive justice;—

In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy, both by indulgences and severities, and can act as spies over the free exercise of human reason;—

In restraining the freedom of the press and investing the Executive with legislative, executive, and judicial powers over a numerous body of men;—

And, that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the Constitution as will rapidly remove every restraint upon Federal power.

Let history be consulted; let the man of experience reflect; nay, let the artificers of monarchy be asked what further materials they can need for building up their favorite system.

These are solemn but painful truths; and yet we recommend it to you not to forget the possibility of danger from without, although danger threatens us from within. Usurpation is indeed dreadful; but against foreign invasion, if that should happen, let us rise with hearts and hands united and repel the attack with the zeal of freemen who will strengthen their title to examine and correct domestic measures by having defended their country against foreign aggression.

Pledged as we are, fellow-citizens, to these sacred engagements, we yet humbly, fervently implore the Almighty Disposer of Events to avert from our land war and usurpation, the scourges of mankind; to permit our fields to be cultivated in peace; to instil into nations the love of friendly intercourse; to suffer our youth to be educated in virtue, and to preserve our morality from the pollution invariably incident to habits of war; to prevent the laborer and husbandman from being harassed by taxes and imposts; to remove from ambition the means of disturbing the commonwealth; to annihilate all pretexts for power afforded by war; to maintain the Constitution; and to bless our nation with tranquillity, under whose benign influence we may reach the summit of happiness and glory, to which we are destined by *nature* and *nature's God.*

Copies of the Virginia and Kentucky resolutions were sent to the "Co-States." Replies were made to Virginia by the legislatures of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York (different replies from the Senate and the House), Delaware, Pennsylvania (the House), and Maryland. Replies to Kentucky were adopted by the following: New Hampshire (same as to Virginia), Vermont, Rhode Island (similar as to Virginia), Connecticut, New York (the House, same as to Virginia), Pennsylvania, Delaware (similar as to Virginia), Maryland (the House). All the replies were opposed to the resolutions.

The substance of the most important of the replies is here given:

Delaware considered the resolutions "a very unjustifiable interference with the general Government and constituted authorities of the United States and of dangerous tendency, and, therefore, not a fit subject for the further consideration of the general assembly."

Rhode Island considered that the Constitution gave to the Supreme Court of the United States the authority of deciding on the constitutionality of any act of Congress, and that for any State legislature to assume that authority would be: (1) blending together legislative and judicial powers; (2) disturbing the peace of the Union in case of a diversity of opinion between the States, each having no resort but its own arm for vindicating its opinions; (3) submitting most important questions of law to less competent tribunals; and, (4) breaking the express terms of the Constitution. Therefore the legislature declined officially to consider the constitutionality of the so-called Sedition and Alien laws, but expressed their private opinion that these laws were within the powers delegated to Congress, and promotive of the welfare of the United States. The legislature contemplated with extreme concern the many evil and fatal consequences which might flow from the very unwarrantable resolutions of Virginia.

Massachusetts declared: (1) that, though it held sacred the principle that consent of the people is the only pure source of just and legitimate power, yet, being bound by solemn oath to support the Constitution, it could not admit the right of a State legislature to denounce the Federal Administration formed under that Constitution to deal exclusively with national concerns; (2) that recourse to measures of extremity upon groundless or trivial pretexts had a strong tendency to destroy all rational liberty at home, and to weaken the nation abroad; (3) that the Constitution had not made the State legislatures judges of Federal acts, their proper course in case of grievance being to propose an amendment to the Constitution; and, (4) that the course proposed by Virginia would either reduce the Constitution to a mere cipher with the form and pageantry of authority without the energy of power, or, in the conflict of jurisdictions, weary the people into submission to a dictator. Therefore, while the legislature disclaimed its right to decide upon the constitutionality of Federal acts, still, lest its silence be construed as disapproving the laws complained against by Virginia, it explicitly declared these not only constitutional, but expedient and necessary.

The rights of aliens, it declared, were not particularly con-

templated in the Constitution, and they were entitled only to a temporary protection while they yield a temporary allegiance, and, when they became dangerous to the public safety, this protection ought to be withdrawn by Congress, which had not only the right but the duty to protect the nation from internal as well as external foes. The nation was menaced by war; the removal of aliens was, therefore, a wise precaution, justified by the usages of nations, and it had been properly committed to the national Executive.

The Sedition Act is equally defensible. Though the Virginia convention had recommended the amendment to the Constitution forbidding Congress to abridge freedom of speech or of the press, they surely did not expect that the amendment was to be construed by the convention.[1]

Plainly the Sedition Act did not abridge the liberty of speech or of the press, which was to utter truth, not propagate falsehood and slander. The act provided that courts and juries should decide whether or not the liberty of speech and press had been abused, and they thereby upheld this liberty rather than infringed upon it.

The Constitution assigns certain duties to the Federal Government. This would imply also the grant of means and power necessary to execute the duties. Yet the grant is not left to implication, but explicitly stated in the eighth section of Article I.

The Sedition Act provides a means for the Federal Government to execute the duty of national protection, which means is not specified in the Constitution, though the duty is. Analogically, the Constitution made no specific provision for the protection of the Supreme Court against disturbance of its proceedings, and the court has enforced its implied right to protect itself by adopting the practice of the common law on this point. Congress could, however, have constitutionally passed a statute effecting this protection.

The President is impeded in performing his constitutional duties by scandalous misrepresentations tending directly to rob him of the public confidence. Therefore Congress has provided him in the Sedition Law the means to perform his duties efficiently.

Had the Constitution withheld from Congress power to provide such means for the execution of government, then

[1] This position is based on the principle that, in construing an equivocal statute, law does not concern itself with the intention of its drafter or even its mover, but with that of the majority which passed it.

it would have made the officials responsible for effects, without giving them control over the causes which naturally produce these effects, and so it would have failed of achieving its object as stated in its preamble.

Sedition and conspiracy were punishable by the common law in the courts of the United States before the act in question was passed by Congress. The act is, in certain respects (such as the mitigation of punishment, etc.), an *amelioration* of the common law.

The act is for the benefit of officers only in their character of agents of the people, and, therefore, it is for the benefit of the people, and not the injury of them.

The act is necessary because an audacious and unprincipled spirit of falsehood and abuse has been too long unremittingly exerted for the purpose of perverting public opinion, and threatened to undermine and destroy the whole fabric of government.

These opinions have been endorsed by our constituents in reëlecting those Representatives who voted for the measures complained of by Virginia. And the citizens of Massachusetts are not indifferent to their constitutional rights; on the contrary, they see that their freedom, safety, and happiness require that they should defend the Government and its constitutional measures against the open or insidious attack of any foe, whether foreign or domestic.

Lastly, the legislature of Massachusetts feel a strong conviction that the several United States are connected by a common interest which ought to render their union indissoluble; and this State will always coöperate with its confederate States in rendering that union productive of mutual security, freedom, and happiness.

Pennsylvania answered Kentucky that the people of the United States had vested the construction of the Constitution in the Federal judiciary, and, therefore, the declaration by a State that any Federal act was void was a revolutionary measure destructive of the purest principles of our State and national compacts.

It considered as abhorrent the statements of the Kentucky legislature that "confidence is everywhere the parent of despotism," and that "free governments are founded in jealousy." Such a principle, it said, cut all social bonds, and renewed the state of savagery. Governments truly republican and free are eminently founded on confidence; their execution is committed to representatives in whom the people trust. No portion of

the people can assume the province of the whole, nor resist its combined will.

The Alien and Sedition Laws are expressive of this combined will—a part of the system of defence against the seduction and aggressions of France. They are terrifying only to the flagitious and designing. Loud and concerted appeals against them made by a minority to the passions of the people will produce effects more violent than useful.

Pennsylvania answered Virginia briefly to the same effect: Her resolutions tended to excite unwarrantable discontents and to destroy the very existence of our Government.

New York answered through its senate that, "not perceiving that the rights of the particular States have been violated, nor any unconstitutional powers assumed by the general Government, the senate cannot forbear to express the anxiety and regret with which they observe the inflammatory and pernicious sentiments and doctrines which are contained in the resolutions of the legislatures of Virginia and Kentucky—sentiments and doctrines no less repugnant to the Constitution of the United States, and the principles of their union, than destructive to the Federal Government, and unjust to those whom the people have elected to administer it."

Therefore the senate deemed it a duty to bear unequivocal testimony against such sentiments and doctrines explicitly and to declare their incompetency to supervise the acts of the general Government.

Connecticut explicitly disavowed the principles contained in the Virginia resolutions, and it justified the Federal acts of which the resolutions complained as rendered necessary by the exigency of the country and passed by the constituted authorities.

New Hampshire, which had received also the Kentucky resolutions, expressed a firm resolution to defend the Constitutions of the United States and the State against every aggression, foreign or domestic, and to this end to support the measures complained of. The Federal judiciary, it said, and not a State legislature, is the proper tribunal to determine the constitutionality of Federal laws.

If the legislature of New Hampshire, for mere speculative purposes, were to express an opinion on the so-called "Alien and Sedition Bills," that opinion would be that these acts are constitutional, and, in the present critical stage of our country, highly expedient. As to this constitutionality and this expediency the legislature of Virginia was referred to the clear

demonstrations on these points made by members of its minority (see page 94).

Vermont resolved that the resolutions of Virginia were unconstitutional in their nature and dangerous in their tendency, and that the Federal judiciary and not a State legislature was the proper body to decide on the constitutionality of Federal acts.

The Supplementary Resolution of Kentucky

The legislature of Kentucky replied to the answers of the several States, made to its own resolutions and those of Virginia, by a supplementary resolution, passed unanimously in the House on November 14 and concurred in by the Senate on November 22, 1799.

The following is a condensation of the preamble and full text of the resolution:

The Kentucky legislature would be faithless to themselves and their constituents if they silently acquiesced in the answers to their former resolutions by the other States, Virginia excepted. It is needless to attempt to expose the unconstitutionality of the Alien and Sedition Acts more fully than we have done; we must lament, however, the unfounded suggestions and uncandid insinuations of the replies to our decent and temperate expressions of opinion. Faithful to the true principles of the Federal Union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation. Lest, however, those of our fellow-citizens throughout the Union who so widely differ from us on those important subjects should be deluded by the expectation that we shall shrink from the principles contained in those resolutions; therefore

Resolved, That this commonwealth considers the Federal Union, upon the terms and for the purposes specified in the late compact, conducive to the liberty and happiness of the several States: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeably to its obvious and real intention, and will be among the last to seek its dissolution: That, if those who administer the general Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein con-

tained, an annihilation of the State governments, and the creation upon their ruins of a general consolidated government will be the inevitable consequence: That the principle and construction, contended for by sundry of the State legislatures, that the general Government is the exclusive judge of the extent of the powers delegated to it, stop not short of *despotism*—since the discretion of those who administer the government, and not the *Constitution*, would be the measure of their powers: That the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction: and, *That a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy:* That this commonwealth does, under the most deliberate reconsideration, declare that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister States in matters of ordinary or doubtful policy, yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That, although this commonwealth, as a party to the Federal compact, will bow to the laws of the Union, yet it does, at the same time, declare, that it will not now, or ever hereafter, cease to oppose, in a constitutional manner, every attempt at what quarter soever offered, to violate that compact: And, finally, in order that no pretext or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal compact, this commonwealth does now enter against them its solemn protest.

The Virginia legislature referred the answers of the various States to a committee of which James Madison was chairman. During the session of 1799-1800 the committee made its report, which had been drafted by Madison.

This celebrated paper[1] is a long and exhaustive argument in defence of the legislature's resolutions, discussing them in their order. The following is an abstract of the report:

[1] It would seem that no praise was too extravagant for admirers of Madison in speaking of this Report. It was called the "Bible of Democracy," the "Second Declaration of Independence," etc.

Report on the Virginia Resolutions

James Madison

The *first* of the resolutions is in the words following:

"*Resolved*, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression, either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. In their *next* resolution—

"The General Assembly most solemnly declares a warm attachment to the union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness."

No question can arise among enlightened friends of the Union as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence and the public happiness thereon depending.

The *third* resolution is in the words following:

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them."

In all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given to the Government were withheld from it; and that, if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th Amendment,[1] which expressly declares "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

[1] Now the tenth.

The resolution proceeds to infer "That, in a case of a dangerous exercise of unwarranted powers, the States have the right to interpose for arresting the progress of the evil and for maintaining their rights within their respective limits."

It is a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal superior to the authorities of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The States, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition. In the case of ordinary conventions between different nations, where by the strict rule of interpretation a breach of a part may be deemed a breach of the whole—every part being deemed a condition of every other part, and of the whole—it is always laid down that the breach must be both wilful and material to justify an application of the rule. But, in the case of an intimate and constitutional union like that of the United States, the interposition of the parties can be called for by occasions only deeply and essentially affecting the vital principles of their political system.

Therefore the resolution specifies the object of the interposition to be arresting the progress of the evil of usurpation and maintaining the authorities, rights, and liberties appertaining to the States as parties to the Constitution.

If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify such actions, there would be an end to all relief from usurped power.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution in the last resort. The answer to this is that the judicial department is not the last resort in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever and beyond the possible reach of any rightful remedy the very Constitution which all were instituted to preserve.

The fourth resolution stands as follows:—

"That the General Assembly doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present Republican system of the United States into an absolute, or at best a mixed monarchy."

The Alien and Sedition Laws are among those alluded to as indicating the spirit of the Federal Government. The phrases construed are: "Providing for the common defence and general welfare" [Preamble].

In Article VII of the "Articles of Confederation" these phrases are used, yet they were not broadly construed as now. By their incorporation in the Constitution it was evidently the intention of the framers of the new instrument to perpetuate the old construction. Indeed, if any breadth of construction is permitted, it may go to the fullest extent, and our whole government be changed from a Federal system to a consolidated one, and, in time, become a despotism.

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the committee too obvious to be mistaken. In both the Congress is authorized to provide money for the common defence and general welfare. In both is subjoined to this authority an enumeration of the cases to which their powers shall extend. Money cannot be applied to the general welfare otherwise than by an application of it to some particular measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it. If it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by, the clause in the Constitution which declares that "no money shall be drawn from the treasury but in consequence of appropriations made by law." An appropriation of money to the general welfare would be deemed rather a mockery than an observance of this constitutional injunction.

The resolution next in order is contained in the following terms:—

"That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government; and which, by uniting legislative and judicial powers to those of the Executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto—a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Mr. Madison repeated the already familiar arguments against the Alien and Sedition acts. His arguments against the Sedition Act largely consisted of a reply to the doctrine advanced in its behalf that "the common or unwritten law"—which Madison characterized as "of vast extent and complexity, embracing almost every possible subject of legislation, both civil and criminal"—forms a part of Federal law.

In the state prior to the Revolution it is certain that the common law made a part of the colonial codes. But it was not the same in any two of the colonies; in some the modifications were materially and extensively different. There was no common legislature by which a common will could be expressed in the form of a law; nor any common magistracy by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.

Did, then, the principle or operation of the great event which made the colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was that the colonies were coördinate members with each other, and with Great Britain, of an empire united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American Parliament as in the British Parliament. The assertion by Great Britain of a power to make laws for the other

members of the empire, in all cases whatsoever, ended in the discovery that she had a right to make laws for them in no cases whatsoever.

Such being the ground of our Revolution, no support or color can be drawn from it for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principles of the Revolution.

The Articles of Confederation are the next source of information on this subject.

This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; while, on the other hand, every such inference or pretext is absolutely precluded by Art. 2, which declares "that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

Is this exclusion revoked and the common law introduced as national law by the present Constitution of the United States?

The only part of the Constitution which seems to have been relied on in this case is the 2d section of Art. 3: "The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

It has been asked what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution other than those arising under the common law, and it is inferred that the common law is, accordingly, adopted or recognized by the Constitution.

The expression "cases in law and equity" is manifestly confined to cases of a civil nature, and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph in the same section is in harmony with this construction. It is in these words: "In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases [including cases of law and equity arising under the Constitution] the

Supreme Court shall have *appellate* jurisdiction, both as to law and *fact*.

Once more: The amendment last added to the Constitution [XIth] deserves attention as throwing light on this subject. "The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a State the terms *law or equity* must be understood as appropriate to *civil*, in exclusion of *criminal* cases.

From these considerations it is evident that this part of the Constitution, even if it could be applied at all to the purpose for which it has been cited, would not include any cases whatever of a criminal nature, and, consequently, would not authorize the inference from it that the judicial authority extends to *offences* against the common law as offences arising under the Constitution.

It is further to be considered that, even if this part of the Constitution could be strained into an application to every common-law case, criminal as well as civil, it could have no effect in justifying the Sedition Act, which is an act of legislative and not of judicial power; and it is the judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution in which a description of the law of the United States is found. The first is contained in Art. 3, Sect. 3. The second is contained in the second paragraph of Art. 6. The common law is not expressed in the enumeration of either passage.

In aid of these objections the difficulties and confusion inseparable from a constructive introduction of the common law would afford powerful reasons against it.

Is it to be the common law with or without the British statutes?

Is the law to be different in every State, as differently modified by its code; or are the modifications of any particular State to be applied to all?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

These consequences, flowing from the proposed construction, furnish other objections equally conclusive.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be altered

by the legislature. Such of the statutes already passed as may be repugnant thereto would be nullified; particularly the Sedition Act itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected, and the common law be held, like other laws, liable to revision and alteration by the authority of Congress, it then follows that the authority of Congress is coextensive with the objects of common law; that is to say, with every object of legislation; for to every such object does some branch or other of the common law extend. The authority of Congress would, therefore, be no longer under the limitations marked out in the Constitution. They would be authorized to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be coextensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all: it will merit the most profound consideration how far an indefinite admission of the common law, with a latitude in construing it equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives, making part of the unwritten law of England. The English constitution itself is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department a discretion little short of a legislative power. It would remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation and would be paramount to the constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and, by one constructive operation, new-model the whole political fabric of the country.

It is, indeed, distressing to reflect that it ever should have been made a question whether the Constitution, on the whole

face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law—a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the Constitution as a system of limited and specified powers.

Mr. Madison continued:

Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libelous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden, by a declaratory amendment to the Constitution—the answer must be, that the Federal Government is destitute of all such authority, this being left to the States.

The resolution *next* in order is as follows:—

"That this State having, by its convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, 'the liberty of conscience and of the press cannot be canceled, abridged, restrained, or modified, by any authority of the United States'; and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other."

Similar recommendations having proceeded from a number of other States, and Congress having, in consequence thereof, and with a view to extend the ground of public confidence, proposed, among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press; and Virginia, having concurred in the ratifications which made them a part of the Constitution, it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy if an indifference were now shown to a palpable violation of one of those rights—the freedom of the press; and to a precedent therein which may be fatal to the other—that free exercise of religion.

The two concluding resolutions only remain to be examined. They are in the words following:—

"That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness,—the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken, by each, for coöperating with this State, in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively, or to the people.

"That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other States, with a request that the same may be communicated to the legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States."

It has been said that it belongs to the judiciary of the United States, and not the State legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution is a novelty neither among the citizens nor among the legislatures of the States.

Nor can the declarations of either be deemed an assumption of the office of the judge. They are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will—possibly to a change in the opinion of the judiciary; the latter enforces the general will, while that will and that opinion continue unchanged.

And, if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can there be the impropriety of communicating the declaration to other States and inviting their concurrence in a like declaration? The legislatures of the States have a right to originate amendments to the Constitution by a concurrence of two-thirds of the whole number in applications to Congress for the purpose.

In respect to the Alien and Sedition Laws the legislatures of the States might have made a direct repre-

sentation to Congress, with a view to obtain a rescinding of the two offensive acts, or they might have represented to their respective Senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution, or two-thirds of themselves, if such had been their opinion, might, by an application to Congress, have obtained a convention for the same object.

The extensive view of the subject, thus taken by the committee, has led them to report to the House, as *the result of the whole,* the following resolution:

Resolved, That the General Assembly, having carefully and respectfully attended to the proceedings of a number of the States, *in answer to the resolutions of December 21, 1798, and having accurately and fully reëxamined and reconsidered the latter, find it to be their indispensable duty* to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their PROTEST against Alien and Sedition Acts, as palpable and alarming infractions of the Constitution.

SPECIFIC PURPOSE OF JEFFERSON AND MADISON

The uniform and emphatic repudiation by the other States of the resolutions of Kentucky and Virginia effectually disposed of the primary purpose of Jefferson and Madison in inspiring them, namely, the calling of a national convention of the States, which should, by a three-fourths vote, as provided by the Constitution, pass an amendment to that instrument enabling three-fourths of the States to declare void any action whatsoever of the Federal Government, whether this be a law passed by Congress, an order of the Executive Department, or a ruling of the Supreme Court.

To Jefferson and Madison it seemed that the Federal Government was preparing to seize supreme control over the States, such as Parliament exercised over Great Britain. The Alien and Sedition Laws of Congress were similar to those passed by Parliament in 1792-3, and the principle involved in them might be extended to making the Federal Government, like Parliament, the final judge of its own powers. Even a convention

of the States to change the Constitution might be prohibited as seditious, and therefore it was well to sound the States in time upon calling such a convention.

While Jefferson and Madison failed in their specific purpose to persuade the States to call a national convention to amend the Constitution in the way which has been indicated they succeeded beyond their greatest expectation in their general purpose, which was to induce the Federalists to "show their hand" and to sound an alarm to the people of the States based upon this revelation. They thus laid the foundation of a "campaign of education" which resulted in the accession of the Republican party to national power and its uninterrupted retention of this for a quarter of a century.

Resolutions expressive of sentiments similar to those of the Kentucky and Virginia resolutions were passed by various States in later years. Professor Johnston notes, as instances of the revenges of time that, in the reversal of political control in the State governments, Pennsylvania and Massachusetts passed resolutions of this character and that Virginia replied in emphatic repudiation of their sentiments.

The denial by Jefferson and Madison, in the resolutions, that the Federal courts had a common-law jurisdiction in criminal matters is, probably, best replied to by Associate-Justice Joseph Story in his "Commentaries on the Constitution."

THE COMMON LAW JURISDICTION OF THE FEDERAL COURTS

JUSTICE JOSEPH STORY

The question, whether the common law is applicable to the United States in their national character, relations, and government, has been much discussed at different periods of the government, principally, however, with reference to the jurisdiction and punishment of common law offences by the courts of the United States. It would be a most extraordinary state of things that the common law should be the basis of the jurisprudence of the States originally composing the Union; and yet a government engrafted upon the existing systems should

have no jurisprudence at all. If such be the result, there is no guide and no rule for the courts of the United States or indeed for any other department of government in the exercise of any of the powers confided to them, except so far as Congress has laid, or shall lay down, a rule. In the immense mass of rights and duties of contracts and claims, growing out of the Constitution and laws of the United States (upon which positive legislation has hitherto done little or nothing), what is the rule of decision, and interpretation, and restriction? Suppose the simplest case of contract with the Government of the United States, how is it to be construed? How is it to be enforced? What are its obligations? Take an act of Congress—how is it to be interpreted? Are the rules of the common law to furnish the proper guide, or is every court and department to give it any interpretation it may please, according to its own arbitrary will? My design is not here to discuss the subject (for that would require a volume), but rather to suggest some of the difficulties attendant upon the subject. Those readers who are desirous of more ample information are referred to Duponceau on the "Jurisdiction of the Courts of the United States"; to Tucker's Black. Comm. App. Note E, p. 372; to 1 Kent's Comm. Lect. 16, pp. 311 to 322; to the report of the Virginia legislature of 1799-1800; to Rawn on the Constitution, ch. 30, p. 258; to the *North American Review,* July, 1825; and to Mr. Bayard's speech in the "Debates on the Judiciary" in 1802, p. 372, etc.

As has been noted the controversy over the Alien and Sedition Laws was chiefly instrumental in the election of Thomas Jefferson to the Presidency. In his inaugural address (March 4, 1801) he thus announced the principles upon which he would conduct his Administration:

The Road to Liberty

First Inaugural Address of President Jefferson

About to enter, fellow citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its administration. I will compress them within the narrowest compass they will bear, stating the general principle,

but not all its limitations. Equal and exact justice to all men, of whatever State or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies; the preservation of the general Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a zealous care of the right of election by the people; a mild and safe corrective of abuses, which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well-disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burdened; the honest payment of our debts, and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information, and arraignment of all abuses at the bar of public reason; freedom of religion; freedom of the press; and freedom of person, under the protection of the habeas corpus; and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment; they should be the creed of our political faith; the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety.

CHAPTER V

Protection of Adopted Citizens

[the koszta affair]

President Pierce, in His Annual Message, Recounts the Facts of the Koszta Affair—Correspondence on the Affair between Baron Hülsemann, Austrian *Chargé d'Affaires,* and William L. Marcy, American Secretary of State—Resolutions of Thanks to Captain Duncan L. Ingraham, Who Secured the Release of Koszta, Are Passed in the House of Representatives—Debate on the Resolutions: John Perkins, Jr. [La.], on the Right of Expatriation; Tilt between Gilbert Dean [N. Y.] and John S. Millson [Va.] on the Duty vs. the Right to Protect Koszta; David T. Disney [O.] on the Distinction between Domiciliation and Allegiance.

THE Federalist policies in regard to immigrants and alien citizens were broached again in the Hartford convention of 1814 [see Vol. V, chapter 1], but with this exception there was no important discussion in America concerning civil rights, unless the subject of slavery be considered in this connection, for the first half of the nineteenth century. The traditional liberal policy toward immigrants, which prevailed in the nearly continuous succession of Republican-Democratic administrations during this period, and the desire of every statesman, Northern, Southern, Eastern, or Western, to invite settlement and development of his section, and so to increase its power in Federal politics, placed the prospective citizen in a most advantageous position. With each party bidding for his vote the requirements for the elective franchise were reduced to a minimum. Consequently the right or privilege—whichever it be considered—was greatly abused, especially by European expatriates (usually revolutionists) who desired to continue their business abroad under the protection of some nation powerful enough

to resist the claims upon them of their former government. Accordingly they visited the United States, made application for citizenship, and returned to Europe trusting in the advantages of their new allegiance and careless of the performance of its duties.

In the annual message of President Franklin Pierce, December 6, 1853, appeared the following statement:

Martin Koszta, a Hungarian by birth, came to this country in 1850, and declared his intention, in due form of law, to become a citizen of the United States. After remaining here nearly two years, he visited Turkey. While at Smyrna, he was forcibly seized, taken on board an Austrian brig-of-war, then lying in the harbor of that place, and there confined in irons, with the avowed design to take him into the dominions of Austria. Our consul at Smyrna and legation at Constantinople interposed for his release, but their efforts were ineffectual. While thus imprisoned, Commander Duncan N. Ingraham, with the United States ship of war *St. Louis,* arrived at Smyrna, and, after inquiring into the circumstances of the case, came to the conclusion that Koszta was entitled to the protection of this Government, and took energetic and prompt measures for his release.[1] Under an arrangement between the agents of the United States and of Austria, he was transferred to the custody of the French consul-general at Smyrna, there to remain until he should be disposed of by the mutual agreement of the consuls of the respective governments at that place. Pursuant to that agreement he has been released, and is now in the United States. The Emperor of Austria has made the conduct of our officers who took part in this transaction a subject of grave complaint. Regarding Koszta as still his subject, and claiming a right to seize him within the limits of the Turkish Empire, he has demanded of this Government its consent to the surrender of the prisoner, a disavowal of the acts of its agents, and satisfaction for the alleged outrage. After a careful consideration of the case, I came to the conclusion that Koszta was seized without legal authority at Smyrna; that he was wrongfully detained on board of the Austrian brig-of-war; that, at the time of his seizure, he was clothed with the nationality of the United States; and that the acts of our officers, under the circumstances of the case, were justifiable, and their conduct has been fully approved by me, and a compliance with the several demands of the Emperor of Austria has been declined.

[1] July 2, 1853.

For a more full account of this transaction and my views in regard to it, I refer to the correspondence between the *Chargé d'Affaires* of Austria and the Secretary of State, which is herewith transmitted. The principles and policy, therein maintained on the part of the United States, will, whenever a proper occasion occurs, be applied and enforced.

The chief letters in the correspondence referred to were one from Baron Hülsemann, Austrian *Chargé d'Affaires*, to William L. Marcy, American Secretary of State, written on August 29, 1853, and the Secretary's reply of September 26. Hülsemann asked that the United States "disavow the conduct of its agents . . . hasten to call them to a severe account, and tender to Austria a satisfaction proportionate to the outrage." Marcy's answer defended the position of the United States throughout on the grounds that Koszta had ceased to be a citizen of Austria even by the law of Austria; that when seized and imprisoned he was already invested with the nationality of the United States, and this government had therefore the right, if it chose to exercise it, to extend its protection to him; that from international law Austria could derive no authority to obstruct or interfere with the United States in the exercise of this right in effecting the liberation of Koszta, and that Captain Ingraham's interposition for his release was, under the extraordinary circumstances of the case, right and proper.

The position taken by Secretary Marcy has since been accepted by the authorities in international law.

The ringing letter of the Secretary met with universal approbation from the American people, and contributed materially toward strengthening the President, for Pierce had been harshly criticized by the "Hards," a faction of New York Democrats who coöperated with the South, for appointing to the chief office in his cabinet a man who belonged to the opposite faction, known as the "Softs," who were prone to make political dickers with the Free Soilers. Captain Ingraham became a popular hero for his prompt and decisive action in the Koszta affair, and resolutions of thanks to him were

EXECUTIVE MA[E]RCY AND THE BAMBERS
[Surrender of Irishmen to the British Consul]
From the collection of the New York Historical Society

passed in the House of Representatives on January 11, 1854, by a vote of 174 to 9. In remarks upon the resolutions the points in international law which had been raised in the Hülsemann-Marcy correspondence were ably discussed by John Perkins, Jr. [La.], Gilbert Dean [N. Y.], John S. Millson [Va.], and David T. Disney, [Ohio].

The Koszta Affair

House of Representatives, January 11, 1854

Mr. Perkins.—Although I approve the doctrines contained in the letter of the Secretary of State, I do not admit that the letter itself embodies any new principle. The secretary himself protests against this idea.

He says, speaking of nationality resulting from domicile:

> "It is no new doctrine now for the first time brought into operation by the United States; it is common to all nations, and has had the sanction of their practice for ages; but it is new that, at this late period, when the United States assert a claim to it as a common inheritance, it should at once be discovered that it is a doctrine fraught with danger, and likely to compromit the peace of the world."

The merit of the secretary's letter is, however, greater to my mind than if its doctrines were novel. I think it no light thing that he has brought forward, in a bold and forcible manner, on a highly proper occasion, a great principle of international law that has been suffered to lie long dormant in our law books. As early as 1817, in the case of Pizarro, 2d Wheaton, this doctrine of nationality, resulting from domicile, was laid down in broad terms by Judge Story, and concurred in by Judges Marshall, Washington, Livingston, and Johnston. *Secretary Marcy has only given to it vitality by its application to persons as well as property.* There is no just reason for its being restricted, so as to apply to one and not to the other.

The principle is broad enough for both, and that it has not always been extended to protect both is attributable to the watchful jealousy with which the monarchical governments of Europe have sought to *make perpetual the allegiance of the subject.* Recognizing, as we do in this country, the opposite doctrine—*the right of an individual to expatriate himself*—the reasoning of the secretary, and the conclusions of his letter, are in harmony with the spirit of our institutions.

I think we have acquiesced long enough in European interpretation of the law of nations. For the last fifty years it has been molded to suit the necessities of particular nations. At this time it is practically little more than a code, conventional in its character, for the protection of existing institutions—interpreted always against the individual, and in favor of the government.

Sir, the time is coming when this country will be forced to declare, in some degree, its independence of a code which is framed to justify tyranny in almost all its forms, and which is too often made a screen for the perpetration of great national crime. When we do declare our independence of the perversions of this code, I believe the act will be attended with moral results almost equal to those which attended the establishment of our colonial independence.

Mr. Dean.—I desire, as one of the Committee on Foreign Affairs—to which this subject was referred—and as a member of this House, to say here in my place, distinctly and unequivocally, that the object of this testimonial is not merely a personal compliment to Captain Ingraham, highly as he deserves it; that compliment he has received by the united voice of the civilized world, by the unanimous declaration of the press of this country and the liberal press of Europe; but hero worship is no part of our duty; we are to legislate and to affirm principles. If we pass these resolutions, as I trust we shall, while we thank the gallant captain, we declare, as the representatives of the American people, that we approve the act in the light of all its surrounding circumstances, and affirm those great principles of natural and international law on which only it is to be justified. We do more, we throw a light into the darkened firmament of Europe, blazing a meteor for an hour, and shining a fixed star forever.

I must dissent from the remark which has been made during the debate—that Congress is not the place to enunciate principles. So thought not the signers of the Declaration of Independence; but they, "in Congress assembled," proclaimed their principles and to their maintenance pledged fortune, life, and honor; and we, by adopting the proposition now before us, will announce and affirm a principle of vital importance.

I will now state what I understand by these resolutions:

I understand the first resolution—and that is the one which contains the whole declaration of principles—to contain three distinct propositions. The first is the right of an individual to expatriate himself, to choose his own place of residence, irrespective of the accident of birth, and a distinct denial of the

right of a prince to track his subject into foreign countries, and there claim jurisdiction over him. The assertion that the seizure of Koszta was "*illegal*" is a direct and positive enunciation of this principle. The second proposition is the right of this Government to afford protection to such persons as choose to come here and adopt this country as their place of residence. The third proposition is the approval by Congress of the act of Captain Ingraham, and the act of our Government in sustaining him. If there is any man in the House who is not prepared to take this new step, who is not now ready to assume this position, I trust that he will vote against the resolutions. I believe the time has come when we should, and when we must, concur in these principles. The executive branch of the Government has already done so in the letter of Secretary Marcy, which has so often been referred to—a letter which, let me say, is destined to an immortality almost equal to Magna Charta or the Declaration of Independence, if it is not sacrilege to compare anything to the Declaration of Independence. This letter, sir, is another Magna Charta—one that has long been needed—an American Magna Charta for adopted citizens.

MR. MILLSON.—It seems to me that the friends of this resolution unnecessarily create prejudice against it, by attributing to the letter of the Secretary of State a position which he never meant to assume. My friend from New York has just told us that the position taken by the Secretary of State in his letter was one novel and hitherto unknown in international history. Now, I wish very briefly to call his attention to a paragraph in that letter, in which I think he will discover that the secretary did not regard his position as at all novel or unknown.

"The vindication of these agents is not placed upon any principle new to the international code, or unknown in the practice of enlightened nations. These nations do not hesitate, in the exercise of the right of protection, to extend it to persons (not always subjects according to their municipal laws) who are clothed with their nationality; and in some instances they have carried this right of protection to limits which this Government would not venture, because it would not feel justified, to approach; nor have any of these nations been disposed to abandon the exercise of this right from a timid apprehension that it might possibly bring them into an occasional collision with other powers."

Mr. Marcy never said that the Government of the United States were *bound* to protect Martin Kozsta, but in twenty instances he has said that they had the *right* to protect him; and in saying this he expressly says that he asserts a principle not new to the international code. And the whole experience of

the present day justifies him in saying it. At this very moment it is a question under considerations by England and France whether they shall not interpose, in the exercise of their sovereign discretion, for the protection of the Sultan of Turkey. Yet no gentleman will pretend that the Sultan is a citizen of either power, or that there is any obligation resting upon them, except in their own discretion, to afford him any such protection.

MR. PARKER.—The secretary says:

"This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard."

I think this is conclusive upon this point.

MR. DEAN.—I had the letter of the secretary open, and was about to read that precise sentence in reply to the remarks of my friend from Virginia. But he misappehends me or the secretary. I was speaking of the doctrine of allegiance, or subjection as it exists in Europe, as contradistinguished from our laws on that subject, and Secretary Marcy, in the passage which the gentleman has cited, was commenting upon an entirely different subject—the right exercised by all civilized nations to extend protection to those whom they do not regard as subjects or citizens, but who, for commercial purposes or otherwise, have been invested with their nationality.

The Austrian Chargé d'Affaires on this subject says:

"In our opinion, Koszta has never ceased to be an Austrian subject. Everything combines to make the Imperial Government persist in this estimate of the matter. The laws of his country are opposed to Koszta's breaking asunder of his own accord, and without having obtained permission to expatriate himself from the authorities of that country, the ties of nationality which bind him to it."

The American Secretary of State, in reply to this assertion, answers:

"There are great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connection in the nature of a civil contract, dissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself

from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity."

Here, then, is a distinct issue between the two governments on this question. Captain Ingraham carried out the American doctrine, and we, by approving his conduct, affirm this principle and indorse the action of the Government in sustaining him.

But we are told that, though this Government may have the right, it is not its duty to protect persons standing in the same relation which Koszta occupied. This cannot be, for allegiance and protection are reciprocal—the former proceeds from the latter; and the American law upon this subject is most beautifully and forcibly stated in the following extract from the secretary's letter:

"Whenever, by the operation of the law of nations, an individual becomes clothed with our national character, be he a native born or naturalized citizen, an exile driven from his early home by political oppression, or an emigrant enticed from it by the hopes of a better fortune for himself and his posterity, he can claim the protection of this government, and it may respond to that claim without being obliged to explain its conduct to any foreign power; for it is its duty to make its nationality respected by other nations, and respectable in every quarter of the globe."

My colleague from New York [Mr. Maurice] refers me to another portion of the letter, in which the secretary asserts that Koszta, on the ground of domicile, had a right to ask, and that, on that ground, it was the *duty* of the Government to afford, protection as long as his character of a domiciliated resident continued. In this he is clearly right, and sustained by both reason and authority.

When gentlemen say that the act of Ingraham is one of doubtful propriety, I tell them that upon that point the Administration take issue with them, and for the verdict appeal to the country. That there may be no misapprehension, and that no one may vote for this resolution ignorant of the facts, what did Captain Ingraham do? And here let me pause to say a word in reply to the objection raised by the gentleman from Tennessee [Mr. Jones]. The gentleman wants to know why we do not tender this vote of thanks to Mr. Brown, the American consul, instead of to Captain Ingraham? If the gentleman will look at the letter of Mr. Hülsemann, he will see that Mr. Brown directed, or rather advised, Captain Ingraham to demand the release of Koszta. Well, he did demand his release, but what

use would it have been if he had stopped there? The letter of his instructions beyond this was silent. But Captain Ingraham, having demanded the release of Koszta, went further, took the means necessary to make that demand effectual, and told the representative of the Austrian Government—the commander of the *Hussar*—on the morning of the 2d July, that unless the man was delivered up by four o'clock in the afternoon he would take him by force. It was his gallant, prompt, and judicious conduct in going further that awards the great merit to Captain Ingraham, and which has invested his name and the flag he bore with such peculiar glory.

Mr. Hülsemann says that he then drew his ship up in line of battle, and prepared to carry out his threat. I will say, further, that the captain of the Austrian brig waited until within ten minutes of four o'clock before he undertook to release his prisoner. Koszta was in the hold of his vessel, and in irons. At that time, having made previous threats of shooting him, they sent down for him. He was afraid that they were taking him to be shot, for he had been told in the morning that such would be his fate if the demand of Ingraham was persisted in. It was a sublime sight—one which has rarely been equaled in history—to see Captain Ingraham standing on the deck of his vessel, with her guns pointed, the torches lighted, and he awaiting, with watch in hand, to give the word of command to fire; the Austrian officers, however, just before the expiration of the time, said, hurriedly, to the prisoner, "We want you no longer here"; and he was delivered just three minutes before four o'clock.

The gentleman inquired the other day whether, if Koszta had not been given up, Ingraham would have been justified in firing into the Austrian vessel? I answer promptly that he would; and, if he had done it, the whole American people, and the laws of nations, would have sustained him. He was at that time the representative of our nation, and demanding the release of a man who claimed the protection of our Government, and who had in his possession papers which entitled him to that protection.

There is another ground upon which the American people will justify Captain Ingraham, and that is this: Our diplomatic representatives, whether properly or not, have been charged with remissness in asserting the rights of Americans traveling abroad. They have waited, and they have doubted. Ingraham, in this case, the moment he received the word from our agent that there was a man claiming the protection of the

American Government in imprisonment, did not send home to search the parish registers to know where he was born, nor trace out the branch of the genealogical tree from which he claimed to spring. He did not wait to examine the records of all the courts to see whether he had declared his intention to become a citizen—or to ascertain the genuineness of the papers he bore, or inquire into the power of the court to grant them. Is an American commander to do so in any case? On the contrary, when the right is claimed by one whom he is satisfied is entitled to it, he should get nine points of the law—that is, possession—leaving the question involved to be afterward settled between the two governments. That is the manner in which our representatives should act. And the conduct of Ingraham, acting as he has, promptly and successfully, upon these principles, has given us respect abroad, and dignity and consideration everywhere.

I was reading but yesterday an extract from a letter received from one of the officers of the *St. Louis*, which stated that when Captain Ingraham entered the harbor of Alexandria he was received amid the joyful ringing of bells and firing of cannon; and that when he entered the theater the American flag was flying, and he was received with cheers. Such tributes as these, sir, make an American proud of his country, and will have their effect in the army and navy. No single battle has ever added such luster to the American name. It has given us a respect abroad which could not be secured by the most successful naval engagement.

We are now to take our position in reference to the rights of our citizens abroad. And those who favor the passage of these resolutions mean to send word to all that it is the deliberate voice of the American Congress that the rights of an American citizen abroad shall be guarded as vigilantly as if he were upon our own soil; and, if necessary, that the whole force of the Government shall be invoked to afford him protection—that the deck of an American ship is sacred; and the spot on which a person entitled to the protection of our Government stands, whether at home or abroad, is as inviolable as the sanctuary of the gods.

Mr. Disney.—It has been remarked, as well in the Koszta letter as upon this floor, that the Secretary of State set forth on that occasion no new doctrine; that he only referred to principles known to the law of nations. To this I must give my dissent. I do not so read it. For the purposes of commerce, the laws of nations have recognized the fact that an individual

may acquire a domicile in a country alien to the one of his origin. They have recognized that, for *commercial* purposes, he may be clothed with the nationality of a country alien to the one to which he owes his allegiance; and the error of the secretary consists in this—he has confounded *political* with *commercial* law. That, while he finds the language which he uses running through the books upon the subject, yet he has omitted to notice and recognize the distinction of which I have spoken, that the nationality which is given by domicile is conferred for *commercial* purposes. This distinction is palpably and unmistakably laid down in the very authorities which the secretary himself cites; and in this nationality the individual must be limited to such acts as are not *incompatible* with his *allegiance*.

As the property of a country constitutes a part of its strength, so the legitimate right of a country in time of war is to weaken its enemy by the destruction and capture of its property; and the courts of England and France, as well as those of our own country, have held that in the execution of this right it is not to be permitted to an individual, under cover of a different nationality, though a resident of the country, to protect the property which is the product of the hostile soil.

The whole difficulty in this case has arisen from confounding political with commercial law—from confounding commercial relations with the right and duty of an individual, as a subject; and I use the word "subject" not in contradistinction to the term which we use in this country—that of "citizen"—but to designate the relations between the governed and the government. I am inquiring into the political relations of the individual under the government. The right and duty of an individual under a government, viewed in his political relations to that government, and the rights of that individual toward that government, in his commercial transactions, in regard to the property of the country in which he is a resident, are different and separate things. There are two sorts of allegiance. The books of this country and Europe recognize them with entire distinctness. The temporary allegiance growing out of a domicile, and connected with the commercial transactions of the country; the personal duty while within the jurisdiction; and the permanent allegiance growing out of the duties of the citizen in the abstract, without regard to his commercial relations and his connection with the property of the country, which reach beyond the jurisdiction of the country. Permanent allegiance imposes upon an individual the obligation

to support, defend, and obey the Government, whether at home or abroad. Temporary allegiance imposes upon the individual the necessity of obeying the laws of the country while he is within the jurisdiction of the country within which he is residing, within which he domiciliated, provided they are not incompatible with the obligations he owes to the country to which his permanent allegiance is due. This is a distinction which the Secretary of State has overlooked. It is an important one, vast and mighty in its consequences.

Take the case of Koszta to illustrate this: while he remained within the limits of the Republic, with an intention to remain permanently here, he owed temporary allegiance to the Government, and was entitled to protection within its *jurisdiction*. But if he had left these shores without the intention of returning, no sooner had he quitted the dock at New York than he would have been divested of all his obligations of temporary allegiance to this Government, and this Government would have been relieved from all obligations in respect to his protection. They were under obligations to protect him in his property and in his relations to his property, whether within or without the jurisdiction of the United States, but not to protect the individual, in his political relations, outside of the jurisdiction of the country, on account of any claim which he may have acquired in his political relations to the institutions of the country during his residence here.

But, sir, before we can decide whether Martin Koszta was entitled to any privileges even of domiciliation, we must first inquire into the intention of the party in leaving our shores—whether it was for temporary purposes merely. He left, as we understand, with the intention of returning to this country. What, then, was the position he occupied? To that question my reply is that he occupied precisely the position of a British subject residing—domiciliated—as a merchant in New York, who leaves the country and takes a voyage to France, to accomplish purposes connected with his business. Now, sir, while he is there, in the heart of France, he is an American merchant, but a British subject—with a temporary allegiance to the United States, but a permanent allegiance to Great Britain. Martin Koszta, in commercial matters, would have been as an American merchant who was temporarily in Smyrna; but though occupying such relations he *might* have been an Austrian subject beside. Such is the doctrine of the law. It was the right and duty of the United States to protect his property as an American merchant; but in his political relations, as soon

as he left our shores, he was absolved from all allegiance to this Government, and the Government at the same time was absolved from obligations to protect him while he remained without the jurisdiction of the country. As an individual, Koszta owed no allegiance to the American Government; and, as I before observed, when he left our shores the American Government was relieved from the correlative duty of affording him its protection. He stood in the attitude of an American citizen, so far as property was concerned; and as such the American Government was placed under obligations to protect him in his property. His right to such protection would have been recognized in any of the courts of Europe, or in any courts of our own country.

With regard to the policy of adopting the doctrine that an individual coming here without any assumption of allegiance creates a duty upon the part of this Government to extend to him its protection, the idea is utterly absurd; and if this Government attempts to defend such a position it will ere long be compelled to retract and retrace its steps. Our Government is but one among a community of nations.

The very authorities which the secretary has consulted, and whose language may be found in every page of this document, have laid down the doctrine for which I contend, and the limitations which he has entirely overlooked—that is, that the nationality of which he speaks is acquired for commercial purposes, and can impose no duty incompatible with allegiance.

In the case of the *Venus* (8 Cranch), the Supreme Court is remarkably explicit: "What are the consequences to which this acquired domicile may legally expose the person entitled to it, in the event of a war between the government under which he resides and that to which he owes a permanent allegiance?" is the question asked, and to this the court replies, that "to his native country he cannot be considered an enemy, in the strict sense of the word; yet he is *deemed such* with *reference* to the seizure of *so much of his property* concerned in the trade of the enemy as is *connected* with *his residence*. It is found adhering to the enemy. He is himself adhering to the enemy, although not criminally so, *unless* he engages in *acts of hostility* against his *native country*"; that is to say, against his permanent allegiance. Grotius is quoted to the same point—563. The domiciliated party, says the court, in the same case, "are bound by such residents to the society of which they are members, subject to the laws of the State, and owing a *qualified* allegiance thereto. They are obliged to de-

fend it, with an exception in favor of a subject in relation to his native country."

But Judge Marshall was unwilling to go even to the extent which the majority of the court assumed:

"I think [said he in the same case] I cannot be mistaken when I say that, in all the views taken of this subject by the most approved writers on the law of nations, the citizen of one country *residing* in another is not considered as *incorporated* in that other, but is still considered as belonging to that society of which he was originally a member."

"For *commercial* purposes [says the judge], the *merchant* is considered as a member of that society in which he has his domicile." "The policy of commercial nations receives foreign merchants into their bosom, and permits their own citizens to reside abroad for the purposes of trade, without *injury* to their *rights* or character as *citizens*." "Nor will they hastily construe such residence into a *change* of *national* character, to the injury of the individual."

I am asked if the repeal of the prohibitory clause in relation to aliens going abroad during their probation does not involve an obligation to protect them while they are abroad? To this I answer that I suppose that the repeal of that clause merely places an alien where he would have been if that clause had never been enacted. It goes only to his *capability* to become a citizen.

This country is now occupying a position among the nations of the earth vastly more important than what she has heretofore done. And proud as we are, and just in proportion as we are proud of the glory, and the honor, and the renown, and dignity, and the reputation of this Republic, we will be chary of putting the country in a position which may inflict hereafter a stain upon that reputation and renown. I say, for this Government, exalted as she is in character, and developed as she is in strength, to lay down doctrines from which, in the future, she will be compelled to recede would be a stain upon that character; and it is to avoid a position of the kind that I have felt myself called upon to direct the attention of the House and the country to the doctrines which have heretofore been entertained, not only by our own Government, but by every government in Europe.

CHAPTER VI

Nativism

[THE KNOW-NOTHING MOVEMENT]

Rise of the "Know Nothing" Party—Debate in the House of Representatives on the Party and Its Principles: in Favor, Nathaniel P. Banks [Mass.]; Opposed, William S. Barry [Miss.].

SINCE Tammany Hall, the local Democratic organization of New York City, largely recruited its membership from immigrants, in conferring citizenship on these the officials in charge of naturalization in the city, being members of the Hall, winked at the grossest violations of the law. These abuses finally became so glaring that in 1835 a new party arose in opposition to them, which called itself the American Republican.

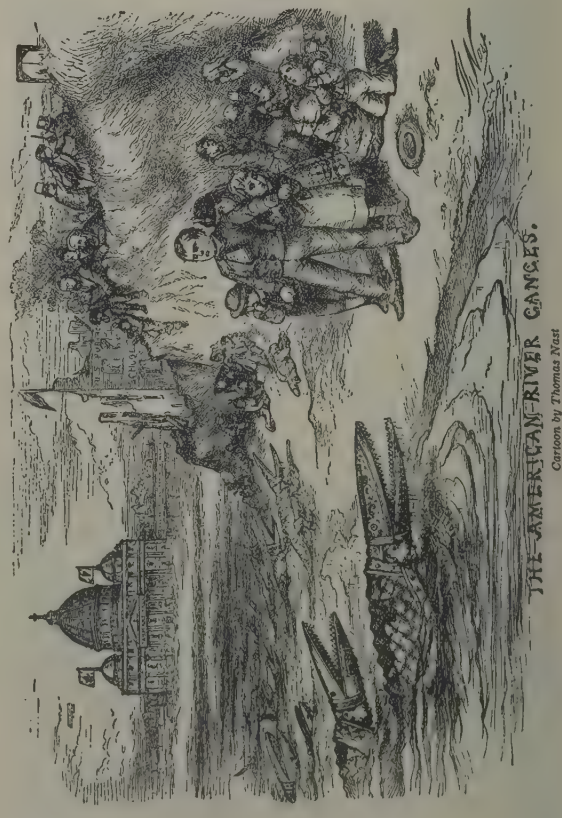
Its growth was rapid: in two years it elected the mayor of New York. The movement spread to Philadelphia, where the same abuses of the naturalization laws existed, and by 1844 it had secured six Congressmen from these two cities. Then it suddenly dwindled, and in the succeeding Congress, when it assumed the name of Native American, it had but one Representative (who came from Philadelphia). However, it revived again after the Presidential election of 1852, when the Whigs (who received few accessions from the foreign-born population) had become embittered by their overwhelming disaster and the prospect of still greater defeats at the hands of the swelling numbers of the Democracy, and were ready to form any new political combination which should cut off recruits from the dominant party.

By this time the organization had taken the form of

a secret fraternity. Its name was said to be "The Sons of 76," or "The Order of the Star-Spangled Banner," though its members were pledged by oath not to reveal its real name, and were instructed to reply to all inquiries concerning the same, "I don't know," whence arose the popular designation of the party as "Know-Nothing." Its purpose was apparent: the restriction, so far as possible, of American citizenship and political preferment to those persons born in this country, with especial exclusion of Roman Catholics. Its favorite countersign was an order which General Washington is reported (on uncertain authority) to have given on a critical occasion during the Revolution: "Put none but Americans on guard to-night."

On June 17, 1854, in the same year in which the Republican party was organized, the Know-Nothings formed a constitution under the name of the American party, the contents of which, though officially considered secret, soon transpired. This proscribed from office-holding not only all foreign-born persons, but also native Americans who were members of the Roman Catholic Church, to whose hierarchical tendencies and not its religious beliefs objection was made. Justification of this position was found in the facts that *Brownson's Review* and the *Freeman's Journal,* the leading Roman Catholic papers of the country, asserted the right of the Church to dictate and review the acts of public executives and representatives, and that dignitaries of the Church, such as Archbishop John Hughes of New York, demanded that Roman Catholic parochial schools be supported by the public funds. The controversy over public aid to the parochial schools continued to be a State issue (particularly in New York) for many years. Thomas Nast, the cartoonist, most vigorously attacked the "Roman Catholic hierarchy" for its opposition to the democratic principle of divorce of Church and State in the school question and other related issues.

The Roman Catholic bishops of New York also demanded that Church property be placed in their hands, although the constitution of the State required that all



religious bodies be incorporated and that their property be held by trustees. This demand was resisted by a number of Roman Catholic congregations, and Cardinal Bedini was sent over by the Pope in 1853 to settle the difficulty. Now this nuncio had aided in suppressing a revolution in Bologna, one of the patriots being executed. Accordingly he was stigmatized as "Ugo Bassi's executioner," and was insulted in a number of cities where he appeared in public. He decided in favor of the bishops in the controversy over Church property, and, when the trustees resisted the transfer, excommunicated these, whereupon they petitioned the State legislature, complaining that the penalty had been incurred because of their fidelity to the law. The legislature upheld the trustees, although eight years afterward the law was amended so that the bishops obtained a virtual victory.

In the State elections of 1854 the American party carried Massachusetts and Delaware and made a strong showing in New York. In the next year it gained the legislatures of New Hampshire, Rhode Island, Connecticut, New York, California, Kentucky, and Maryland, and was beaten only by small majorities in a number of Southern States. Encouraged by this success it prepared in the presidential campaign to oppose to the anti-slavery issue of the rival new party, the Republican, that of nativism, or opposition to foreign influence in American politics.

On February 21, 1856, in secret convention at Philadelphia, the American party adopted a platform containing the following principles:

"(3) Americans must rule America; and to this end native-born citizens should be selected for all State, Federal, and municipal offices. (9) A change in the laws of naturalization, making a continued residence of twenty-one years necessary for future citizenship. (12) The enforcement of 'all laws' until repealed or decided unconstitutional. (13) Opposition to Pierce's administration for its expulsion of 'Americans' from office and for its reopening sectional strife by repealing the Missouri Compromise."

On February 22 the convention nominated Millard Fillmore [N. Y.] for President and Andrew J. Donelson [Tenn.] for Vice-President. These nominations, though not the platform, were ratified by the Whig national convention held at Baltimore on September 17. The issue of the party, however, could not replace that of slavery in the minds of the people, and only Maryland cast its votes (eight in number) for the candidates. Thereafter the party speedily dwindled. In 1857-9 it had five Senators and from fifteen to twenty Representatives in Congress, and in 1859-61 two Senators and twenty-three Representatives, mostly from the border States. The Civil War completely killed the party, although its principles cropped out at times thereafter in minor political organizations such as the American Protective Association, known as the "A. P. A."

The new party formed the chief subject of discussion in the House of Representatives during the session of 1854-55. The debate was inaugurated with an attack on the party by William S. Barry [Miss.] on December 18, 1854, in a speech on "Civil and Religious Toleration." This was replied to on the same day by Nathaniel P. Banks [Mass.].

The Know-Nothing Party

House of Representatives, December 18, 1854

Mr. Barry.—This society, or association, known by the name of "Know-Nothings," is one which has recently sprung into existence. Its founders are unknown; its purposes are unknown, because the purposes avowed by those who are supposed to belong to it—by those advocating it—are contradictory in their character. These are to be deduced, not from authorized avowals of those acknowledged to belong to the society, but they are to be gathered by scraps, collected here and there from the declarations of those who are suspected of being members, or who have incidentally acquired information. It is not like other political organizations here, avowing principles, and meeting and daring the responsibility of the avowal. It is not like other associations, which having principles believed to be of vital importance to the country, their members are willing

to declare those principles, and to stand or fall with them. If, then, in attempting to find out the purposes of this order, I shall do injustice to it—if I shall ascribe to it that which its advocates deny, let members upon this floor, if there be such belonging to the order, rise and correct me. I shall be willing to be supplied with the information—more willing, perhaps, than they will be to give it.

This association appeals to that which is strong in every country. It appeals to that feeling of nationality without which a nation cannot exist as an independent government, but which, at the same time, when kindled and maddened, may destroy all that is good in government, and subvert the very principles on which it was established. There is no nation in the world in which this prejudice against foreigners cannot be aroused; but the most beautiful and soothing effect of civilization, the loveliest influence of our own institutions, has been to mollify this prejudice against those outside our borders, and to bring the whole family of nations, as it were, into a common brotherhood. According to the degree of a nation's civilization, you will find this prejudice and hostility to foreigners. In proportion as a nation is elevated in its consciousness of power, and in its knowledge of the high duties of civilization, will it receive and treat with respect those who spring from a foreign soil, or are reared under the influence of different ideas; as it sinks in the scale of self-respect and civilization, in the same degree do you find this prejudice; and as a nation is possessed of a rabble instead of a people, it will be seen that its fury can be aroused against all who cannot pronounce its shibboleth.

One of the most frequent justifications of this organization, Mr. Chairman, is that there are secret associations of foreigners which must be counteracted in this manner. If such political associations exist among the foreign population of this country, it certainly seems a strange method to rebuke the error by forming other associations, in which is embodied all that is wrong in those we condemn. We give dignity and consequence to their conduct by imitating it, and lose all the advantage of honest principles by leveling our own conduct to the standard of those we reprobate. If the foreigners have adopted rules of action incompatible either with social order or political rights, there can be no duty more consistent with pure philanthropy or elevated patriotism than the attempt to correct their error, and infuse into their minds juster views of the duties of the citizen, both to his neighbor and to the State. We have adopted the humane and tolerant opinion of Mr. Jefferson, the great apostle of the Democratic party, and who infused into it

that generous and trusting faith in man, whether native or alien born, which has been the germ of the chief differences between the two great parties of the country, *"That little is to be feared from error, while reason is left free to combat it."* The evils that we see are not to be cured by persecution; the faggot and the stake are exploded arguments; and having discarded the more open, manly, and responsible instruments of torture, we will not now turn to seize upon those which are secret, sinister, and irresponsible.

Secret political associations have heretofore existed in oppressed countries, for enlarging the rights of the citizens, and limiting the powers of rulers; but this is the first, so far as my reading extends, in which the effort has been made, through such an organization, to narrow the liberty of man, and graft an oppressive principle upon the government. There has been a strong repugnance to these political associations in this country from the earliest period of our history. The society of the Cincinnati, formed immediately after the Revolution, and composed of men fresh from the baptism of fire and blood in that holy struggle, has decayed, and almost expired, under the distrust felt by the American people of secret associations, which might be wielded to the detriment of the public liberty, or to serve the ambitious purposes of those who would make the association the instrument of their own advancement. The times are not so improved, nor men grown so patriotic, that a power which was denied by public opinion to the best patriots of the purest days of the Revolution can safely be intrusted to the hands of those who can show no peculiar claim, either of service or purity, to special confidence.

Mr. Chairman, two distinct questions are presented in examining this subject—first, the purposes which the order has in view; and, secondly, the means by which they are to be accomplished.

These purposes, as gathered from supposed members, from newspapers professing to advocate the views of the order, and from the writings and speeches of those affecting to sympathize with it, are—

First. The exclusion of all foreigners from office.

Second. The extension of the term of naturalization from five to twenty-one years, or some other period longer than five years.

Third. The entire repeal of the naturalization laws.

Fourthly. The exclusion of Roman Catholics from office.

The means by which these things are to be accomplished are

a secret political association, in which the members are bound by the most solemn oaths to obedience, to silence, and to mutual fidelity.

I shall speak, first, of the organization, and then of the purposes the order has in view.

I can but believe that a secret political association is dangerous to the rights of the people and to the stability of the Government. In a free government, where every man is entitled to declare his opinions, and there is no punishment for the avowal of whatever doctrines he may entertain, what excuse can there be for a resort to secrecy? When the people are oppressed by a tyrannical government, and the penalty of death awaits every man who dares to speak or think against the power that is crushing him, there may indeed be an excuse for patriots scheming in the darkness of midnight, and in the security of unknown places of meeting; but, in the midst of a people who enjoy every liberty that the most liberal institutions can bestow, where freedom of thought, of speech, of action, and of the press are the birthright of every man, how can a secret proscriptive organization be allowed to take root, and rights, the dearest that man can exercise, or government protect, be taken from the people by means so insidious and so fruitful of danger?

The Constitution allows no oaths to be forced upon the voter, nor tests to be imposed in the use of that franchise. The sense of duty and the personal stake of each man in the welfare of the community were thought sufficient to insure its faithful exercise. But this secret association attempts to bind men by the most stringent oaths to exercise the right of voting only as certain *native patriots* shall determine, in the secrecy, and perhaps in the darkness, of midnight. The citizen who assumes these oaths and obligations parts with his individual freedom, abandons his personal independence, and comes to the polls, not an untrammeled voter, but a mere machine to carry out, by his suffrage, the elections and the purposes which others—perhaps against his consent—have determined on. He barters away his freedom who makes any pledges or swears any oaths which impair his right to modify his ticket at any time prior to depositing it in the ballot box. The electoral franchise is one which is conferred on each individual who exercises it, and which he has no right to trammel the free, judicious use of, by private oaths and secret combinations; and his duty is to his country and the Constitution, not to midnight caucuses of ambitious and crafty men, who glaze over their schemes of selfishness with well-affected anxiety for the public good.

Here Mr. Barry quoted what was said to be the oath of the society.

In my judgment, sir, a man who is a member of an established government, from which he receives the amplest protection of person and property, and to which, in return, he owes the amplest measure of fidelity and obedience, has not the moral right to take such an oath as that I have quoted. He may as well owe allegiance to a foreign sovereign, and be ready to obey his commands, as assume obligations to any society of his countrymen which place him in collision with his own government. So plain, and almost self-evident is this truth, that a year since no one in this country could have been found to question it, as no one will a year or two hence, when this bubble, with its tints that delude some eyes, shall have passed into oblivion, with its elder brothers, the Alien and Sedition Laws, and when the public mind, which is now swayed from its self-poised equilibrium by a temporary excitement, shall have recovered its just position.

The oath provides that the member shall "not, under any circumstances, expose the name of any member of this order, nor reveal the existence of such an organization." This portion of the oath, perhaps, explains why those not in the order have never met a man who confessed that he belonged to it. And, sir, we have heard men deny connection with it, who we have every reason to be satisfied were members. Has any man the right to take an oath binding himself to the continuous statement of an untruth. Can that institution be good whose first fruits are thus evil? No, sir; it is wrong, radically wrong. Nor can the guilt of the deception be escaped by the flimsy evasion that the real name of the order is not "Know-Nothing," and that, consequently, a man may safely say he does not belong to one of that name, though he really is connected with the order which the public have designated by that title, and he well knows it is the one alluded to by the inquirer. Since his intention is to deceive, he is responsible for the deceit. Nor can he escape by the plea that the querist has no right to put the question, and that he is, therefore, at liberty to disregard the truth in his answer. It is by no means certain that each citizen has not the right to ask every other any question he may see fit, in reference to public matters, without being liable to the charge of inquisition or impertinence; and though the person asked may have the choice of silence or speech, he is under the common obligation that rests on all men, *if he an-*

swers at all, to tell the truth. No oaths sworn, however solemnly, nor with the direst penalties that a secret midnight association ever devised, can discharge a citizen from the eternal duty of veracity. The difficulties in respect to truthfulness, in which a member is involved, arise from his oath to conceal the existence of the order, and his own connection with it. The object seems to be to protect the members from the odium with which secret political associations have been viewed in this country, and to secure the benefits of such an organization, while they escape the responsibility of a connection with it. There is more of wily cunning than of republican frankness and manhood in such a course.

But this secrecy necessarily destroys all confidence between men. Till this new order sprang into existence, with its frightful demands upon the conscience of its members, there existed among the citizens of our country such mutual trustfulness that the statements of men of good character were received without distrust upon all subjects; but since it has come to be admitted that some men, of hitherto unquestioned veracity, have falsely denied their connection with the order of the Know-Nothings, and it has even been more than suspected that some of those from whom we have a right to expect an especial purity of life, and by whom we have been accustomed to be taught that it is better to die than to stain our lips with untruth, have taken the oath before quoted, which requires of them conduct so much at variance with their teaching, it is not to be wondered at that *some have become skeptical of the existence of human veracity.* The whole social fabric rests upon the belief of truth among men; and the strongest bond of faith in an individual's truthfulness is the well-founded opinion that he has never once voluntarily defiled his soul with falsehood. To conceal effectually their connection with the order, the members may be, and some possibly have been, driven to a line of conduct, in my opinion, more reprehensible than a direct denial of the truth—the acting of a protracted and systematic falsehood. Having formerly belonged to the old Whig and Democratic parties, and not daring to excite suspicions, or to confirm those already entertained, of their belonging to the Know-Nothings, by separating themselves openly from their old friends, they still affect to retain their interest in party action and party success, allow themselves to be treated as members of their old parties, become possessed of information, which is given to them, as they well know, on the belief of their being still faithful to their former friends, and yet, while acting thus, they are

under oaths which bind them to different parties, different principles, and different candidates.

That this is no idle supposition of my own, as some credulous persons, who think that such things cannot be in a free and manly country like our own, may be tempted to exclaim, I will quote from the resolves of a Know-Nothing Council in Brooklyn, New York. The preamble to those resolves declares that "*good men* and *true* had already been nominated by the great political parties of the State, *the nomination of some of whom was effected by the direct action of this order.*" If any man, Whig or Democrat, had smuggled himself into a meeting of the other party, by pretending to belong to it, the judgment of all men would reprobate the act as perfidious and disgraceful. The contempt of all honorable men would follow him like a curse. What rule of morals can tolerate in members of this order that which is condemned in all other parties? Their first departure from sound principles in joining the order involves subsequent delinquencies to conceal it, and make it effectual. If trade and commerce require good faith and sincerity in those who follow those callings, how much more are they indispensable among those who are acting for the public, and whose conduct may influence for years to come their country's welfare.

It has been claimed, in support of the order, that both of the old parties are corrupt, and that it was necessary to form a new party, of purer principles and better material. An architect who should pronounce both of two buildings which he had examined unsound and unsafe in structure and detail would hardly be thought reliable if he should attempt to construct another edifice of the brick and stone which he had just condemned as useless and unworthy. Yet this order assumes to form, out of the corrupt members of the old parties, a society of immaculate patriots. A few of the old partisans get together and rate themselves above reproach, and then adopt such other citizens, members of the old corrupt parties, as are willing to unite in asserting the knavery of all other men and their own purity. This Pharisaical assumption of superiority is worthy of all rebuke and contempt. Those of this order supposed to be in this House, I must say, in all courtesy, I cannot rank one whit above the average of their fellow members in the qualities of citizens or legislators. Self-canonized saints and self-elected patriots are of questionable stuff. There is a spontaneous distrust of the assumption that arrogates to itself a Benjamin's portion of the common stock of human virtue and excellence,

and the claim of impostors is usually extensive in proportion as it is groundless.

In a free government, I hold, sir, that there is no right in a portion of the people, whether a minority or a majority, to adopt a secret political policy, or pursue it by secret means. The commonwealth is the joint product of the thoughts and wills of the people who compose it. They have risked their mutual interests in a common venture. Counsel and service are due from each to all. Whatever pertains to the common benefit is the proper subject of mutual deliberation. I, as a member of society, may justly expect its protection in every right which the laws or the Constitution give me—protection not only against foreign invasion, but also against domestic violence; against the man who assaults my person, or wrests my property from me; but not a whit less against those who, by means of secret cabals, midnight assemblages, unnatural oaths, and malicious combinations, would peril, impair, or destroy any one of my civil or political rights. Society can protect me, can protect itself against the effects of these secret political associations, only by extirpating them. They are the fruits and the offspring of revolution: putrid bodies which the thunder of anarchy lifts from the deep in which they slumbered.

All citizens, I think, sir, are under obligations of candor and sincerity toward each other in matters political. I think the very nature of a free government requires it of them. The ballot of each voter is intended to be secret only so far as to protect him against violence, or any undue influence in preparing and casting it. This right to absolute freedom in performing this high civil act is not clearer than the corresponding obligation of every other man to refrain from all attempts to disturb, oppress, or intimidate him in the exercise of it. But when the ballot is put into the box, it ceases to be a mere private act, and becomes a part of the public history. An attempt at concealment provokes inquiry, and justifies it. There can be but two reasons for keeping a vote secret—timidity, if we think ourselves right, or shame and conscious guilt, if we believe ourselves wrong. And a man must be deficient in some of the better qualities of citizenship who is willing to assign either of them as an excuse for a secret vote. And the motives that prompt the vote, since he has no right to be influenced by any but those of the public good, are also proper subjects of inquiry, and, *if the voter be a man, of free and truthful answer.* No man ever cast a secret vote, even if his purpose were as kindly a one as to avoid making a preference between rival friends,

but felt his self-respect lowered, and that he had not acted up to the full dignity of citizenship. There is, and there should be, no penalty attached to the exercise of the right of voting, but the estimate which the public may attach to a man's character, according as he is thought to have used his privilege well or ill. It is simply an item going to make up the aggregate of character. Nor should there be laws compelling him to declare how he voted; in free countries, the great mass of men being independent, in fact, as well as name, will spurn concealment in the matter; and I do not know, in all history, of more than one inquisitorial attempt, by an *ex post facto* law, to compel the citizen to declare for whom he had voted; and this attempt, so tyrannical, was made, not by foreigners, who, ignorant of the genius of republicanism, might, unconsciously, have violated its principles; nor by the old parties of the country who, immersed in senility and corruption, might be indifferent to the forms of liberty, but by the conclave of patriots who assembled in New York as a Know Nothing council, representatives of those who are to regenerate America; who, mourning the decay of public spirit and the corruption of national virtue, have, by *self-election, and the imposition of their own hands,* set themselves apart for the work of reformation.

Public opinion is one of the most efficient restraints on human action. The punishments of this world seem, with but too many, more terrible than the retribution of that which is to come. The criticism, the censure of men often restrain evil-disposed persons, and an enlightened public opinion guides and sustains the virtue of individuals. We find the action of political parties is purest when it is most under the public eye; and, as the veil of secrecy is thrown about it, there is a culpable laxity of conduct. A private caucus, though there is no obligation of secrecy, is thought less free from corruption than a public convention. Meetings of which there is no record but the unsafe memory of those present are likely to be less judicious than those in which everything is recorded and published. A railroad, or other corporation directory, which gives its proceedings no publicity in a twelvemonth is the subject of distrust, and too often falls into downright knavery. These things we all see and know; and yet it is maintained that it is possible for an association, secret, irresponsible, its members unknown, and denying their connection with it, to select its candidates and elect them, and to control the government of a great country without danger to the rights of the people or of corruption among the members. Where this secrecy begins, free-

dom ends. When the streets of Paris streamed with blood; when the guillotine was the only engine whose activity was not palsied by the general terror that pervaded the land, the orders that plunged France into such frightful calamities issued from the midnight, secret, irresponsible association of the Jacobins. A career that begins in religious and political proscription may well end, like theirs, with the lamp-post and the guillotine.

The first avowed purpose of the order which I shall discuss is the exclusion of foreigners from office. The pledge of the member on entering the order is that "he will not vote or give his influence for any man for any office in the gift of the people unless he be an American-born citizen." A judicious man, it seems to me, will hardly deny that it is equally criminal to do, by indirection, as to do openly that which we are forbidden under the Constitution. That instrument confers on alien-born citizens a complete eligibility to seats in the House of Representatives and Senate, when the respective periods of age and citizenship have been completed, as upon native-born citizens. No man will deny that Congress possesses no power to add, by law, to the age or period of citizenship fixed by the Constitution, and that such a law would be unconstitutional and void. Any attempt to do so would be an assault upon a right which the framers of the Constitution thought of sufficient importance to guard by a special provision, and I can see no distinction in justice between attempting to rob them of the rights by a law and by a secret association.

There is no obligation, in my judgment, to vote for a foreigner to any office more than for any other citizen; but there is an obligation not to form a combination against him by which he is to be disfranchised or stinted in the enjoyment of any constitutional right.

If it be true that foreigners are less fit for office than native citizens, it is a gross distrust of the national common sense to suppose the people will not act upon it, and a poor commentary upon public spirit that special oaths and the terrors of a secret inquisition are needed to urge them up to the discharge of an obvious duty. I cannot but believe that true policy and justice are, in this case, harmonious. These foreigners are in our midst; they have come under our invitation, and have trusted to the liberal spirit of the age and the generous provisions of our laws and Constitution, and our purpose should be, by acting up to the full measure of good faith, to encourage them to the highest standard of republican citizenship. They are citizens, with the right to vote, and policy dictates that they should

be so treated as soonest to nationalize them, that the peculiarities of their birth, education, language, and ideas may be lost in the character of our own people. There is no safety in a course that excludes them from any right which is theirs by the Constitution and laws, and which induces them, from wounded pride, to perpetuate the distinctions which separate them from the native-born citizens.

Justice would teach us that foreigners should receive a share of offices proportioned to their number, if the subject becomes a matter of mathematical division; but it would be more fortunate for the peace of the country if the question of nativity and religion were never raised, and if selections to office were made according as Mr. Jefferson's strong questions are answered, "Is he honest? Is he competent? If he faithful to the Constitution?"

Second. The extension of the term of naturalization to twenty-one years, or some other period longer than five years.

The intermingling of races here is one potent element of our growth and success. Those nations have been foremost in the world's history whose characters have been the amalgam of the greatest variety of the best races of the earth. A constant immigration of enough to produce variety, but not to perpetuate diversity, would, I believe, contribute to preserve and increase our vigor. But I wish to see no foreign settlements in our country; no papers, schools, and school-books in a foreign tongue; no regions of country in which a traveler might fancy himself on the banks of the Rhine, or the greensward of Ireland. I desire our people to be homogeneous in language and institutions; I would have the first generation of foreigners to be the last, their children I would have American in tongue, in education, in principle, and in law.

It is said that this extension is rendered necessary by the abuses of the present system.

These abuses are chiefly through false naturalization papers and false swearing. They exist, I am inclined to think, less through any defect in the present laws than through the defect in their enforcement. The use of false naturalization papers, illegal voting, and the perjury attendant upon both are offences against the laws of the State where they are committed; and it is to the State tribunals that the citizens must look for redress and the vindication of their rights. There is no ground, none whatever, to believe that grand juries would be more active to find indictments under a new law than under the old one, nor that petit juries would be more prompt to convict.

It is useless to cumber the statute book with laws which there is not the public virtue to enforce. No law can execute itself; it must have the agency of man to administer it, and it is useless to attempt to make the barbarous severity of the statute atone for the apathy of the people. If the evil exists in the magnitude described, if offences are so many and punishments so rare, the root of the evil would seem to lie deeper than an imperfect statute. It cannot lie in the law merely, for that would be pointed out and remedied; nor in the officers of the law, the juries, the attorneys, and the judges, for a wholesome public opinion would impel them to the discharge of their duty; but it lies deeper; I fear it lies in a corrupted public sentiment. Individuals dislike the labor and inconvenience with which a prosecution is attended, and, after an ebullition of temper and a few newspaper paragraphs upon election frauds, the matter is allowed to drop. Another reason, perhaps, quite as effectual, is that both parties in the cities have been engaged in the disreputable work of procuring fraudulent votes, and each fears to provoke inquiry into its own conduct by attempting to expose the crimes of the other. But even if all the illegal voting complained of were confined to foreigners, by whom is the temptation to commit the offence offered? Certainly by our own native citizens; and it seems strange that the whole indignation is visited upon the foreigner, who is denounced as "ignorant and corrupt," and scarcely a censure is bestowed upon the native who debauched him, and who, I suppose, by contrast, is to be regarded as "intelligent and virtuous."

But, Mr. Chairman, it seems to me that the cause of the evil which is ascribed to the immigration of foreigners may be justly sought for even further back than the condition of public sentiment where it exists. As a state becomes more refined and populous, the disparity in the condition of the people becomes greater. The inequalities of wealth and social advantages are more obvious; the rich become richer and the poor poorer. If there be any method of preventing this result, political philosophy has not yet announced it; and the evil has begun to be felt in this country in our large cities. There is, in all of them, a portion of the community, happily for us yet small, who are sunk in vice and ignorance. As the population becomes denser there will be accessions constantly to the number, and in due time there will exist a class in this country, as in the Old World, in which vice, and crime, and destitution will be the hereditary condition. It is from this class, and those who approach its condition, that the material for fraudulent voting

is drawn. So far as this class exists in our midst, a large share of it, I believe, will be found among the foreign population; because they congregate about the cities, where the vice of proletarianism mainly flourishes, and because the native population, from its superior intelligence and familiarity with the mode of life here, has retained the more lucrative occupations, leaving to the foreigner the humbler and cheaper ones, and those which are first to suffer from revulsions in trade and commerce. Population and production march on closely together; there will not, for any great length of time, be a wide disparity between the supply of food and the number of people to consume it. And when the amount produced and that requisite for consumption are about equal, a slight decrease of the former, or of the supply of labor by which it is to be produced, results in poverty and starvation. Such is the state of things in the greater part of Europe. Such, in a mitigated form, is getting to be the condition of our larger cities. The accounts of the destitution now prevailing in some of them among the honest and industrious and the gloomy anticipations of the coming winter are heartrending. Yet government has not caused it; the tariff has not caused it; foreigners have not caused it; nor even the present war, though that event may have precipitated it. It is the effect of those mutations which are the inevitable condition of existence, and which are brought about by the whole variety of those perplexed causes which have produced that result which we call "the present state of things." Our very prosperity has been as effective in bringing it about as any other cause. High excitements in the commercial world are always followed by periods of languor and depression, and the suggestions of quacks and their still more dangerous remedies are alike to be discarded. Republican institutions can protect us against unjust legislation, oppressive taxes, and guilty wars, but they cannot secure us against the inexorable laws of trade, commerce, and manufactures. It is, then, unjust to ascribe to transient causes evils which appear inseparable from the structure of civilized society.

But, sir, if all these evils were the result of fraudulent voting, how would the mischief be remedied by extending the period of probation from five to twenty-one years? If five years' delay is so irksome that the foreigner will risk the penalties of fraudulent voting and perjury to escape it, it seems to me the temptation would be multiplied fourfold by increasing the delay to twenty-one years.

So far as the extension of the period to twenty-one years is

a sentiment, a mere gratification of a feeling or a prejudice, it is either above or beneath reason, but, as a statesman's remedy for an existing abuse, it seems entirely incompetent and unsatisfactory.

The discussion of this subject is too portentous, too pregnant with the high philosophy of races, population, and government, to be handled by those whose whole political pharmacy is persecution, whose highest ambition is the ejection of an Irish tide-waiter from his office, and the summit of their statesmanship to combine the "isms" that are *out* against the Democrats who are *in*. The real danger is that foreigners will congregate in some States of the Union in such numbers, preserving the language, manners, and traditions of the Old World, as to root out the native population speaking the English tongue, and that we may come to be a confederacy of States as foreign in origin, in language, customs, institutions, and religion as are the several nations combined by force under the sway of the Emperor of Austria or the Czar of Russia. Nothing can tend to accomplish this more speedily than proscription. If the foreigner finds himself one of a degraded caste while living among the native population, he will naturally seek those regions in which his own countrymen are numerous, and a little more concentration of the foreign population in some of the Northwestern States will give them an absolute numerical majority and insure the control there. In such an event they would, of course, retaliate the proscription under which they had suffered; they would, perhaps, become even as intolerant as the Know Nothings, and permit no native-born citizen, nor the son of a native, to vote or hold office; they would send naturalized foreigners to represent them here in both Houses, as they would have the constitutional right to do; they would have their relative weight in presidential elections, and the "foreign vote" would then be something distinct and palpable for politicians to intrigue after. No state of things could be more deplorable than the war of races, of which this order is the beginning, and, if it be not crushed at once by the honesty and common sense of the people, it may give to our history a chapter as dark and bloody as that of the English revolutions or of the religious wars of the Huguenots and Catholics in France. You know, sir, that this is the evil to be dreaded in the future, compared to which all German anti-Sabbath societies, Irish riots, illegal voting, and foreign military companies sink into utter insignificance, and before which, as remedies, the extension of the term of naturalization to twenty-one years and the Know Nothing rem-

edy of exclusion from office are but as bands of tow to devouring flames. Neither of these would diminish perceptibly the number of immigrants; and, while the annual supply continues or increases, any law which tends to perpetuate the distinction of races will only make the ultimate danger more formidable.

The duty of excluding paupers, vagrants, convicts, and felons is imperative; and, if the evil be as great as is charged, the only surprise is that we have allowed a public mischief of such gravity to exist so long. Laws, rigorous and effective, should be enacted if such are not now on the statute book; and every citizen who regards the public weal should unite heartily in their enforcement.

The third remedy proposed is the repeal of the naturalization laws. But even this would not protect us from the influx of foreigners, nor from the ill effects of their voting, in case any of the States see fit to bestow that right upon them; and, if the naturalization laws should be repealed, or the term extended to twenty-one years, under the influence of a temporary excitement, the natural reaction of popular feeling would demand a restoration of the old law; or the right of voting and other privileges of citizenship would be conferred by the States upon their alien inhabitants. The power of each State, then, is ample over its own ballot-box, and it can be approached only by those on whom she confers the right. There is not a voter of the Union who derives his power from the Federal Government; he may be naturalized under a law of Congress, and possess all that such laws can bestow, yet never be permitted to cast a vote or hold a State office in the Union. This is fortunate, as the necessities of States are different. The evil is local, so should the remedy be.

I do not deny—on the contrary, I affirm—the right of a nation to impose such terms on the influx of foreigners as a due regard to her own interest and safety requires. She is the sole judge of the evil and the remedy. If there were just reason to apprehend such an immigration from Europe or Asia as would unduly crowd our people, impoverish our labor, or exhaust our soil, I should advocate a policy more prompt and adapted to the emergency than the ritual of the Know Nothings, or their clumsy imitation of the secrecy and persecution of the Jesuits. We have the right, and I should favor its exercise in that extremity, to deny all foreigners admission, and I would, in that case, have our coast present an iron front to the tide of immigration as it does to the waves of the ocean, so long as the danger existed. But I would appeal to the manly com-

mon sense of the people, and have our action, if any were taken, wear all the dignity of national justice and self-defence, and not the sinister aspect of a revengeful intrigue and midnight cabal. I do not believe the time for such action has come; and, if it were now thick upon us, the remedies of Know Nothingism are poor, flimsy—wholly inadequate.

It cannot be denied that the policy of our Government has been to encourage immigration. The vast amount of fertile unoccupied territory, the number of canals to be dug, of railroads to be built, and all the variety of labor required in a new country induced our ancestors to solicit foreign aid. The surplus labor and capital of Europe found employment here. Most of the immigrants settled in the Northern and Northwestern States, and it is owing to this addition to their native population that their numbers have increased faster than the Southern States. These foreigners not only brought their strength to increase our productive industry, but the aggregate of money they have introduced into the country has been very large; many of them, being inferior in education and social advantages to our native population, turned to those occupations which are almost solely physical, requiring vigor of muscle and strength of constitution, leaving to the native population almost a monopoly of the more scientific and remunerative branches of industry. This population has furnished to the North a large increase of capital. It has supplied capital with a cheaper labor by increasing the amount of it. It has given greater activity to manufacturers by adding several millions to the number of consumers. It has strengthened the shipping interest by an amount of passage money equal, it is said, to the whole export freights of the country. The North could not have completed one-tenth of her improvements and kept up her other interests to their present extent without this foreign labor. Most of these improvements at the South have been made by the native labor and without materially diminishing the annual supply of the staple productions of the country. As a section, the North has reaped the benefits of this immigration, and it will have to meet the consequences which flow from it. The question of the organization of labor, its rights and duties, is perhaps the most vexed one of all that disturb the body politic. By immigration we are perhaps fifty years in advance of what we should have been had increase in numbers been natural only. The difficulties that attend our condition are not mainly attributable to the *foreign origin* of a part of the population, but to the number of the population. If every foreigner were this

day removed from the country, and natives in equal numbers substituted, the difficulties which exist now would be as great then and substantially the same. It matters not where the population is born, if there is not work for them to do and they have no accumulations in store, there will be want, misery, and destitution. It results from the density of population and not from its nativity. If the population of New York City were to-day wholly native, would the cessation of business, the partial suspension of manufactures, trade, and commerce, afflict them less sorely than it does the present mixed population? But yesterday and there was labor for all, and, with labor, food and contentment; to-day there is a deficient supply, and at the same time a greater scarcity and dearness of the necessaries of life. If there be any way to prevent these fluctuations in business, and the suffering consequent upon them, it has never yet been made known.

The last purpose to be achieved by the Know Nothings is the exclusion of all Catholics from office. It is not to be denied that there is diversity of opinion among the brethren of different sections. The order seems already to have fallen into the most corrupt practice attributed to the old parties and to the most corrupt class of the old politicians, that of varying its creed with every change of latitude. In the infancy of its existence it is already mature in its vices, and, with a most surprising harmony between the end and the means, it aims at political and religious intolerance by seizing on every prejudice and adopting every creed. The foreign Protestant is told that the order strikes only at Catholicism, and the native Catholic is assured that it interferes with no man's religion, but attempts to limit the influence of foreigners.

In Louisiana Catholics are allowed to join the order, we are told—and why? Because that denomination is too numerous there to be assailed openly.

It is something that will, I dare say, excite surprise through the civilized world, when it becomes known, that the people of this country, who have been first to practice, in its fullest extent, the great Christian doctrine of toleration, are engaged in discussing whether or not the Government is safe while it continues. With what show of justice or consistency can we plead to the Catholic sovereigns of Europe for the toleration of Protestantism in their dominions while we disfranchise our fellow citizens of the Catholic faith? How can we ask them to go forward in relaxing the fetters of opinion while we are going backward? How dare we talk of freedom of conscience

when more than a million of our citizens are to be excluded from office for conscience sake?

Yesterday to have argued in favor of religious toleration in this country would have been absurd, for none could have been found to deny or question it. But to-day there is a sect boasting that it can control the country, avowing the old papist and monarchical doctrine of political exclusion for religious opinions' sake. The arguments by which they sustain themselves are those by which the Inquisition justified their probing the consciences, and burning the bodies, of men five hundred years ago, and against which Protestantism has struggled since the days of Luther. You, sir, and I, and all of us owe our own right to worship God according to our consciences to that very doctrine which this new order abjures; and, if the right of the Catholic is first assailed and destroyed, you, sir, or another member who believes according to a different Protestant creed, may be excluded from this House and from other preferment because of your religious faith. The security of all citizens rests upon the same broad basis of universal right. Confederates who disfranchise one class of citizens soon turn upon each other; the strong argument of general right is destroyed by their united action, and the proscriptionist of yesterday is the proscribed of to-morrow. Human judgment has recognized the inexorable justice of the sentence which consigned Robespierre and his accomplices to the same guillotine to which they had condemned so many thousand better men.

If the Catholic be untrustworthy as a citizen and the public liberty is unsafe in his keeping, it is but a natural, logical consequence that he shall not be permitted to disseminate a faith which is adjudged hostile to national independence; that he shall not be allowed to set the evil example of the practice of his religion before the public, that it shall not be preached from the pulpit, that it shall not be taught in the schools, and that, by all the energy of the law, it shall be utterly exterminated.

This was the course which England pursued when she entertained the same fears of the Catholics three hundred years ago, and which she has lived to see the absurdity of, and has removed almost, if not quite, every disability imposed. Perhaps, however, this new sect will not startle the public mind by proposing too much at once, and holds that it will be time enough to propose further and more minute persecution when the national sentiment is debauched enough to entertain favorably this first great departure from the unbounded toleration of our fathers.

It is the experience of this country that persecution strengthens a new creed. The manhood of our nature, of all true, genuine men, clings more ardently to a faith which brings peril to the believer. With the history of Protestantism in our minds, and remembering how every effort to destroy it only planted it deeper in the hearts of the faithful, it is natural to believe that persecution will invigorate other creeds and sects. In my judgment, this attempt at proscription will do more to spread Catholicism here than all the treasures of Rome or all the Jesuitism of the cardinals.

Now, sir, what is this movement at the North, and who are engaged in it? It is a combination of all the "isms" of that section. Abolitionism, Free Soilism, Whigism, Woman Rightism, Socialism, Anti-Rentism, gathered together from a thousand fretful rills and mingling their currents in one common channel. Abolitionism and Know Nothingism are akin; the first is a denial of the rights of a section of the Union and an attempt to destroy them because, in its wisdom, it has determined that those rights have not the proper moral sanction; the other is a denial of the rights of a class of citizens, regardless of section. One is a crusade against the rights of States; the other against the rights of individuals. The one openly spurns the Constitution; the other attempts a flimsy evasion of it. This daringly attempts a breach and an assault; that more cunningly adopts and prepares a surprise. The one almost commands respect for nefarious schemes by boldness and courage; the other would bring discredit on the best of causes by evasion, circuity, and irresponsible assaults. In Massachusetts, where the sect made their own nominations, so far as I can learn the politics of those elected to Congress, all are ultra anti-slavery men.[1]

Those whom the order voted for elsewhere in the North are of the ultra stamp almost without exception. To secure the vote of the Free Soilers and Abolitionists of both the old parties it was indispensable to have a candidate tinctured strongly with those heresies, and a flavor of Know Nothingism was added to secure the coöperation of certain Democrats whom unadulterated Whiggery and Abolitionism might have disgusted. It was a combination and a triumph of all that was ultra, and factious, and discontented, over all that was moderate, and judicious, and studious of the public peace.

Now that most of the elections at the North are over, a laborious attempt is made to persuade the South that the order is free of those Abolition tendencies which secured its triumph.

[1] "Know-Nothings" from this State, such as Nathaniel P. Banks, shortly became radical Republicans.

The one great fact relied on is that the order in New York is opposed to Seward.

Mr. Seward's reason for refusing to join the order, I doubt not, was that, with his sagacity, looking to ultimate success, he could not fail to see that the whole movement would be short-lived, and that, when it ended, no political act, not even membership of the Hartford convention, with its secret proceedings, could be more destructive to the prospects of a public man than to have avowed the principles of the order. You, sir, and I, we all know that it is the almost universal opinion in political circles here that this thing will have a brief day. The most anxious wet-nurses of the bantling hardly expect it to live through the presidential canvass of 1856. There is everywhere the most feverish anxiety among the faithful to secure some little official crumb of comfort before it is forever too late. Each longs to be carried into the pool while the waters are troubled, for the time of the troubling, they know full well, will soon be past, and then where shall they be healed? Evidences of premature decay are already visible. The party will vanish as suddenly as it arose and leave scarcely a wreck behind. Its members feel the sandy foundation slipping from beneath their feet. They feel their sentence is pronounced each time they hear repeated the wise and tolerant doctrines of our political religion, which are grafted upon our Constitution. Blank annihilation stares them in the face. They see indignation and distrust without, discord and rebellion within. Their secrecy is betrayed and mocked, their intolerance is despised, and their prestige is broken.

Were there no cause for the dissolution of the order in its principles, the discordant materials which compose it would soon precipitate its destruction. The ultra men already elected, agreeing in nothing but hostility to the South, to aliens, and to Catholics, can harmonize in no course of action, foreign or domestic, unless, by the happening of a Whig majority in Congress, the tariff should be altered to suit the protectionist theory, or some other doctrine of that party be embodied in a law. If this order takes hold in the South, it will surprise both friends and opponents. It will be a matter of wonder why that section, suffering none of the hardships which are pleaded as an excuse for the order in the North, and from her institutions peculiarly averse to secret and irresponsible associations, should discard a long history of generous toleration to adopt the creed of proscription, and wear the name of an order which, in the Northern States, has beaten down the defenders of the Constitution and

State rights, and inaugurated more fully than ever before the era of consolidation and fanaticism.

In a crisis like the present it becomes the Democratic party to remain steadfast to its old principles. In the "act for establishing religious freedom," adopted in Virginia in 1786 and originating in the benevolent mind of Mr. Jefferson, it was enacted that,

> "No man shall be enforced, restrained, molested, or burdened in his body or goods, nor shall he otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument, to maintain, their opinions in matters of religion, and that the same SHALL IN NOWISE DIMINISH, ENLARGE, OR AFFECT THEIR CIVIL CAPACITIES."

On this tolerant principle the Democratic party, through all the variety of disaster and success, has stood from that day to this. It has been the guardian of every civil and political right, of every individual, and of every section. No error has been too gigantic for its assault, no right too insignificant for its protection. When the rights of the States were in peril during the Federal Administration of the elder Adams, it was the champion of our faith, Mr. Jefferson, who was foremost in their defence, resting their security upon principles as wise and venerable as the Constitution itself, and triumphantly sustained by the Democratic party. It was during his Administration that the "Alien and Sedition Laws," so violative of personal right, were effaced from the statute book by the votes of the same Democratic party which it is now attempted to seduce into heresies more abominable than those which it then abolished. This new ism is the old "alien law," under a thin disguise; and these two, with "Native Americanism," are bodies into which the old unlaid spirit of Federalism has insinuated itself, hoping, under these forms, to obtain a favor which was always denied it when recognized. It is like Petruchio's nether wedding garment, "a thrice-turned pair of old breeches," betraying the nakedness it was intended to conceal.

MR. BANKS.—It is but a few years since we asked for a secret or independent ballot, in virtue of the right of every man to give a vote, not only uncontrolled by, but unknown to, other men. It only perfected the right of citizens to vote by ballot, for the ballot itself is a secret institution; but no proposition could have excited greater commotion than this.

Other difficulties were not of rare occurrence; that element of power which is now exciting such attention throughout the country, which seems to have hitherto held a balance of power

in nearly all communities, and to have decided nearly every contested election, upon a policy dictated by its leaders, was not without its power among us; and a recent and most important contest, so decided, has impressed a seated grief upon many thousand hearts. I mean the influence of foreign votes.

All these causes, some operating on one mind and some upon another, have produced discontent among men of all parties. It was not to be expected that ordinary men could rise superior or be wholly indifferent to them. Nor is it a recent nor sudden ebullition of feeling. For many years indications of revolt have been noted. New combinations have appeared and disappeared. One by one, men have abandoned their former organizations, with more or less success, but not in such strength as to give courage to the timid or security to the weak; and the masses of men remained in camp, waiting only a fitting opportunity to escape party drill. At length it came. In that mysterious manner so aptly described by the eloquent gentleman from Mississippi, somebody constructed a sort of subterranean passage by which men could pass from one camp to another, seeing nobody, knowing nobody, and saying nothing to anybody. Sir, you should have seen them go. Eighty thousand men, of every pursuit and opinion, in the brief space of three months, attested their belief in its efficiency and necessity. And was it not their right? Who will say that the people—the sole depositories of political power—discontented with existing parties, may not, even in this mysterious manner, make new combinations for the transaction of their own affairs, and erect new standards of policy for themselves? Is it not their right? Who says no? Their justification stands not so much upon their necessities as their convenience; and who can point out a more effectual or natural method of doing what they have done—the transposition of the rank and file of all parties into a new organization, excluding nobody but the leaders, taking everybody inside that desires to come, and leaving nobody outside but the driver? Who will say it is not the right of the people? Does the gentleman from Mississippi complain of their secrecy? Is it secrecy that makes the wrong? Sir, secrecy is their right. It belongs to them. No man and no power can justly take it from them. What have they done? As yet they have done nothing. You cannot punish men for that. Well, sir, these men have done nothing yet, except to carry an election here and there, and that is not treason, even though a Pennsylvania judge did charge a jury that certain things could not be done, or ought not to be done, or were criminal in point of law. Sir,

it is the people who are passing through these avenues, those who make judges and district attorneys, and they will take care of them all. They will take care of the juries and sheriffs as well as judges.

MICHAEL WALSH [N. Y.].—Has this avenue you have been speaking of any connection with the "underground railroad"?[1] [Laughter.]

MR. BANKS.—It has not. It is altogether another line of business. I own no stock in that corporation. [Renewed laughter.]

Now, a word upon secrecy in politics! Who made the President of the United States? The people, you will say, have elected him to the office. But who laid the train to which the people set fire? Sir, there never has been a presidential election in this country which has not been controlled by secret associations and combinations; and, let me say, too, by a combination which has no popular elements; which has no popularity in its constitution; which operates through a few privileged members; and it is, in fact, such combinations that control the government of the country. Who can undertake to say that the next presidential conventions will not be controlled by coteries of men whose only power is the secrecy with which their plans and purposes are held? Who will deny that it has been ever thus, or that it will be ever thus? Why is that criminal in the people which has been the constant practice of politicians?

But I am for publicity as well as secrecy. I go beyond the gentleman from Mississippi in that respect. I am for publicity when a man assumes to act for other men; but when he acts for himself I say that no man has a right to require him to divulge his purposes or views. If he choose to wear them on his sleeve, it is his right to do so; and, if he choose to keep them in his own breast, and to say nothing, and to know nothing [laughter], it is equally his right. But when a man assumes to act for others, then, sir, he has not the right, as a representative party, to secrecy; and, if the original power call upon him for a development of his policy, he cannot withhold it.

I may say here, in passing, that the secrecy which this country has, in some degree, contributed to fasten on the diplomacy of the world is an element of power which is doing more to crush the nations of the earth than any other element of op-

[1] A system of conveying fugitive slaves to Canada, conducted by Abolitionists.

pression. The five millions of men who are this hour in arms, under whose heavy tread the earth shakes, are not doing one-tenth part of the wrong to the generations now existing and yet unborn which the secret and false diplomacy of the world is producing in its effects upon them; and, so far as this country contributes, in any degree, to sustain the secrecy of diplomacy, so far, I say, its policy should be changed; and therefore I voted —as I think my friend from Mississippi did not vote—for an exposition of what our friends and diplomatic agents were doing in the congress of Ostend.

Mr. Bayly, of Virginia.—Oh, let that alone.

Mr. Banks.—Yes, if the committee will report soon. [Laughter.]

Then I ask the attention of the committee for a moment to the program which the gentleman from Mississippi exhibited as the proposed operations of what he calls the Know Nothings. I do not know whether he is right or wrong; but in a paper published in Pennsylvania I read some months since an *exposé* of what the purposes of that organization are, and of the means through which they intend to operate. In the first place, I did not see anything there about the naturalization laws; nothing of their repeal nor the limitation of the term; nor any other matter or topic referring to that subject. *The Pennsylvanian* published the document, and it was copied in our section of the country as a full, entire, and perfect *exposé* of the purposes of the secret association existing in Pennsylvania and having its ramifications throughout the country. Therefore, it does not appear that interference with the naturalization laws is one of these purposes. I looked carefully to that point, but I saw nothing referring to that, nor to the Catholic Church or Catholic religion.

Mr. Barry.—Will the gentleman allow me to correct him. I read here from the same paper, *The Pennsylvanian*, and if the gentleman admits this to be an authentic copy of the rules of the body——

Mr. Banks.—Sir, I admit nothing. I know nothing. [Laughter.]

Mr. Barry.—I hold in my hand the paper to which the gentleman from Massachusetts refers—*The Pennsylvanian*—and I find in the oath which the member is required to take the following sentence:

"That you will support, in all political matters, for all political offices, second degree members of this order, providing it be necessary for the American interest; that, if it may be done legally, you will, when elected

to any office, remove all foreigners, aliens, or Roman Catholics from office, and that you will, in no case, appoint such to office."

Mr. Banks.—I call the attention of my friend to the fact that in his speech he used the term "Catholics"; he now reads it "Roman Catholics."

Mr. Barry.—Well, in our section of the country Catholics are understood as Roman Catholics.

Mr. Banks.—I beg the gentleman's pardon if I say that there may be a distinction in the terms.

Mr. Barry.—I venture to say that no other gentleman in the House misunderstood me, in speaking of Catholics, except the gentleman from Massachusetts, who might do so on Know Nothing principles. [Laughter.]

Mr. Banks.—I noticed the distinction, and I purpose to speak of it. I have no objection to any man of the Catholic Church or faith. Here is our friend from Pennsylvania [Mr. Chandler], an amiable, learned, and eloquent man; I might be willing to vote for him, Catholic as he is, in preference, perhaps, to others nearer my political faith than he is. It cannot concern me, and it can concern no man, that, as a matter of faith, any person cherishes the doctrine of transubstantiation, accords the full measure of Catholic veneration to sacred relics or images, and accepts every article of the Nicene creed. Each man is accountable for his own faith, as I for mine. And, even though my name were appended to the declaration read to us by the gentleman from Mississippi from *The Pennsylvanian*, I might still vote for such a man if otherwise it lay in my way to do so.

But there is another branch of this subject. It is a current belief that the Pope, the head of the Roman Church, who stands as the Vicar of God, and is invested with his attributes of infallibility, is not only supreme in matters of faith, but has also a temporal power that can not only control governments, but, in fitting exigencies, may absolve his disciples from their allegiance. The power was asserted in England under Henry VIII and Elizabeth, and it has never been disavowed there, nor in Spain, nor in any other land, Catholic or Protestant, by the authority of the Roman Church. My name is not appended to the *exposé* read to us here, nor do I know much about it; but I will say that, if it be true that the Pope is held to be supreme in secular as in sacred affairs, that he can absolve men from their relations with others not of the true faith, it is not strange that men should hesitate in support of his followers. I would not

vote for any man holding to that doctrine, and, I doubt not, other gentlemen here would concur with me in that feeling.

And then, again, as to our foreign population. I bear no enmity toward foreigners. I have stood by the adopted citizens of my own State, without any distinction of person whatever, whether they were high or low, rich or poor. But if

THE UNSEEN SIGNAL OF THE JESUITS

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they hold as the supreme head of secular power the Pontiff of Rome, and consider that he can in any case absolve them from their allegiance to the commonwealth of Massachusetts or to the United States, why they have no claim whatever upon any man for support. If they understand that their interests are separate from those of American citizens, if they take direction from their spiritual guides in political matters, and, by preconcerted and private arrangements, form associations and make parties of their own, seeking to obtain and hold the balance of power, throwing their weight first into one scale and then into the other, as they may understand their own interest to dictate, they will force upon American citizens the alternative either to make similar combinations against them, by refusing to divide upon the ordinary maxims of party policy, or to abdicate

the seats of political power. A balance of power, under such circumstances, is absolute power, and the direction of public affairs is in the hands of those who wield it.

Now, I understand the breaking up of preëxisting organizations that were based upon the minute differences of opinion upon past questions, thus throwing an unfailing balance of power into the hands of a small minority of citizens, not of national origin, and possibly of only *quasi*-national interests, to be the purpose and object of the American organizations that have been so vigorously denounced. Of course I must admit that the necessity of such combinations to guard against the public dangers arising from causes I have stated—obedience to ecclesiastical direction in political affairs and the silent assumption of that position which gives to a small number of men a despotic balance of power—is denied. But I hesitate not to say that, in my own State, many thousand people entertain the belief that there is cause of fear, and my experience in its recent political history forces upon me a participation in that conviction.

I desire to call the attention of the committee to the present condition of the country as it regards emigration, and to contrast its results with that period when the Constitution and the early statutes of naturalization were adopted. Then the emigration from abroad, according to the estimate of Professor Tucker, was at the rate of five thousand per annum.

Look, now, at the returns made to us of European emigration. Within the present year, the last quarter of which has not yet expired, the foreign emigration will amount to very nearly four hundred thousand persons. And has this emigration reached its head? Who can say that? Look at the condition of Eastern and Western Europe, of Asia, of China? The earth shakes under the heavy tread of more than five million armed men, and every state is subjected to the general scourge of actual or impending war.

But emigration presents an avenue of escape from the evils of actual or impending war. Where shall they go? To Canada? To unstable Mexico? To South America? They will come to the United States. The three and a quarter millions of foreign-born people, and their descendants here, have so many heart strings out to draw their kith and kin to the New World. Our country begins to be known abroad. The most favorable account of this country, lately published, was written by a gentleman[1] who ten years since asked an American how it was

[1] Alexis De Tocqueville, author of "Democracy in America."

possible he, who had *seen* Europe, could *live* in America? They begin to feel that America is the only land where men can reach their true standard of greatness. Our institutions are debated by the light of every camp-fire and hearthstone on the face of the earth. The excited imaginations of distressed and heartbroken men invest that liberty we actually enjoy with the attributes of an almost fabulous and impossible prosperity and freedom. When one State is exhausted another is opened. How is it possible that emigration can have reached its head? Who can doubt its increase; or that it may, even in our time, be doubled?

Look to the East, to China, India, Japan, with their six hundred millions of people, often without employment or subsistence. They have already an idea of the institutions and capacity of the American continent. The Chinese, whose emigration has been limited to Japan, now seek the United States and the islands of our southern seas. They are already upon the Pacific Coast. Thirty or forty thousand are in California; and when we are, by steamships, within ten or twelve days' sail of their crowded empires, who can prophecy the extent of this new and unanticipated emigration? Who can check its encroachments? Not the State; that has been decided by the supreme judicial tribunal. What power is equal to that duty?

Shall we fend off with the bayonet? No, sir, if they come we shall admit them. There may be legitimate uses for them in the economy of God's providence. But have they a Christian character adapted to the institutions of this country? I ask the gentleman from Mississippi whether we shall give to them the rights of citizenship at the close of their first five years' residence? Or are we to have another extension of judicial decrees, another code of judicial fictions, that, in the absence of any legislation, shall determine what affinities of race, and color, and blood make it impossible for men ever to participate in the powers of government?

Did the framers of the Constitution declare that foreigners had a right to participate in the affairs of government? Not at all! They made the Constitution proscriptive. They declared by a unanimous vote of the convention that, after a brief period, no man but a native-born citizen should be eligible to the office of President. They declared that nine years' citizenship should be required to make a man eligible to the Senate, and seven years to the House of Representatives. They took from the States the power to confer citizenship which the States then exercised. There is nothing to show that they entertained

the idea advanced here that foreigners had a *right* to participate in the highest prerogatives of government. It was made a question of expediency. It was a privilege conferred.

Mr. Gerry, of Massachusetts—afterward Vice-President during the administration of Mr. Madison—said that he wished "in future eligibility might be confined to NATIVES. He was not singular," he said, "in his views. A great many of the most influential men in Massachusetts reasoned in like manner." Similar views were expressed by leading men of the Federal and Republican parties.

How is it with the foreign population of our day? The gentleman from Mississippi alluded to the flattery of foreign voters by General Scott in the campaign of 1852. But how was it with the Democratic party in that canvass? Where were the different parties of all the States? And how will it be with all the parties in the contest of 1856? May not they, too, go down on their knees to those who may hold the balance of power in that contest?

How is it that so many gentlemen of foreign birth hold diplomatic stations at foreign courts? Is it because General Pierce is President? Would not General Scott have pursued the same policy? May not the next man who occupies the presidential chair do the same thing? I do not censure one party and excuse another because the necessities of action are equally imperative on all.

There is no remedy for this state of affairs but that UNION which has been described to us, and that, I understand, to be a chief object of the party whose members are called Know Nothings. While it denies no rights to a minority, it demands the rights of a majority. While it denies to foreigners nothing that belongs to them, it claims and assumes the prerogative of government which is here the unquestioned right of Americans. Denying to no person the rights of conscience, or the freedom of religious opinion, it establishes and perpetuates both of these in placing the Government upon the basis which was contemplated by the Constitution and by the Fathers of this Republic.

In 1848 I supported the Democratic candidate for the presidency. I was intimate with one who likewise advocated the claims of General Cass, but who always said he would be defeated. It was a tight battle, as everyone knows; and none but very wise men knew its result until after the election. Some months after my friend mentioned to me his prediction. "How was it," said I, "that, while you labored for Cass, you were

certain of his defeat?" Said he, "I am a Jesuit; and our instructions were to shout for Cass but to vote for Taylor."

Now, sir, I know that a change of the statutes of naturalization will not remedy any possible evil of this character. But the revision of these statutes may be pressed upon our attention by the increased number of convicts and paupers of other governments that are sent here; by the hitherto unanticipated emigration from the Chinese Empire; by what we know of the past and fear of the future. These things do not, in my judgment, demand a repeal of the statutes of naturalization, but they will justify an extension of the term of residence now required and a more stringent execution of the laws existing than has been usual hitherto.

The gentleman from Mississippi suggested that this was a land of toleration—of religious toleration. Sir, I go far beyond that. I do not agree merely to the toleration of Catholics or Protestants here. They have an absolute right. Every person is entitled to religious freedom. The Catholic and the Protestant have their right under our institutions. No one will be more reluctant than myself to disturb or curtail the right. I am for extending it to the professors of every faith in the largest possible degree. But the concessions of the Constitution and laws end there. In matters of politics we extend to citizens from other lands the right of participation, not the right of control. In establishing the charter of religious freedom we neither avoid the responsibilities nor abdicate the duties of government.

CHAPTER VII

AID TO FREEDMEN

[THE FREEDMEN'S BUREAU]

The Government's Care for Freedmen in the Civil War—Establishment of the Freedmen's Bureau—Debate on the Bill in the House: in Favor, Thomas D. Eliot [Mass.], Gen. Robert C. Schenck [O.], William D. Kelley [Pa.]; Opposed, Francis D. Kernan [N. Y.]—Debate in the Senate: in Favor, Charles Sumner [Mass.]; Opposed, Garrett Davis [Ky.]; Opposed to Certain Features, Thomas A. Hendricks [Ind.], James W. Grimes [Ia.], Samuel C. Pomeroy [Kan.], William Sprague [R. I.], John B. Henderson [Mo.], Henry S. Lane [Ind.], John P. Hale [N. H.]—Gen. Oliver O. Howard Is Made Commissioner of the Bureau; His Administration—Lyman Trumbull [Ill.] Introduces in the Senate Bill to Enlarge Powers of the Bureau; It Is Extensively Debated, Passed by Congress, and Vetoed by President Johnson—The President's Speech Defying Congress—Speech of Representative Ignatius Donnelly [Minn.] on "Education and Citizenship"—Thomas D. Eliot [Mass.] Introduces in the House Another Bill Framed to Avoid Constitutional Objections; It Is Passed by Congress; Vetoed by the President; Passed by Congress over the Veto.

IN the case of the negro the National Government permitted the exercise of civil duties before it conferred upon him civil rights. Thus from the beginning of the nation he was allowed to serve as a soldier [see Vol. VI, chapter IX.]

During the Civil War and for some time thereafter the negro was treated by the Government as a ward, somewhat in the manner in which it has always treated the Indian.

Before the end of 1864, says Alexander Johnston in his "American Political History," the advance of the Union armies had freed three million persons, of whom at least a million threw themselves helplessly upon the Federal Government for support. Attempts to em-

ploy some of them upon confiscated or abandoned plantations failed through the rapacity and inhumanity of the agents employed; and in 1863 great camps of freedmen were formed at different points, where the negroes were supplied with rations, compelled to work, and kept under some degree of oversight. The next year, 1864, this great responsibility was transferred from the War to the Treasury Department, but was still a mere incident of the military or war power of the President, as commander-in-chief, and was without any regulation of law.

A bill to establish a Bureau of Emancipation had been introduced in the House on January 12, 1863, but it failed to pass. Another bill passed the House on March 1, 1864, but failed in the Senate.

The Freedmen's Bureau

One of the last acts approved by President Lincoln (on March 3, 1865) established in the War Department a Bureau for the Relief of Freedmen and Refugees.

By this act the President, with the concurrence of the Senate, was authorized to appoint a Commissioner of the Bureau and one assistant commissioner for each seceded State, or military officer detailed for the duty, the function of whom was to superintend the disposition of provisions, clothing, etc., issued by the War Department, to supply the immediate needs of the beneficiaries, and to set apart in seceded territory tracts of land which had been either abandoned by the former owners or confiscated or purchased by the Government, said tracts being divided into forty-acre lots for the freedmen, who were to hold them for three years at an annual rental of not more than 6 per cent. of the appraised value of such lots in 1860, and who, during this term or at its expiration, were to be allowed to purchase them at the said valuation.

In order to aid the freedmen to take advantage of this opportunity to purchase land a number of philanthropic citizens throughout the North, headed by

Peter Cooper of New York City, organized a Freedmen's Savings and Trust Company, which was incorporated by Act of Congress, approved on March 3.

On the same day the President approved an act of Congress removing all disqualification of color in carrying the mails.

Freedmen's Aid Bill

Congress, December 20, 1864–March 3, 1865

The House bill, postponed from the previous session, came before both Houses on December 20, 1864, and a joint conference committee was appointed, consisting of Senators Charles Sumner [Mass.], Jacob M. Howard [Mich.], and Charles R. Buckalew [Pa.], and Representatives Thomas D. Eliot [Mass.], William D. Kelley [Pa.], and Warren P. Noble [O.].

On February 2, 1865, Mr. Eliot reported to the House of Representatives the bill drafted by the majority of the committee, which was to create an independent bureau of the Government for the administration of the affairs of the freedmen, with powers substantially those which were afterward granted.

Francis Kernan [N. Y.] opposed the bill, chiefly because of the military character of the commissioners, who were to exercise authority in certain instances over white persons.

> Sir, I submit that the experience of the last few years must have made it apparent to every gentleman here that these military commissions are characterized by a want of certainty as to the conviction of the guilty and the certainty of frequently convicting the innocent.

On February 9 the President laid before the House a memorial which he had received from officers of the private freedmen's aid societies of the country, and which asked that the Government establish the proposed bureau.

The work was too great for private charity, said the petitioners, besides, it was the Government's duty to undertake it.

> It is the magnitude, not the nature, of the work that appalls us, and drives us to the Government for aid and support. We have found the freedman easy to manage beyond even our best hopes; willing and able to fight as a soldier; willing and able to work as a laborer; willing and able to learn as a pupil; docile, patient, affectionate, grateful, and although with a great tribal range of intellect from nearly infantile to nearly or quite the best white intelligence, yet with an average mental capacity above the ordinary estimates of it.
>
> We have no doubts of the aptitude of the slave for freedom under any fair circumstances. But we see that his circumstances must inevitably be unfair under the best arrangements the Government can make, and that, independently of a great paternal care on the part of the Government, they will be so bad as to wring cries of shame and indignation from the civilized world, dishearten the friends and advocates of emancipation at home, and give new vitality to the disloyal suggestions of the slaveholders' allies in the North and West.
>
> Has the Government any moral right to free the slave without seeing to it that, with every chain it breaks, the best within its power is done to keep the freedman from hankering after his master and his bondage, from feeling that his liberty is a burden, his life a curse, and his domestic affections even more fatal to his peace under our flag than beneath the plantation whip? Shall he hunger and thirst, shall he go naked and cold, shall he wander houseless and die unburied, shall his aged parents and young children be scattered where he cannot find them, and in unspeakable misery lay their bones together, too old and too young to contend with their fate upon the strange and distant soil to which fear and want have driven them? While anything remains undone within the power of the nation or the Government to do to alleviate or diminish this misery, the Christian principle and pity of our people will allow none who are responsible for it to rest in peace.
>
> Let not this anxiety for a bureau of emancipation, as an expression and organ of government solicitude and care, be confounded with a disposition to overdo the care of the freedmen; to come between them and the natural laws of political economy; to substitute supervision and direction for their own latent energies and self-helpfulness. The utmost extent to which the ordinary principles of free light and labor can be applied to the blacks should be insisted on; the least possible done for them, the most possible expected of them; as little difference made as can be between them and other laborers, their

> treatment always leaning rather to too little than too much aid and direction.

Gen. Robert C. Schenck [O.] argued for placing the bureau under an existing department, preferably the War Department, since its activities, which he considered to be chiefly directed to the present relief of the freedmen, would end with the war. He wished to add to the bill the features of a bill already before the House (submitted by the Committee on Military Affairs), which provided for the relief of destitute whites in the South as well as blacks.

William D. Kelley replied to General Schenck:

> The view taken by the gentleman from Ohio is a very narrow one. It does not comprehend the scope of this bill or of the want for which it proposes to provide. He seems to desire to enlarge its purposes by embracing a class of people not contemplated by the bill, but proposes really to narrow them by reducing the functions simply to those of feeding exiled people or hungry refugees. The bill contemplates a temporary organization for systematizing the labor of the four million people who hold no other relation than life and nativity to our country or its institutions. They have no experience of life beyond the plantation, or, if they have, they have derived it as they have gone in gangs from one slave market to another, or from the market to the field of labor. They have not been permitted to know the cares and responsibilities of life.
>
> We provide by national law for the care of the newly arrived immigrants, and why? Because many of them come to us in ignorance, and most of them without knowledge of our country, its laws, its habits. We protect them against the vices of our own people. We induct them, as it were, into the great temple of American civilization.
>
> The system, or rather want of system, proposed by the gentleman from Ohio would, in my judgment, create and foster an immense body of paupers, while the aim of every provision in the bill of the committee of conference is to elevate into independent, self-sustaining, self-governing men and women the freedmen of the country. They hold no relation, I say, to our laws. They are not witnesses under the laws of the States in rebellion; they may not sue; they may be robbed of their earnings, and there is no court before which they can successfully

present or press their claims. They are, thanks to the infernal system of laws under which they have been reared, unable to read or write.

This bill would throw around them for a brief time the care of the Government, and see that contracts are fairly made with them and fairly enforced. It involves no large amount of patronage. It involves no cost. It proposes to add immensely to the revenue of the country by making lands that otherwise would lie waste bloom and bear, and to quicken the industry by giving the stimulant of a just reward to those who, without such care, would wander in vagrancy and pauperism, under the general provisions of the bill which the gentleman from Ohio would substitute.

Mr. Speaker, it is not often given to a legislature to perform an act such as we are now to pass upon. We have four million people in poverty because our laws have denied them the right to acquire property; in ignorance because our laws have made it a felony to instruct them; without organized habits because war has broken the shackles which bound them, and has released them from the plantations which were destined to be their world.

We are to organize them into society; we are to guide them, as the guardian guides his ward, for a brief period, until they can acquire habits and become confident and capable of self-control; we are to watch over them, and, if we do, we have, from their conduct in the field and in the school, evidence that they will more than repay our labor. If we do not, we will doom them to vagrancy and pauperism, and throw upon another Congress, and perhaps upon another generation, the duty or the effort to reclaim those whose hopes we will have blasted, whose usefulness we will have destroyed.

Mr. Eliot asked General Schenck to support the bill now and later offer one for the aid of the destitute whites, which bill, he promised, he would heartily support. He objected to placing the Freedmen's Bureau under the War Department because of the conflict which would ensue with the Treasury Department, which had authority over the abandoned lands. This authority would shortly pass to the War Department, and then the Bureau could be put under the control of the Department. There was urgent need, he said, to pass the bill at once.

The House agreed to the report by 64 yeas to 62 nays.

On February 13 Senator Sumner reported the bill of the majority of the committee to the Senate.

Garrett Davis [Ky.] objected to the military character of the bill, on the ground already advanced by Representative Kernan.

On February 21 Thomas A. Hendricks [Ind.] argued that the Bureau should logically be under control of the Interior Department, which had similar charge of the lands and well-being of the Indians.

James W. Grimes [Ia.] objected to the bill because it applied only to the rebel States. The 12,000 colored refugees in the District of Columbia ought also to come under its provisions. Furthermore, the destitute white loyalists in the South ought to have equal treatment with the negroes. He also feared that the unlimited power given to the commissioners to hire out the freedmen might some time be abused. He therefore advocated the bill of the Committee on Military Affairs in the House, which contained none of these objectionable features.

Samuel C. Pomeroy [Kan.] feared that an independent bureau might become a permanency and that the freedmen would never be thrown on their own resources but always be sustained by the Government. Thousands of colored and white refugees had come into his State, and he had observed that the former were more self-reliant than the latter, having learned in the bitter school of slavery readily to adapt themselves to hard conditions.

I am looking for a speedy return of the colored population of this country to freedom and to taking care of themselves and adapting themselves to that condition; and all I think the exigencies of the case demand is some temporary expedient for a year or two.

William Sprague [R. I.] was opposed to the measure if the elective franchise could be granted to the negro.

When a man can vote he needs no special legislation in his behalf. The freedmen's department, as proposed by the bill under discussion, uncoupled with the rights and privileges of free men for the colored men, in my opinion, will illustrate history in the style that the Indian Bureau illustrates the beginning and end of the Indian. Sir, I am for perpetuating all races of men. I do not believe that it is necessary to secure the prosperity of one race that another should be destroyed. I fear that the bill under discussion will destroy the negro race in this country. I desire that those who advocate this bill will stop here and spend their time and talent in demanding for the negro race all the rights and privileges of freedom. Do this, and no freedmen's bureau is at all necessary.

Senator Sumner resisted postponement, as he feared that this meant killing the bill.

I am pained by this opposition. It is out of season. Sir, I am in earnest. Seriously, religiously, I accept emancipation as proclaimed by the President, and now, by the votes of both Houses of Congress, placed under the sanctions of constitutional law. But even emancipation is not enough. You must see to it that it is not evaded or nullified, and you must see to it especially that the new-made freedmen are protected in those rights which are now assured to them, and that they are saved from the prevailing caste which menaces slavery under some new alias; and this is the object of the present measure.

The Senator from Iowa renews now the objections which he made at an earlier stage of this legislation. So far as I understand his objection then and now, it is twofold: first, that the freedman is placed under constraint, and that he is not a freeman; and, secondly, that he is treated too much as an infant or a pupil. Now, I undertake to say that the objection in both these forms is absolutely inapplicable.

The freedman is treated in every respect as a freeman. Again and again in the bill his rights are secured to him. Thus, for instance, in the fourth section it is expressly provided that "every such freedman shall be treated in all respects as a freeman, with all proper remedies in courts of justice, and no power or control shall be exercised with regard to him except in conformity with law." In face of these positive words, so completely in harmony with the whole bill, it is vain to say that the freedman is not a freeman. Sir, he is a freeman just as much as the Senator himself, with a title derived from the

Almighty which no person can assail. When the Senator finds danger to the freedmen in this measure he consults his imagination, inflamed by these hostile sentiments which he has allowed himself to nurse.

But the Senator complains that the freedman is treated too much as an infant or a pupil. Let him point out the objectionable words. The freedmen, it is admitted, are under the general superintendence of the commissioner. But are we not all under the general superintendence of the police, to which we may appeal for protection in case of need? And just such protection the freedmen may expect from the commissioner, according to his power. The Senator himself is under the superintendence of the presiding officer of the Senate, whose duty it is to see that he is protected in his rights on this floor. But the presiding officer can do nothing except according to law, and the commissioner is bound by the same inevitable limitations.

But there are regulations applicable to the contracts of the freedman. Very well. Why not? To protect him from the imposition and tyranny of the dominant race it is provided that "no freedman shall be employed on any estate above mentioned otherwise than according to *voluntary contract*, reduced to writing and certified by the assistant commissioner or local superintendent." Mark the language, "voluntary contract." What more can be desired? But this is to be reduced to writing. Certainly, as a safeguard to the freedman and for his benefit. Then, again, the commissioners are to act as "advising guardians," in which capacity they are to "aid the freedmen in the adjustment of their wages." But do not forget that the freedman is a freeman, and if he does not need such aid or advice he may reject it—just as much as the Senator himself. Look at other clauses, and they will all be found equally innocent.

But there is the section originally introduced on the motion of the Senator from West Virginia [Waitman T. Willey], providing that "whenever the commissioner cannot otherwise employ any freedmen who may come under his care he shall, so far as practicable, make provision for them with humane and suitable persons at a just compensation for their service." Here again are tyranny and outrage carried to the highest point. But how? The commissioner is to act as an *intelligence office*. That is all; and everything that he does is to be "in conformity with law." This clause, even if it were in any respect ambiguous, must be ruled by those earlier words which declare that "every such freedman shall be treated in all respects as a freeman."

What more can be desired? With this rule as a touchstone, no freedman can suffer in his rights.

But the strange complaint is made that this measure is too favorable to the freedman, and, indeed, we have been told that something is needed for the whites. Very well; let it be done. I trust that an enlightened government will not fail to recognize its duties to all alike. Meanwhile, it is proposed that abandoned lands shall be leased to freedmen, and, if they are not able and disposed to take the lands for a twelvemonth, then they are to be leased to other persons. And why not? The freedmen for weary generations have fertilized these lands with their sweat. The time has come when they should enjoy the results of their labor at least for a few months. This war has grown out of injustice to them. Plainly to them we owe the first fruits of justice. Besides, this provision is essential as a safeguard against white speculators from a distance who will seek to monopolize these lands, with little or no regard to the freedmen. Ay, sir, it is too evident that it is essential as a safeguard against grasping neighbors who still pant and throb with all the bad passions of slavery.

Mr. President, the objections to the measure are vain. It is not hurtful to the freedman. It is not hostile to liberty. Its declared object is the good of the freedman. Its inspiration is liberty. Look at it as a whole or in detail and you will find the same object and the same inspiration. It only remains that the Senate should adopt it, and give a new assurance of justice to an oppressed race. In the name of justice, I ask your votes.

The Senate refused to postpone the bill by a vote of 13 yeas to 16 nays.

John B. Henderson [Mo.] opposed the bill.

It will, if adopted, instead of benefiting the freedmen of the South, be attended with consequences sufficient in time to reënslave them. Does the Senator from Massachusetts take into consideration the vast number of freedmen to be found in the Southern States—from three to three and a half millions? It is intended that the eighty-eight superintendents who are provided for in the bill shall go on to look into the condition of these negroes, and wherever they cannot make otherwise suitable provisions on the lands they may seize upon in the Southern States it will be their duty to look out homes for them, and put them with those parties that they see fit to place them under, for such compensation and for such a time as they may

desire. What will be the result of this? Will there be enough abandoned lands in the Southern States upon which to place the negroes?

Again, these commissioners and superintendents are to act as guardians, and they are to aid the freedmen in the adjustment of their wages and in the application of their labor. I do not profess to have been an anti-slavery man a great while, but the Senator from Massachusetts is certainly too old an anti-slavery man to have been the author of a proposition of this character. What was the old argument in favor of the institution of slavery? It was that the African race is not competent to self-government, that the negro is not able to take care of himself, that he needs a guardian. Though I am not a very old anti-slavery man, I can say to Senators here that I never believed a word of that argument. I believe to-day that if you turn loose the negroes of the Southern States and tell them to take care of themselves they will do it. There is no doubt about it. They will make a better contract for themselves than any white man who is their next friend will make for them. They are intelligent enough to do it; and, Mr. President, I tell you that, so far as my experience goes, they are as industrious as the white man. They take care of their wages as well as the white man does, and they are just as capable of making contracts.

Senator Sumner.—Allow me to say to the Senator, then, that this bill will have no application to such persons. No person need be aided in making a contract unless he stands in need of it. Every person under the bill will be as free as the Senator himself, just as free to make a contract to the right or the left as the Senator from Missouri. It is only if he stands in need of it that he may claim that aid.

Senator Henderson.—Let me call the Senator's attention to the fact that this is made a duty. If my proposition be true that these negroes can take care of themselves, why the necessity of this aid? Turn loose the negroes in this country and let them take care of themselves. Take the letter "d" out of that word "freedmen," leave them to be "freemen" and not "freedmen." I am opposed to keeping up the idea that these negroes when they have been turned free are to have guardians, supervisors, superintendents, and commissioners to take charge of them.

Henry S. Lane, of Indiana.—Overseers.

Senator Henderson.—Yes, "overseers," for they are nothing else.

Now, let us look at another provision of this bill. It is not made the duty of the negroes to take charge of the abandoned farms in the South. The Senator says that if these negroes can take care of themselves they will be just as free as I am. The Senator is mistaken. Why does he make it the duty of these officers to take charge of all the lands in the Southern States? Why not let the negroes go and take charge of them themselves? I ask the Senator now, and I ask for an answer, is it possible for a single negro to get possession of a home after the appointment of these superintendents unless it be their free will to put him upon the land?

I venture to predict that, after the machinery of this department is put into full operation in the Southern States, and this vast number of clerks and superintendents shall have been appointed, there will be a system of fraud and swindling that will astound the Senator from Massachusetts. Let me tell the Senator that the negro would be much better off without these superintendents. The negro knows how to cultivate the cotton lands of the South much better than the gentlemen who will be sent down there as superintendents, and who never saw a cotton plant in their lives.

But what else is there? If the lands and other property shall not be required for the freedmen, the officers may rent or lease them to other persons. It is also provided that all contracts of the freedmen are to be in writing. The Senator from Massachusetts knows very well that when a contract is once reduced to writing the writing itself is the evidence of the contract and no oral testimony can be taken against it. Does he not know that nine-tenths of the negroes of the Southern States cannot read and write? And if these superintendents are permitted to superintend every contract and to make contracts for the negro, as they will do, does he not know that it will be utterly impossible for the negro in any court of justice anywhere to introduce testimony outside of the contract? These contracts will be made by dishonest superintendents again and again in order to benefit themselves and to rob the negro of the earnings of his labor. Such will be the fact; and the Senator from Massachusetts in less than two years from to-day will discover that what I say is true.

On February 22 John P. Hale [N. H.] spoke. He objected to letting the negroes have the first choice of the abandoned lands, thus leaving the destitute white men without relief at a time when they most needed it.

If at any time one of your officers under this bill may feel inclined to make some provision for some loyal, suffering white person, though he may have got the contract nearly consummated by which the outcast and the refugee is to obtain a place of shelter for himself, his wife, and his little ones, if a colored man comes up and says he wants it, your officer's hands are tied and he cannot move for the benefit of the white refugee.

I confess that I do not hold to that sort of philanthropy. I think I go as far as Christianity and humanity require me to go when, in cases of this kind, I let the white and the black stand together; but I am unwilling to have placed by my vote upon the statutes of this country a provision which would actually forbid our officers from extending any relief, even the slightest, to a white refugee, provided there was a colored person who wanted it.

Henry S. Lane [Ind.] opposed the bill, reiterating the arguments that had been presented by former opponents of the measure.

I am in favor of temporary relief and temporary support to poor colored persons and equally to the white refugees. But I have an old-fashioned way of thinking which induces me to believe that a white man is as good as a negro if he behaves himself. [Laughter.] Now, sir, the report of this committee of conference goes upon the supposition that the negro is wholly incompetent to take care of himself. The reason assigned for slavery by slave masters for the last fifty years has been that these people are helpless, utterly unable to take care of themselves; that they have been under the guardianship of their masters so long that you cannot trust them with their own interests. As long as you keep them under the guardianship either of their masters or of overseers to be appointed under this bill, so long will they be helpless and unable to take care of themselves. As long as you hold them up they will never stand alone; but the very moment you make them freemen and secure their rights in the courts of justice, I believe they will be fully competent to take care of themselves. This proposition of the committee of conference only proposes a change of masters, under the provisions of the ninth section. You appoint commissioners who have a right to take possession of the farms, lease them to whomsoever they please, and then they may hire out these negroes at any price they shall agree upon between themselves and the lessees of the lands. That is what I under-

stand to be the provisions of the bill, and, under such provisions, it would introduce, in my opinion, a system of fraud and swindling unheard of in the history of the world. You give these poor creatures to the kind protection of broken-down politicians and adventurers, and decayed ministers of the gospel, and make them overseers to make fortunes out of these poor creatures, and they will treat the negroes, in my opinion, under this bill, far more cruelly than their masters under the old slave system did.

I am opposed to the whole theory of a freedman's bureau. I would make them free under the law; I would protect them in the courts of justice; if necessary, I would give them the right of suffrage, and let loyal slaves vote their rebel masters down and reconstruct the seceded States; but I wish to have no system of guardianship and pupilage and overseership over these negroes.

Garrett Davis [Ky.] objected to the bill because it would perpetuate the vicious system of trading in cotton already inaugurated by Northern men in the subjugated parts of the South.

There is a delusive intimation in the proposition that it is to be made self-supporting; but any man who is acquainted with the South, with free negroes, and with the general subject of the bill knows that for years and years at least this system never can be worked so as to become self-supporting.

But the particular objection I have to it is, in the first place, that every assistant commissioner and every superintendent of freedmen and of abandoned lands in all the districts will be a secret partner of every man to whom he lets these lands upon lease and to whom he assigns any portion of the freedmen for their cultivation. No guards or provisions which can be thrown around the system by legislation will ever prevent it from degenerating into that abuse. Here, then, will be from twenty-two to twenty-five assistant commissioners and from fifty to sixty local superintendents, with their retinue of clerks and other officers, who are by this bill required to be sustained by the military power of the United States. That will give them energy and give them strength by which all of their schemes and all of the policy which they will bring into this new freedmen's department shall be rigorously executed at the point of the bayonet.

Mr. President, what will be the consequences? These are

gentlemen in the Senate who have visited Southern plantations. They know that the negro cabins are huddled together in the form of villages around the mansion of the owner, and the slaves who have been in the habit of laboring in the fields come there at night for rest and depart in the morning to their labor. This measure proposes that lands to the quantity of fifty acres shall be let by the commissioner and the assistant commissioners to the freedmen. Where will a freedman find a house in which to shelter himself and his family upon fifty acres of a vast cotton estate? There are no such houses except in these villages that are built up by the owner of the estate around his mansion. They are not distributed and located so as to be let in tenements of fifty acres. In addition to that, where will the freedman get the capital to buy his horse or his oxen and his plow and other agricultural implements to put his crop of cotton or corn in the ground? All these require capital—capital far beyond the ability of the freedman to command—and this fact renders the scheme impracticable so far as it professes to be for the benefit of the freedman.

The inevitable result will be that the freedman will lease no land. He will not be able to lease and to cultivate land. He will not be able to purchase equipments of horses and agricultural implements that will be necessary for its cultivation. Then he must fall into general line and become simply a laborer, to be hired by the assistant commissioners or by the superintendents, and to be hired to some man with whom they are secretly in partnership, with whom they are to share the profits and the produce of the freedman's labor from these abandoned lands.

In the language of the honorable Senator from Indiana, it will be but changing the form of slavery. There will be the name of freedman attached to the negro, but he will be subject to be taken by the assistant commissioners and the superintendents to be hired out; and, if there is any obstacle in the way of the performance of this duty, they are to be backed by the military power of the United States. The consequence will be that a few favorites and secret partners of these Government officials, corrupted by cotton, will obtain leases of all the cotton lands in large bodies.

When their business will be to hire the freedmen to cultivate the cotton fields the profits of the culture of which they are to share, is it not inevitable that there will be vast abuse in the discharge of the duty of hiring the freedmen by these officials? They will gather them together, they will present this

law to the freedmen, they will show that the law itself authorizes them to command the freedmen to assemble upon any plantation that they may designate, to go into the service of any lessee they may name, at any wages they may agree upon, and the freedman, awed and intimidated by the law, becomes submissive and entirely obedient to the mandate of the commissioners and superintendents. He becomes as tractable, ay, more tractable and obedient than he ever was to his former master or overseer, because here is the power that has given to him the name of freedman sending its official agents into the region of country where he lives, exhibiting the law which authorizes those agents to assemble and to command the attendance and the rendezvous of the freedmen at any place they may designate, and provides that the freedmen shall labor according to their mandate at such prices as they may agree upon. The consequence will be inevitably that the negro will labor for the white man, will labor for the lessee in connection and as a secret partner of the superintendents and of the assistant commissioners. The whole scheme will become a system of corruption, of plunder, of fraud and oppression upon the freedmen to enrich the white adventurers who go into the business of discharging the duties of commissioners and superintendents.

Sir, I cannot doubt that, if the condition and relations of parties were changed, if the Democratic party was now in power and was wielding the vast forces of this Government, and was endeavoring to enforce upon the Republican party out of power the identical principles and measures which the latter has been so swift to impose upon the whole country, the Black Republican party would rise as one man, with one heart, and with indomitable energy, and oppose all this policy and these measures which they are now seeking to fasten upon the country.

By a vote of 14 yeas to 24 nays the report of the committee was not concurred in.

Another joint conference committee was appointed, consisting of Senators Henry Wilson [Mass.], James Harlan [Ia.], and Waitman T. Willey [W. Va.], and Representatives Robert C. Schenck [O.], George S. Boutwell [Mass.], and James S. Rollins [Mo.]. It brought forward on February 28 the bill in its final form. Both Houses passed the bill on March 3, the vote being taken *viva voce*. President Lincoln approved the act on the same day.

Edwin M. Stanton, Secretary of War, selected as the commissioner of the bureau Gen. Oliver O. Howard, whose character was well indicated by the appellation generally given him of "the Christian Soldier." James G. Blaine, in his "Twenty Years of Congress," says of his administration of the bureau:

He was subjected to unreasonable fault-finding, often to censure and obloquy; but throughout the whole he bore himself with the honor of a soldier and the purity of a Christian—triumphantly sustaining himself throughout a Congressional investigation set on foot by political malice, and confronting with equal credit a military inquiry which had its origin in the jealousy that is often the bane of army service.

In the administration of the freedmen's bureau it had been found that its effectiveness was hampered by lack of power on the part of its officers. Accordingly, on January 12, 1866, Lyman Trumbull [Ill.] introduced in the Senate from the Judiciary Committee a supplementary act to enlarge the powers of the bureau.

The President of the United States, through the war department and through the commissioner of the bureau, was authorized to extend military jurisdiction and protection over all employees, agents, and officers of the bureau; and the Secretary of War was authorized to issue such provisions, clothing, fuel, and other supplies, including medical stores, and to afford such aid as he might deem needful for the immediate and temporary shelter and supply of destitute refugees and freedmen, their wives and children, under such rules and regulations as he might direct. The President was also authorized to reserve from sale or settlement under the homestead and preëmption laws public lands in Florida, Mississippi, and Arkansas, not to exceed three millions of acres of good land in all, for the use of the freedmen, at a certain rental to be named in such manner as the commissioner should by regulation prescribe; or the commissioner could purchase or rent such tracts of land in the several districts as might be necessary to provide for the indigent refugees and freedmen depending upon the Government for support.

It was further provided that wherever in consequence of any State or local law any of the civil rights or immunities belong-

ing to the white persons, such as the right to enforce contracts, to sue, to give evidence, to inherit, purchase, lease, sell, hold, or convey real and personal property were refused or denied to freedmen on account of race or color or any previous condition of slavery or involuntary servitude, or whenever they were subjected to punishment for crime different from that provided for white persons, it was made the duty of the President, through the commissioner, to extend military jurisdiction and protection over all cases affecting persons against whom such unjust discriminations were made. But the jurisdiction was to cease "whenever the discrimination on account of which it is conferred shall cease," and was in no event to be exercised in any State "in which the ordinary course of judicial proceeding has not been interrupted by the rebellion, nor in those States after they shall have been fully restored to their constitutional relations to the United States, and when the courts of the State and of the United States, within their limits, are not disturbed or stopped in the peaceable course of justice."

This bill was brought at the height of the contest between President Johnson and Congress over reconstruction of the Southern States, and partisan spirit flamed high in the ensuing debate, which covered not only every phase of the question of negro rights, but the constitutional aspect of Reconstruction as well. Nearly every Senator of prominence spoke upon the bill, and most of them with marked ability. However, since the arguments are presented in other debates on reconstruction this one is here omitted.

The bill was passed by the Senate on January 25, 1866, by a vote of 37 to 10.

When the bill reached the House it was referred to the Select Committee on Freedmen's Affairs (Thomas D. Eliot, of Massachusetts, chairman). It was promptly reported and came to a vote on February 6, when it passed by 136 yeas to 33 nays, a strictly partisan vote.

The most notable speech on the bill in the House was one delivered on February 1 by Ignatius Donnelly [Minn.], who possessed an original mind that ran along lines out of the usual grooves of Congressional thought. Looking beyond the satisfaction of the material needs of the freedmen and the grant to them of civil and

political rights, he insisted that the negro needed over and above these *education*, to "fit him to protect himself in that not distant day when the bureau must necessarily be withdrawn." It is true that he did not foresee the special kind of education—industrial—which later such institutions as those at Hampton, Va. (founded 1868), and Tuskegee, Ala. (founded 1881), were established to promote among the negroes (and, in the former case, among the Indians also), but his speech aided in turning the attention of Congress and the country to the general need for negro education, and from this there sprang up inevitably in the minds of practical philanthropists the particular direction which such instruction should take.

Mr. Donnelly offered an amendment, providing "a common-school education to all refugees and freedmen who shall apply therefor." It was not adopted.

Education and Citizenship

Ignatius Donnelly, M. C.

Sir, this is a new birth of the nation. The Constitution will hereafter be read by the light of the rebellion; by the light of the emancipation; by the light of that tremendous uprising of the intellect of the world going on everywhere around us. He is indeed fearfully cramped by the old technicalities who can see in this enormous struggle only the suppression of a riot and the dispersion of a mob. This struggle has been as organic in its great meanings as the Constitution itself. It will leave its traces upon our Government and laws so long as the nation continues to exist.

The measure under consideration should not awaken opposition. It is right and necessary. So long as oppression continues, the Government must intervene in behalf of justice and liberty, and through what machinery can it better intervene than through this bureau?

But, sir, even more than all this is needed. What, let me ask, is the condition of the *mind* of the South?

Gentlemen demand that the ballot shall be universal. They must go further; they must insist that capacity properly to direct the ballot shall be likewise universal.

Said Washington:

"In proportion as the structure of government gives force to public opinion it is essential that public opinion should be enlightened."

Said Jefferson, in the famous ordinance of 1787:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever established."

Says Horace Mann:

"If Republican institutions do waken up unexampled energies in the whole mass of the people, and give them implements of unexampled power wherewith to work out their will, then these same institutions ought also to confer upon that people unexampled wisdom and rectitude." . . . "I know we are often admonished that without intelligence and virtue as a chart and a compass to direct us in our untried political voyage we shall perish in the first storm; but I venture to add that without these qualities we shall not wait for a storm—we cannot weather a calm. If the sea is as smooth as glass, we shall founder, for we are in a stone boat."

It is not necessary to demonstrate the importance of education. The common sense of mankind approves it; the success of our nation attests it; a million happy homes in our midst proclaim it. Education has here fused all nations into one; it has obliterated prejudices; it has dissolved falsehoods; it has announced great truths; it has flung open all doors; and thank God, it has at last broken all the shackles in the land! The rebellion sprang from popular ignorance; its suppression came from popular education. When the Englishman described the North as a land "where every man had a newspaper in his pocket," he touched at once the vital point of our greatness and the true secret of our success.

Let the great work go on. Its tasks are but half completed. Let it go on until ignorance is driven beyond our remotest borders. This is the noblest of all human labors. This will build deep and wide and imperishable the foundations of our Government; this will raise up a structure that shall withstand the slow canker of time and the open assaults of violence. The freedom of the people resting upon the intelligence of the people! Who shall destroy a nation founded on this rock?

The one great error of our country has been that education was not from the very first made a matter of the State, and as essential to the citizen as liberty itself. Education means the intelligent exercise of liberty, and surely without this liberty is a calamity, since it means simply the unlimited right to err. Who can doubt that if a man is to govern himself he should

have the means to know what is best for himself, what is injurious to himself, what agencies work against him and what for him? And the avenue to all this is simply education. Suffrage without education is an edged tool in the hands of a child—dangerous to others and destructive to himself.

Now, what is the condition of the South in reference to all this?

I assert that it is such as would bring disgrace upon any despotism in Christendom.

The great bulk of the people are rude, illiterate, semi-civlized; hence the rebellion; hence all the atrocious barbarities that accompanied it.

The number of ignorant is indicated by the proportion unable to read and write; indicated, I say, but not fully shown, because, of the practically ignorant, of those who read neither books nor newspapers, and are thus cut off from acquiring information through its ordinary channels, the proportion who have never learned their letters or to write their names may be small indeed.

I repeat, the condition of the South in this respect would be shameful to any semi-civilized people, and is such as to render a republican government, resting on the intelligent judgment of the people, an impossibility.

I appeal to the revelations of the census.

My statistics do not include the former slaves, but the white people of the South and the few freed negroes found among them in 1860.

It appears from the census that the adult male white and free negro population of the United States, in 1860, over twenty years of age, who could not read and write was but little short of half a million. In other words, that in the last presidential election, if the entire population of the United States had voted, half a million votes would have been cast by men who could not read and write.

When we recollect that upon our presidential elections depend the great interests and the life of the country, and remotely the cause of all mankind, we may well stand appalled before this vast force of half a million ignorant men deciding the destinies of the world.

But if we look exclusively at the Southern States we find still greater cause for surprise and alarm.

The census shows that in 1860 in the seven Southern States of Delaware, Virginia, North Carolina, Tennessee, Alabama, Arkansas, and Kentucky there were 140,036 illiterate males,

over 20 years of age, able neither to read nor to write. In the same year 715,551 votes were cast for presidential electors. Thus about one man in five was illiterate.

If, however, we add to each man entirely illiterate one other who, while able to read and write his name, derives no practical advantage from these mere rudiments of education in forming his opinions, we will find the total to be more than one-third of the total vote.

The total number of illiterate in the Southern States in 1860, over twenty years of age, exclusive of the then slaves, was 545,177. In these, with the comparatively ignorant associated with them, we see the upholders of the rebellion at the ballot box and in the field. Without these it could never have been inaugurated, or if inaugurated could never have maintained itself for six months against the mighty levies of the Union.

But, it may be said, these evils will correct themselves. The testimony is all the other way:

From 1840 to 1860, a period of twenty years, the number of illiterate over twenty years rose from 549,693 to 1,218,311; in other words, an increase of considerably more than one hundred per cent.!

At the same ratio of growth, in 1920 it would amount to the enormous total of 12,596,688.

Who will pretend that with such a mass of ignorance the Government could survive? It would be buried in the most disgraceful anarchy the world has ever seen.

But, Mr. Speaker, even these appalling figures do not tell the whole story. These figures do not include the then slaves, now freedmen. We must add to the ignorant population of the South the 4,000,000 blacks just released from slavery. Giving these their natural increase, in 1920, when it is supposed that the total population will be 120,000,000, the illiterates will be 18,591,500, one-fifth of the entire number and nearly one-third of the entire vote.

I trust, then, that no gentleman will doubt the propriety of the amendment I have submitted. We are interfering in behalf of the negro; let us interfere to educate him. We thus strike out at one blow a large proportion of the ignorance of the South; we shame the whites into an effort to educate themselves, and we prepare thus both classes for the proper exercise of the right of suffrage.

Nor shall it be said that the ignorance revealed by these statistics is an exotic, that it results from foreign immigration. While it is true that in the North a large proportion of the

illiterate are from foreign lands, in the South the reverse is the case. In North Carolina, in 1860, the illiterate persons of native birth were 74,877, while those of foreign birth were but 100.

We find that the Southern States have a population about equal to the Middle and Western States combined, while the number of illiterate in the former is 545,177, as against 241,854 in the latter; and this not including the vast number of illiterate freedmen in the South, who would make the disproportion still greater. So that the South outnumbers in illiterate the most unfavorable portions of the North more than two to one.

Who can fail to see in this vast disproportion the cause of the rebellion? In the language of Henry Ward Beecher:

> "As upon the coast you can trace the line between the dark and treacherous sea on the one hand, and the firm and trusty land on the other, by the row of light-houses; so you can mark between the deep, damnable wickedness of treason and the supernal luster of patriotism by the line of schoolhouses."

Now, Mr. Speaker, I put it to this House, and through it to the whole people of the country, North and South, whether this state of things is to continue. This is not a political question. It rises above the level of politics and directly affects the welfare of all the people and the life of the nation itself.

If, sir, this enormous growth of ignorance is to continue we can meet with no fate save that which has overtaken too many of the free governments of the world.

We cannot count upon our representative system. The struggle we have gone through shows too plainly that reforms must originate with the people. The people may be converted, the representatives never. They are precisely what the people behind them are, and no more. If the people are ignorant, they will have demagogues for their representatives.

The preservation of this Government through the many dangers that have encompassed it since its birth I look upon as the marvel of modern times. The hand of God is plainly visible in it. Let us do our part now to prepare the way for the mighty future that awaits us. There is no loftier task on earth.

We cannot leave the population of the South, white or black, in the condition they are now in. We must educate them. When you destroy ignorance you destroy disloyalty; for what man with a free, broad scope of mind, and with a knowledge of all the facts, can fail to love this just, benevolent, and most gentle Government?

Let us turn, then, to the next consideration. What chance

is there for the black man in the South without the intervention of this bureau?

We have liberated four million slaves in the South.

It is proposed by some that we stop right here and do nothing more. Such a course would be a cruel mockery.

These men are without education, and morally and intellectually degraded by centuries of bondage. They have neither the arts nor the knowledge nor the power of combination to protect themselves against the superior race from whose grasp they have just been forcibly wrested. That race did not willingly yield them up; to abandon them to their former masters would be to consign them once more to inevitable slavery. The master would have every inducement to reënslave his former bondman, and not a single barrier would stand in his way.

But it may be said the amendment to the Constitution prohibiting slavery would protect them. Sir, a grand abstract declaration, unenforced by the arm of authority, is not a protection.

Slavery consists in a deprivation of natural rights. A man may be a slave for a term of years as fully as though he were held for life; he may be a slave when deprived of a portion of the wages of his labor as fully as if deprived of all; he may be held down by unjust laws to a degraded and defenceless condition as fully as though his wrists were manacled; he may be oppressed by a convocation of masters called a legislature as fully as by a single master. In short, he who is not entirely free is necessarily a slave.

What has the South done for the black man since the close of the rebellion?

Let us examine the black codes of the different States adopted since that time.

In South Carolina it is provided that all male negroes between two and twenty, and all females between two and eighteen, shall be bound out to some "master." The adult negro is compelled to enter into contract with a master, and the district judge, not the laborer, is to fix the value of the labor. If he thinks the compensation too small and will not work, he is a vagrant, and can be hired out for a term of service at a rate again to be fixed by the judge. If a hired negro leaves his employer he forfeits his wages for the whole year.

The black code of Mississippi provides that no negro shall own or hire lands in the State; that he shall not sue nor testify in court against a white man; that he must be employed by a master before the second Monday in January, or he will be

bound out—in other words, sold into slavery; that if he runs away the master may recover him and deduct the expenses out of his wages; and that if another man employs him he will be liable to an action for damages.

The black code of Alabama provides that if a negro who has contracted to labor fails to do so he shall be punished with damages; and if he runs away he shall be punished as a vagrant, which probably means that he shall be sold to the highest bidder for a term of years; and that any person who entices him to leave his master, as by the offer of better wages, shall be guilty of a misdemeanor, and may be sent to jail for six months; and, further, that these regulations include all persons of negro blood to the third generation, though one parent in each generation shall be pure white; that is, down to the man who has but one-eighth negro blood in his veins.

The Mississippi legislature passed a law prohibiting negroes from acquiring lands or real estate. This was promptly overruled by the United States authorities. Whereupon the legislatures of Mississippi and Alabama passed laws making the owner of the property, who rents or leases a negro a house or land, responsible for everything he buys—his meat, his bread, his doctor's bill, and even his taxes. Of course no one will rent a black man a house or lease him land under such a law; and of course also the negro will have to be driven out upon the highway and become a vagrant, and thus become subject to the vagrant law.

The black code of Tennessee provides that the vagrant negro may be sold to the highest bidder to pay his jail fees; and to make sure that he be kept a vagrant no housekeeper shall harbor him; his children may be bound out against his wish to a master by the county court; if his master fails to pay him he cannot sue him nor testify against him. It further provides that colored children shall not be admitted into the same schools with white children, while it makes no provision for their education in separate schools.

The black code of Virginia provides that any man who will not work for "the common wages given to other laborers" shall be deemed a vagrant; the masters have formed combinations and have put down the rate of wages to the freedmen below a living price; the negro refusing to work for these wages is seized as a vagrant, sold to service "for the best wages that can be procured" for three months; if he runs off he shall work another month with ball and chain for nothing.

It is true General Terry has declared that the order shall not

be enforced; but of what avail will this be when the military are withdrawn and Virginia is reconstructed?

All this means simply the reëstablishment of slavery:

1. He shall work at a rate of wages to be fixed by a county judge or a legislature made up of white masters, or by combinations of white masters, and not in any case by himself.

2. He shall not leave that master to enter service with another. If he does he is pursued as a fugitive, charged with the expenses of his recapture, and made to labor for an additional period, while the white man who induced him to leave is sent to jail.

3. His children are taken from him and sold into virtual slavery.

4. If he refuses to work he is sold to the highest bidder for a term of months or years, and becomes in fact a slave.

5. He cannot better his condition; there is no future for him; he shall not own property; he shall not superintend the education of his children; neither will the State educate them.

6. If he is wronged he has no remedy, for the courts are closed against him.

Said a Georgian the other day:

"The blacks eat, sleep, move, live, only by the tolerance of the whites, who hate them. The blacks own absolutely nothing but their bodies; their former masters own everything, and will sell them nothing. If a black man draws even a bucket of water from a well, he must first get the permission of a white man, his enemy. If he sleeps in a house over night, it is only by the leave of a white man. If he buys a loaf of bread, he must buy of a white man. If he asks for work to earn his living, he must ask it of a white man; and the whites are determined to give him no work, except on such terms as will make him a serf and impair his liberty."

This, then, is slavery, less the protection which the master formerly afforded his chattel. The slave now has a mob for his master. General Schurz says, in his admirable report:

"The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up. But although the freedman is no longer considered the property of the individual master, he is considered the slave of society; and all independent State legislation will show the tendency to make him such. The ordinances abolishing slavery, passed by the conventions under the pressure of circumstances, will not be looked upon as barring the establishment of a new form of servitude."

The enemies of the black man, those who opposed his liberation, now point to him and say, "See the condition to which you

have reduced him. He is worse off than before. His race is perishing from the face of the earth under the innumerable miseries which liberty has inflicted upon it."

For one, with the help of Almighty God, I shall never consent to such cruel injustice. Having voted to give the negro liberty, I shall vote to give him all things essential to liberty.

If degradation and oppression have, as it is alleged, unfitted him for freedom, surely continued degradation and oppression will not prepare him for it. If he is not to remain a brute you must give him that which will make him a man—opportunity. If he is, as it is claimed, an inferior being and unable to compete with the white man on terms of equality, surely you will not add to the injustice of nature by casting him beneath the feet of the white man. With what face can you reproach him with his degradation at the very moment you are striving to still further degrade him? If he is, as you say, not fit to vote, give him a chance; let him make himself an independent laborer like yourself; let him own his homestead; let the courts of justice be opened to him; and let his intellect, darkened by centuries of neglect, be illuminated by all the glorious lights of education. If after all this the negro proves himself an unworthy savage and brutal wretch, condemn him, but not till then.

He must have this opportunity. He cannot remain in an amphibious condition between liberty and slavery. He must be either full slave or full freeman; he must either be master of himself or the servant of another.

Do not believe the delusive hope uttered by some that the race which has all the privileges will some day willingly divide them with the race that has none. The world's history tells no such story. The Old World's royalties and aristocracies rest upon ancient conquests; and yet how unwilling, even after centuries have passed, have the victors ever been to permit the vanquished to rise! Let the wretched condition of the masses in those countries at the present day testify.

Is the right of suffrage necessary to the negro?

The right to vote is the right of self-protection, through the possession of a share in the Government. Without this a man's rights lie at the mercy of other men who have every selfish incentive to rob and oppress him. This is the great central idea of a republican government. The absence of this is the source of all despotism. I would ask, what white man would consider himself safe without the right to vote, especially if the Government was exercised exclusively by a hostile race?

What shield and safeguard can the negro have if it be not the right to vote? To whom can he appeal when the highest earthly tribunals are filled by his enemies?

No man can rest with safety upon the mercy and generosity of any other man. The law protects the ward from its guardian, the child from its parent, the wife from her husband, nay, even the dumb brute from its owner. Can we, then, as the Representatives of a free people, consign a helpless race to the mercy of its hereditary oppressors? Can we, in the heart of a free government, permit the erection of such a strange and abnormal system of despotism?

Mr. Speaker, it is as plain to my mind as the sun at noonday that we must make all the citizens of the country equal before the law; that we must break down all walls of caste; that we must offer equal opportunities to all men.

Injustice is the mother of revolutions. In no case has rebellion raised its head in the midst of equal laws; for what more can a man ask than equality? But I challenge the historian to point to a single community where unjust laws have not sooner or later given birth to revolution; to the efforts of one class to perpetuate and of the other to resist injustice.

If you give the negro an equal opportunity with the white man he becomes perforce a property-holder and a law-maker, and he is interested with you in preserving the peace of the country. If you hand him over to oppression, if you deprive him of all hope, if you debase him into a brute, you can expect nothing from him but poverty, turbulence, and wretchedness. If, then, your object, if the object of all government, is to advance the prosperity of the people, can you do so by ruining one-eighth of the entire population?

The true issue before the South is justice or anarchy. We must save the South from herself. The negroes now know themselves to be freemen. They may be made savages, but never again slaves. The cruel, heartless course the South seems bent on pursuing will sooner or later set the land aflame with insurrection. And in that day are we ready, we, the Christian people of the North, to hold down with our armies the poor writhing wretches who will tell us that their title deeds of liberty bear our superscription; and who will fling into our faces while we are manacling them the sacred promises of the proclamation of emancipation? Never! never! This thing cannot be. Our own hearts would revolt at it; the world would cry us: Shame! The name of American would become an epithet of contempt in the mouth of all mankind.

We must hold our faith. We made great vows to God when the fury of the tempest smote us, and night and darkness seemed settling down upon our frail bark forever. Let us not, like the drunken sailors of the Mediterranean, abandon those vows amid the profligacy of the harbor. It becomes a great people to hold its faith as the most sacred thing beneath the wide canopy of the heavens.

If it is, then, true that we must make the freedmen fully free, and, if the right of suffrage is necessary to this freedom, then it is equally necessary that education should accompany freedom.

Pass the amendment I have proposed, and the Freedman's Bureau will not only protect the negro now but give him the means of self-protection hereafter. Without this the ballot is a useless, perhaps a pernicious, instrument in his hands. Without this your bureau will be but a temporary relief, and in a short time the negro will relapse into oppression. Educate him, and he will himself see to it that common schools shall forever continue among his people; and in doing him an act of justice you will increase the safety of the nation forever.

Let not the objection of expense be made. No outlay is too great which is necessary to the safety of the people, since in that is involved all the wealth of the country. It is a madman's economy to save money by rendering the people unfit for self-government and then lose all in the misgovernment which is sure to follow.

Universal education must go hand in hand with universal suffrage. Either alone will be unavailing; together they will create the mightiest government and the ablest race the world has ever known.

If you pass the amendment I have offered, the Freedman's Bureau becomes an instrumentality of more good than was ever before achieved in the world by any merely human agency. Its influence will be greater than even Jefferson's famous ordinance, which gave to freedom the Northwestern Territory. And who shall count the results yet to flow from that great measure? A thoroughly educated negro population in the South means a white population forced into education through mere shame; it means an intelligent and, necessarily, a loyal people; it means industry, prosperity, morality, and religion everywhere; a land rejoicing in wealth and glorious with liberty.

The bill was vetoed by President Johnson on February 19 for the following reasons: (1) that it abolished

trial by jury in the South, and substituted trial by court-martial; (2) that this abolition was apparently permanent, not temporary; (3) that the bureau was a costly and demoralizing system of poor relief; and (4) that Congress had no power to apply the public money to any such purpose in time of peace.

The Senate voted upon the veto the day after it was received, 30 yeas to 18 nays, less than the two-thirds majority required to override it.

A mass meeting was held in Washington on Washington's birthday, to approve the President's action. The meeting adjourned to the White House, where the President made a long and abusive harangue against his Republican opponents, whom he arraigned by name. Saying that he had "fought traitors and treason in the South," he let it be inferred that he was in a similar contest in the North and would wage it with equal fearlessness. Beginning to recount his own career from humble beginnings, he was interrupted by a voice from the crowd reminding him that he had been a tailor, whereupon he said he had not done "patchwork" then, nor did he propose to do it now. He "wanted the whole suit," and it was not his practice to fail to perform what he had pledged himself to do. He said that a Congressman had said that he, the President, ought to be put out of the way of the bill. Interpreting this as a threat of assassination, he asked:

"Does not the murder of Lincoln appease the vengeance and wrath of the opponents of this Government? Are they still unslaked? Do they still want more blood? I am not afraid of the assassin attacking me where a brave and courageous man would attack another. I dread him only when he would go in disguise, his footsteps noiseless. If it is blood they want let them have courage enough to strike like men."

Later in the session (May 22) a bill was introduced in the House of Representatives by Thomas D. Eliot [Mass.] from the Select Committee on Freedmen's Affairs, continuing in force, with amendments, the act in existence. It was so framed as to escape the objections

which had caused Republican Senators to sustain the President's veto of its predecessor. The most important changes were the limitation of the act to two years and the reduction of the sweeping judicial powers accorded the bureau. It also contained a new provision for applying the property of the ex-rebel States to the education of the freedmen—evidently a result of Mr. Donnelly's speech. It was not extensively debated, and came to a vote in the House on May 29, when it was passed—yeas 96, nays 32. The Senate passed it, *viva voce*, on June 26. Owing to the press of other business it did not reach the President until the first week of July. He vetoed it on the 16th for the same general grounds given in his first veto. On the same day it was passed over the veto: in the House by 104 yeas to 33 nays, and in the Senate by 33 yeas to 12 nays.

At the expiration of the statute, in June, 1868, the bureau was continued by law for one year longer in unreconstructed States. August 3, 1868, a bill was passed over the veto, providing that General Howard should not be displaced from the commissionership, and that he should withdraw the bureau from the various States by January 1, 1869, except as to its educational work, which did not stop until July 1, 1870. The collection of pay and bounties for colored soldiers and sailors was continued until 1872 by the bureau, when its functions were assumed by the usual channels of the War Department. Total expenditures of the Freedmen's Bureau, March, 1865–August 30, 1870, were reported at $15,359,092.27.

CHAPTER VIII

Suspended Sovereignty or State Suicide?

[RECONSTRUCTION OF REBELLIOUS STATES]

Message and Proclamation of President Lincoln on Amnesty and Reconstruction—Henry Winter Davis [Md.] Moves in the House of Representatives a Resolution Guaranteeing a "Republican Form of Government" to the States in Rebellion—Debate: in Favor, Mr. Davis, Fernando C. Beaman [Mich.]—Resolution Is Referred to a Special Committee, Which Reports a Bill for Reconstructing Governments of These States—Debate on the Bill: in Favor, Nathaniel B. Smithers [Del.], Thomas Williams [Pa.], M. Russell Thayer [Pa.], Ignatius Donnelly [Minn.], Thaddeus Stevens [Pa.], Sidney Perham [Me.], James M. Ashley [O.], Daniel W. Gooch [Mass.], William D. Kelley [Pa.], George S. Boutwell [Mass.]; Opposed, James C. Allen [Ill.], Charles Denison [Pa.], Myer Strouse [Pa.], James A. Cravens [Ind.], Francis D. Kernan [N. Y.], Nehemiah Perry [N. J.], Fernando Wood [N. Y.], Samuel S. Cox [O.], George H. Pendleton [O.]; the Bill Is Passed by House and Senate—The President Refuses to Sign It, and Gives His Reasons in a Proclamation, in Which He Also Sustains Reconstruction by Executive Authority—Protest of Senators Davis and Benjamin Wade [O.]—Reconstruction Bill Proposed in Next Session of Congress; It Is Tabled—Speech of President Lincoln on Reconstruction of Seceded States: "At Home Again in the Union."

THE subject of reconstruction of the seceded State governments was, during the Civil War, considered almost entirely in its constitutional aspect, and the debates thereon at that time properly belong to Volume V, treating of State Rights. However, after the war, the question of the maintenance of Civil Rights, especially of the negro, became the crucial issue in setting up loyal State governments in the South. That the subject may not be divided in treatment, all the debates upon reconstruction are presented in the present volume.

President Lincoln first broached the subject of reconstruction in his annual message of December 8, 1863, which he accompanied with a proclamation on the sub-

THE RAIL-SPLITTER [LINCOLN] AND TAILOR [JOHNSON] REPAIRING THE UNION

From the collection of the New York Historical Society

ject, combined with an offer of amnesty to former rebels taking oath of allegiance to the United States Government.

Of this proclamation he said in his message:

On examination it will appear, as is believed, that nothing is attempted beyond what is amply justified by the Constitution. True, the form of an oath is given, but no man is coerced to take it. The man is only promised a pardon in case he voluntarily takes the oath. The Constitution authorizes the Executive to grant or withhold the pardon at his own absolute discretion; and this includes the power to grant on terms, as is fully established by judicial and other authorities.

It is also proffered that if, in any of the States named, a State government shall be, in the mode prescribed, set up, such government shall be recognized and guaranteed by the United

States, and that under it the State shall, on the constitutional conditions, be protected against invasion and domestic violence. The constitutional obligation of the United States to guarantee to every State in the Union a republican form of government, and to protect the State in the cases stated, is explicit and full. But why tender the benefits of this provision only to a State government set up in this particular way? This section of the Constitution contemplates a case wherein the element within a State favorable to republican government in the Union may be too feeble for an opposite and hostile element external to, or even within, the State; and such are precisely the cases with which we are now dealing.

An attempt to guarantee and protect a revived State government, constructed in whole, or in preponderating part, from the very element against whose hostility and violence it is to be protected, is simply absurd. There must be a test by which to separate the opposing elements, so as to build only from the sound; and that test is a sufficiently liberal one which accepts as sound whoever will make a sworn recantation of his former unsoundness.

But if it be proper to require, as a test of admission to the political body, an oath of allegiance to the Constitution of the United States, and to the Union under it, why also to the laws and proclamations in regard to slavery? Those laws and proclamations were enacted and put forth for the purpose of aiding in the suppression of the rebellion. To give them their fullest effect, there had to be a pledge for their maintenance. In my judgment they have aided, and will further aid, the cause for which they were intended. To now abandon them would be not only to relinquish a lever of power, but would also be a cruel and an astounding breach of faith. I may add, at this point that, while I remain in my present position, I shall not attempt to retract or modify the Emancipation Proclamation; nor shall I return to slavery any person who is free by the terms of that proclamation, or by any of the acts of Congress. For these and other reasons it is thought best that support of these measures shall be included in the oath; and it is believed the Executive may lawfully claim it in return for pardon and restoration of forfeited rights, which he has clear constitutional power to withhold altogether, or grant upon the terms which he shall deem wisest for the public interest.

It should be observed, also, that this part of the oath is subject to the modifying and abrogating power of legislation and supreme judicial decision.

The proposed acquiescence of the national Executive in any reasonable temporary State arrangement for the freed people is made with the view of possibly modifying the confusion and destitution which must at best attend all classes by a total revolution of labor throughout whole States. It is hoped that the already deeply afflicted people in those States may be somewhat more ready to give up the cause of their affliction, if, to this extent, this vital matter be left to themselves; while no power of the national Executive to prevent an abuse is abridged by the proposition.

The suggestion in the proclamation as to maintaining the political framework of the States on what is called reconstruction is made in the hope that it may do good without danger of harm. It will save labor and avoid great confusion.

But why any proclamation now upon this subject? This question is beset with the conflicting views that the step might be delayed too long or be taken too soon. In some States the elements for resumption seem ready for action, but remain inactive apparently for want of a rallying-point—a plan of action. Why shall A adopt the plan of B, rather than B that of A? And, if A and B should agree, how can they know but that the general Government here will reject their plan? By the proclamation a plan is presented which may be accepted by them as a rallying-point, and which they are assured in advance will not be rejected here. This may bring them to act sooner than they otherwise would.

The objection to a premature presentation of a plan by the national Executive consists in the danger of committals on points which could be more safely left to further developments. Care has been taken to so shape the document as to avoid embarrassments from this source. Saying that, on certain terms, certain classes will be pardoned, with rights restored, it is not said that other classes, or other terms, will never be included. Saying that reconstruction will be accepted if presented in a specified way, it is not said it will never be accepted in any other way.

The movements, by State action, for emancipation in several of the States not included in the Emancipation Proclamation, are matters of profound gratulation. And while I do not repeat in detail what I have heretofore so earnestly urged upon this subject, my general views and feelings remain unchanged; and I trust that Congress will omit no fair opportunity of aiding these important steps to a great consummation.

Reconstruction Proclamation

The proclamation in regard to reconstruction contained the following provisions:

1. It offered amnesty to all but specified classes of leading men;
2. It declared that a State government might be reconstructed as soon as one-tenth of the voters of 1860, qualified by State laws, "excluding all others," should take the prescribed oath;
3. It declared that, if such State government were republican in form, it should "receive the benefits" of the guaranty clause;
4. It excepted States where loyal governments had always been maintained; but,
5. It added the caution that the admission of Senators and Representatives was a matter exclusively "resting with the two Houses, and not to any extent with the Executive." The proclamation further remarked that "any provision which may be adopted by such State government in relation to the freed people of such State, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition as a laboring, landless, homeless class, will not be objected to by the national Executive."

The amnesty offered was accepted by very few persons.

On March 22, 1864, Henry Winter Davis [Md.] succeeded in getting before the House of Representatives a resolution which he had offered early in the session, guaranteeing to States in rebellion "a republican form of government."

Governments for Rebellious States

House of Representatives, March 22–May 4, 1864

Mr. Davis spoke as follows upon his resolution:

The vote of gentlemen upon this measure will be regarded by the country with no ordinary interest. Their vote will be taken to express their opinion on the necessity of ending slavery

with the rebellion, and their willingness to assume the responsibility of adopting the legislative measures without which that result cannot be assured, and may wholly fail of accomplishment. The measure now proposed, or any adequate and proper measure to accomplish its purpose, is entitled to the support of all gentlemen upon this side of the House, not less of those who think that the rebellion has placed the citizens of the rebel States beyond the protection of the Constitution, and that Congress, therefore, has supreme power over them as conquered enemies, than of that other class who think that they have not ceased to be citizens and States of the United States, though incapable of exercising political privileges under the Constitution, but that Congress is charged with a high political power by the Constitution to guarantee republican governments in the States, and that this is the proper time and the proper mode of exercising it. It is also entitled to the favorable consideration of gentlemen upon the other side of the House who honestly and deliberately express their judgment that slavery is dead. To them it puts the question whether it is not advisable to bury it out of sight that its ghost may no longer stalk abroad to frighten us from our propriety.

It purports, sir, not to exercise a revolutionary authority, but to be an execution of the Constitution of the United States, of the fourth section of the fourth article of that Constitution, which not merely confers the power upon Congress, but imposes upon Congress the duty of guaranteeing to every State in this Union a republican form of government. That clause vests in the Congress of the United States a plenary, supreme, unlimited political jurisdiction, paramount over courts, subject only to the judgment of the people of the United States, embracing within its scope every legislative measure necessary and proper to make it effectual and what is necessary and proper the Constitution refers, in the first place, to our judgment, subject to no revision but that of the people. It recognizes no other tribunal. It recognizes the judgment of no court. It refers to no authority except the judgment and will of the majority of Congress and of the people on that judgment, if any appeal from it. It is intended to meet all the emergencies of the national life.

It is the result of every principle of law that there can be no republican government within the limits of the United States that does not recognize, but does repudiate, the Constitution, and which the President and the Congress of the United States do not, on their part, recognize. Those that are here

represented are the only governments existing within the limits of the United States. Those that are not here represented are not governments of the States, republican under the Constitution. And, if they be not, then they are military usurpations, inaugurated as the permanent governments of the States, contrary to the supreme law of the land, arrayed in arms against the Government of the United States; and it is the duty, the first and highest duty, of the Government to suppress and expel them. Congress must either expel or recognize and support them. If it do not guarantee them it is bound to expel them; and they who are not ready to suppress them are bound to recognize them.

The Supreme Court of the United States in declining jurisdiction of political questions such as these, in the famous Rhode Island cases, declared, by the mouth of Chief Justice Taney, in the presidency of John Tyler, that a military government, established as the permanent government of a State, is not a republican government in the meaning of the Constitution, and that it is the duty of Congress to suppress it. That duty Congress is now executing by its armies. He further said in that case that it is the exclusive prerogative of Congress—of Congress, and not of the President—to determine what is and what is not the established government of the State! and to come to that conclusion it must judge of what is and what is not a republican government.

What jurisdiction does the duty of guaranteeing a republican government confer, under present circumstances, upon Congress? What laws may it pass? The rebel States must be governed by Congress till they submit and form a State government under the Constitution; or Congress must recognize State governments which do not recognize either Congress or the Constitution of the United States; or there must be an entire absence of *all* government in the rebel States; and that is anarchy. To recognize a government which does not recognize the Constitution is absurd, for a government is not a constitution; and the recognition of a State government means the acknowledgment of men as governors and legislators and judges actually invested with power to make laws, to judge of crimes, to convict the citizens of other States, to demand the surrender of fugitives from justice, to arm and command the militia, to require the United States to repress all opposition to its authority, and to protect it from invasion—against our own armies; whose Senators and Representatives are *entitled* to seats in Congress, and whose electoral votes must be counted in the election of the President of a Government which they disown and defy! To accept the

alternative of anarchy as the constitutional condition of a State is to assert the failure of the Constitution and the end of republican government. Until, therefore, Congress recognize a State government, organized under its auspices, there is no government in the rebel States except the authority of Congress. In the absence of all State government, the duty is imposed on Congress to provide by law to keep the peace, to administer justice, to watch over the transmission of decedents' estates, to sanction marriages; in a word, to administer civil government until the people shall, under its guidance, submit to the Constitution of the United States, and, under the laws which it shall impose, and on the conditions Congress may require, reorganize a republican government for themselves, and Congress shall recognize that government.

But we have not yet suppressed the insurrection. We are still engaged in removing armed rebellion. Is it yet time to reorganize the State governments, or is there not an intermediate period in which sound legislative wisdom requires that the authority of Congress shall take possession of and temporarily control the States now in rebellion until peace shall be restored and republican government can be established deliberately, undisturbed by the sound or fear of arms, and under the guidance of law?

What is the condition of the rebellion at this time? There is no portion of the rebel States where peace has been so far restored that our military power can be withdrawn for a moment without instant insurrection. There is no rebel State held now by the United States enough of whose population adheres to the Union to be intrusted with the government of the State. One-tenth cannot control nine-tenths. Only in West Virginia, and possibly Tennessee, does our authority exist. You can get a handful of men in the other seceded States who would be glad to take the offices if protected by the troops of the United States, but you have nowhere a body of independent, loyal partisans of the United States, ready to meet the rebels in arms, ready to die for the Republic, who claim the Constitution as their birthright, count all other privileges light in comparison, and are resolved at every hazard to maintain it.

The loyal masses of the South, of which we hear so much, what was their temper at the outbreak of the rebellion? what is their temper now? It is the most astounding spectacle in history that in the Southern States, with more than half of the population opposed to it, a great revolution was effected against their wishes and against their votes, without a battle, a riot, or a

protest in behalf of the beneficent Government of their fathers —a revolution whose opponents hastened to lead it, without a martyr to the cause they deserted except the nameless heroes of the mountains of Tennessee, or a confessor of the faith they had avowed save the illustrious Petigru of South Carolina!

Doubtful of the issues of the war, exhausted by bloodshed, anxious for peace—peace and *independence*—there are some who will accept peace and union, but they are not men who will draw the sword for the United States, and they would be equally content with peace and independence.

What, then, are we to do with the population in these States? To make "confusion worse confounded" by erecting by the side of the hostile State government a new State government on the shifting sands of that whirlpool, to be supported by us while we are there and to turn its power against us when we are driven out? That would be to erect a new throne where

> "Chaos umpire sits,
> And by decision more embroils the fray
> By which he reigns."

In my judgment it is not safe to confide the vast authority of State governments to the doubtful loyalty of the rebel States until armed rebellion shall have been trampled into the dust, until every armed rebel shall have vanished from the State, until there shall be in the South no hope of independence and no fear of subjection, until the United States is bearded by no military power and the laws can be executed by courts and sheriffs without the ever-present menace of military authority. Until we have reached that point this bill proposes that the President shall appoint a civil governor to administer the government under the laws of the United States and the laws in force in the States respectively at the outbreak of the rebellion, subject, of course, to the necessities of military occupation.

When military opposition shall have been suppressed, not merely pushed back, then call upon the people to reorganize in their own way, subject to the conditions that we think essential to our permanent peace and to prevent the revival hereafter of the rebellion, a republican government in the form that the people of the United States can agree to.

Now, for that purpose there are three modes indicated. One is to remove the cause of the war by an alteration of the Constitution of the United States prohibiting slavery everywhere within its limits. That, sir, goes to the root of the matter, and

should consecrate the nation's triumph. But there are thirty-four States—three-fourths of them would be twenty-six. I believe there are twenty-five States represented in this Congress; so that we on that basis cannot change the Constitution. It is therefore a condition precedent in that view of the case that more States shall have governments organized within them.

The next plan is that inaugurated by the President of the United States in the proclamation of the 8th December, called the amnesty proclamation. That proposes no guardianship of the United States over the reorganization of the governments, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the election. But if, in any manner, by the toleration of martial law lately proclaimed the fundamental law, under the dictation of any military authority, or under the prescriptions of a provost marshal, something in the form of a government shall be presented, represented to rest on the votes of one-tenth of the population, the President will recognize that, provided it does not *contravene* the proclamation of freedom and the laws of Congress; and, to secure that, an oath is exacted.

Now you will observe that there is no guaranty of law to watch over the organization of that government. It may combine all the population of a State; it may combine one-tenth only; or ten governments may come competing for recognition at the door of the executive mansion. The executive authority is pledged; Congress is not pledged. It may be recognized by the military power and may not be recognized by the civil power, so that it would have a doubtful existence, half civil and half military, neither a temporary government by law of Congress, nor a State government, something as unknown to the Constitution as the rebel government that refuses to recognize it.

But what is the proclamation which the new governments must not contravene? That certain negroes shall be free, and that certain other negroes shall remain slaves. The proclamation therefore recognizes the existence of slavery. It does just exactly what all the constitutions of the rebel States prior to the rebellion did. It recognizes the existence of slavery, and they recognize the existence of slavery; and, therefore, the old constitutions might be restored to-morrow without *contravening* the proclamation of freedom. Those constitutions do not say that the President shall not have the right, in the exercise of his military authority, to emancipate slaves within the States. They say nothing of the kind. They do not even establish slavery.

There is not a constitution in all the rebel States that formally declares slavery to be the supreme law of the land. They merely recognize it just as the proclamation recognizes its existence in parts of Virginia and in parts of Louisiana. So that the one-tenth of the population at whose hands the President proposes to accept and guarantee a State government can elect officers under the old constitution of their State in exactly the same terms and with exactly the same powers existing at the time of the rebellion, and may under his proclamation demand a recognition. No man will say that there is one word in their laws that contravenes what purports to be a paramount, not a subordinate, order. So soon as the State government is recognized the operation of the proclamation becomes merely a judicial question. The right of a negro to his freedom is a legal right divesting a right of property, and is to be enforced in the courts; and then the question is what the courts will say about the proclamation. Is it valid or invalid? Does it of itself confer a legal right to freedom on negroes who were slaves? Is it within the authority of the Executive? These are the only questions open under such a government; and how local State courts created by the Southern people will decide such a question *no one* can doubt; for it is quite certain that the great mass of that population is devoted to the system of slave labor; and, though if the question be whether they will give up slavery as the condition precedent to the restoration of a State government, they will abandon it; yet if it be whether they prefer to maintain or abolish slavery, there is not the least doubt that their voice would be almost unanimous for its maintenance. If they have the decision we know what it will be already. It is therefore under the scheme of the President merely a judicial question, to be adjudged by judicial rules, and to be determined by the courts. It is a question whether each individual negro be free. It is a question whether the master has the right of seizure, or the negro can control himself. It is to be determined by the writ of *habeas corpus*. It is a question of personal right, not a question of political jurisdiction. Its fate in the State courts is certain. Its fate in the courts of the United States under existing laws is scarcely doubtful.

Fernando C. Beaman [Mich.] supported the resolution. He denied the doctrine of secession and insisted that, though a State might commit treason, it was still the imperative duty of the national authority to provide

a government for the people and restore domestic tranquillity.

In the beginning of the war, he said, the Government was very cautious that it should do nothing which might admit, even inferentially, that the rebel States had in law seceded. We did not clearly distinguish between abandonment or abrogation and legal secession. We did not immediately discover that the destruction of local government had prepared the way for the substitution of Federal authority. Hence State laws, especially in regard to slaves, were respected by the generals in the field.

Even in this hall, for a long time during the last Congress, we exhibited the farce of calling on South Carolina and her sister conspirators for bills and resolutions. In July, 1862, the President—with his habitual caution and prudence, and in consonance, it is believed, with a very extensive public sentiment, in a solemn document in relation to the confiscation act laid before both Houses of Congress—declared that it was "startling to say that Congress can free a slave within a State"; and yet, on the 1st day of January following, he issued a proclamation that will render his name as famous and imperishable as that of Washington, in which he declared freedom to nearly all the slaves in the seceded districts.

But now we have advanced from this position. We have, after much delay, determined to confiscate the property of rebels. We no longer drive back the fugitive from oppression to miserable bondage. We no longer force him against his will to prosecute acts of treason and rebellion, but we invite him to partake of the blessings of freedom; we give him a musket, and rank him among the defenders of the country. We have determined to prosecute the war in accordance with the laws of nations, disregarding the pretended constitutional claims of rebels in arms.

Still, sir, there is some difference of opinion in the country in regard to the proper mode of treating those States and in respect to the power of Congress over them. I regard the difference of opinion on this side of the House as one rather of terms than of ideas, of theory rather than of practice. Whether, as it seems to me, the State is out of existence, or as is alleged by the gentleman from Maryland [Mr. Davis] the State survives, but the Government is abrogated and the Constitution is "absolutely dead" (which I think is substantially the same proposition),

"and incapable of revival except by a revolutionary process"; or, as is affirmed by the gentleman from Pennsylvania [Thaddeus Stevens], the seceded States are foreign powers, is not perhaps material to the present discussion. The important inquiry is not what technical words will most aptly define the anomalous condition of the seceded districts, but the pertinent, practical questions are, What can we do with them? How far can the National Government exercise jurisdiction within its own territorial limits? To what extent may it intervene to protect its own loyal citizens in the midst of rebels? What are its powers as an agent in the reëstablishment of lawful State governments, and to what extent may it provide for security in the future?

Each of the theories to which I have referred asserts all the power necessary to warrant the passage of the bill in question, as well as all the authority that I have ever deemed requisite for a safe construction of the Government. If the State be abrogated we may permit a new creation with such restrictions as we may be pleased to direct. If the State survives, but her constitution and government have been destroyed, we may allow a reorganization under such conditions and with such limitations as we see proper to impose. If the State has become a foreign power, then, as a conquered province, we may treat her as a part of the national domain; and in either case we may provide for her people suitable government and for such length of time as she shall be unable to resume her place in the Union. Indeed, we are solemnly bound by the organic law to "guarantee to every State in this Union a republican form of government." But how? What is the construction of this provision, and what is the extent of the obligation? It is clear that it does not bind the Union in any case to maintain a State government. Such an obligation would be as absurd as it would be impossible of performance.

This clause in the Constitution, by misconstruction, as it seems to me, has led the minds of gentlemen into the strangest and wildest mystification. They argue that as a necessary consequence of its existence, both in law and in fact, a State once organized and admitted into the Union will ever remain a legitimate, organized State; and, therefore, assuming this as a postulate, it is alleged that in theory a State cannot secede. Whether there may be secession in fact is a question of physical power. Should the rebels prevail and establish their independence, such a result would not vindicate the doctrine of secession, but it would be the establishment of secession in fact. Would it not, in that event, be ridiculous to affirm that because, by the Constitution, there is to every State guaranteed a republican form of government, therefore those established independent States were still States of the Union?

For the same reason, it is said that no State can commit suicide; but no sane man believes that a policy of life assurance will secure immortality to the assured.

Now it seems to me that the principles applicable to the questions of secession, State suicide, and abrogation of State constitutions and State governments are simple and easily illustrated. No State can, without consent, legally withdraw from the Union; therefore there can be no legal secession. No State can release her territory and people from the claims and injunctions of the Federal Constitution until she shall have established her independence by force of arms; so in that sense no State is out of the Union. When a State, by the consent and active participation of her officers and people, has repudiated and foresworn the Federal authority and joined an antagonistic confederacy, she is no longer a State in the Union; but her territory and people, until she shall have established her enfranchisement, will remain within the jurisdiction of the United States and amenable to Federal authority. If she succeeds, whatever may be the guaranties of the organic law, her whole territory is out of the Union. By the action of the people and the State authorities in making war upon the United States and forming a foreign alliance, the State, or the government, if you like the term better, is out of existence. Certainly you do not recognize the rebel authorities, and there is no other in those States; so it follows that there is no government in the seceded district that can be recognized under the Federal Constitution. As here used, I regard the terms State and government as synonymous, because I cannot conceive of a State, in the sense used, as applicable to our political system, without some kind of governmental organization.

Now, I repeat that the Constitution does not guarantee that every State shall maintain a State government. The Federal Government has pledged its faith that no State of the Union shall be forced or even permitted to have a monarchical government, and that it will render all needful aid to enable the people to sustain one republican in form; but if they will not have it you cannot exercise the functions of State government for them. Such is the present condition of the rebellious districts. They had State governments under the Constitution and within the Union, but they tore them into pieces and cast away the fragments. But amid the traitors, surrounded by the ruins of those

fallen governments, are true patriots and loyal men. They are citizens of our common country, and entitled to all the benefits guaranteed by the Federal Constitution. They had not votes and arms sufficient to resist the traitors. You have strength to crush out rebellion, but you cannot vote nor elect officers for them. But you can give them temporary government, republican in form, such as is now enjoyed by hundreds of thousands of American citizens without the limits of State organizations; and adopt prompt and efficient measures for an early restoration to their former rights and privileges. Such, I understand, is the purpose of the bill.

The resolution was referred to a special committee, a majority of whom reported, on April 19, a bill with the following provisions:

1. Appointment of provisional governors for the seceded States by the President with the consent of the Senate.
2. When insurrection in any of the States has been suppressed the provisional governor shall enroll its white male citizens, and, when the number of those who take the oath of allegiance to the Federal Government amounts to one-tenth of the whole, he shall call a convention of these to establish a State government.
3. The number of delegates to this convention shall be that of the last constitutional State legislature, appointed by the provisional governor among the counties. The provisional governor shall fix and control the election to the convention and preside over its deliberations.
4. No person who has held office (civil or military) under the rebel usurpation, or has borne arms against the Federal Government, shall vote for a delegate or be elected as one, even though he takes the oath of allegiance.
5. The State government adopted by the convention shall provide: (a) that no one who has held office under the rebel usurpation shall vote for State officers or serve as such; (b) slavery shall be forever prohibited; (c) no debt, State or Confederate, which has been contracted under the usurping power shall be recognized or paid.
6. The new constitution shall be submitted to the vote of the loyal people of the State, and, if it is ratified by them, the State shall be proclaimed by the President, with the assent of Congress, as a State on equal terms with those which had not seceded from the Union.

7. If the convention shall refuse to adopt a constitution on the conditions provided, the provisional governor shall dissolve it, and, when he has reason to believe that another convention will adopt such a constitution, shall call this for the purpose of doing so.
8. Until a permanent State organization has been affected the provisional governor shall execute the Federal laws, and the laws of the State the year before secession, and shall not recognize slavery. To assist him in this the President shall appoint such State officers as are necessary.
9. The taxes collected under the laws of the States shall be applied to the State administration, and any surplus shall be reserved in the Federal treasury to be turned over to the permanent State government when this is organized.
10. All slaves shall be freed, and persons attempting to restrain them of their liberty shall be fined and imprisoned.
11. Every person who shall hereafter hold any office, civil or military, in the rebel service is declared not to be a citizen of the United States.

James C. Allen [Ill.] a member of the committee, spoke against the bill. He said that the method proposed was an innovation in our political system and that the powers conferred were unconstitutional, being in derogation of the rights of the States and of the people.

If the States were out of the Union, he asked, when did they get out, and how did they become foreign States?

By resisting the authority of the United States with force? Surely not. They could not thus cut asunder the ligaments that bound them to the Federal Government and release themselves from the obligations and duties which they owed to it, unless this resistance had been carried to a point where the Government had given its consent to a separation, the point at which all revolutions become successful. It will not be contended by the friends of this bill that that point has been reached. Then if they have not thus hewn their way out of the Union to the position of foreign States, how else could they get out? There is but one other way, and that is by their ordinances of secession. If they could go out by act of secession without consent of the Federal Government, then they are foreign States, and their citizens owe obedience and allegiance to another government,

and the war we have been waging against them is not a war to vindicate the supremacy of the Constitution and the laws of the Federal Government, but a war of conquest for the subjugation of a foreign people. If they became foreign States by the act of secession, then they had a right to secede. If they had no right under the Constitution and laws to secede, then their ordinances of secession were void, and they are yet States in the Union, and the allegiance and obedience of their citizens are due to the Federal Government, in all that the Federal Government has a right to demand.

But these States were not regarded by the Government as out of the Union. The President and Congress did not so regard them. The people, when they rallied under the call for troops, rallied under a belief that the war was a war to maintain the Union, to vindicate the supremacy of the laws over men and States in rebellion against rightful authority. It is true we treat their citizens, when captured with arms in their hands, as prisoners of war, entitled to the rights that pertain to belligerents under the usages of war; but we do this, not because we regard them as citizens or soldiers of a foreign government, but because humanity and the interest of our own soldiers captured by them require that we should thus treat them.

This bill is based upon the supposition that the time will come when these people will be willing to return to allegiance and duty. But it contains provisions which destroy the equality of these States and curtail the rights of their citizens. I know gentlemen are ready to answer that these people have forfeited the protection which the Constitution gives to the law-abiding citizen and have no right to claim the protection of the Constitution. I answer, they have rendered themselves amenable to the penalties prescribed by the Constitution and laws by their rebellion, and it will remain with the Government to say how far these penalties may be inflicted upon them when again brought within their reach; but you can only inflict penalties on individuals. You cannot, and ought not if you could, to fix the badge of inequality upon the States, for I assume if these States are not entitled to equality of right in the sisterhood of States then they ought not to be in the sisterhood. This is the theory of our Constitution, and has ever been the practice of the Government. No plan for the reorganization of these States will be successful that does not keep this fact in view. Their reorganization on any other basis will be effected only by force, and their people will yield only such obedience to the Government as is exacted by force.

The President's plan, as set forth in his amnesty proclamation of December last, is subject to the same objection. The House will pardon me if for a moment I wander from my argument upon this bill to pay a passing notice to that proclamation, although it may be deemed a work of supererogation to discuss a document of such unlimited pretension that has so soon fallen into such general contempt. In regard to it, I agree with much that was said by the gentleman from Maryland [Mr. Davis], that it is not worth the paper upon which it is written; that the President possessed no constitutional power to enforce it; that it is a dead letter except in the presence of the army. That it was intended to increase the President's power on the floor of the House and of the Senate, and more particularly in the electoral college, are facts too palpable to be successfully controverted. I need not say that the powers assumed in the proclamation are not only dangerous to civil liberty, but that their exercise is military usurpation. If he can in time of war suspend one portion of the Constitution under the pretext of military necessity, he can suspend the whole instrument, and make his power not only absolute, but perpetual; he can suspend that provision of the Constitution which authorizes the people to elect his successor in November next, and install him into office on the 4th of March following; he can issue his mandate and disperse the two Houses of Congress; he can send his posse into your court-rooms and drive the judges from the bench. All these things he can do if he has power to dictate to a State what its State constitution shall or shall not contain. What power the President possesses, either in peace or in war, he derives from the Constitution. Whatever powers he exercises must be exercised in pursuance of its warrant, and when he steps beyond the power conferred by that instrument he becomes to that extent a usurper.

This bill in some respects is an improvement upon the President's plan of reconstruction. It preserves the geographical boundaries of the States, and would prevent the division of one of these States into two or more States. It also in a subsequent section provides that Congress shall determine when they have sufficiently reformed their State governments as to entitle them to a representation upon this floor and in the Senate. It vindicates, to this extent, the dignity and power of Congress over these questions, but at the same time it is obnoxious to serious objections, some of which are embraced in the President's plan. One of the most prominent is that it carries out a feature in the President's plan which enables one-tenth of the citizens to make

constitutions and laws for the government of the other nine-tenths.

The President would have created a sort of order of nobility, the patent whereof he proposed to bestow, not for eminent service to the State or upon the field, or for valuable discoveries, which is usual in governments where these orders are created, but on account of their sycophancy, in taking an oath to support and maintain the President's proclamations as coming within his prerogative and power. This bill proposes to confer the same dignity upon one-tenth, but for a different reason; but it is no less objectionable in principle.

This bill is based upon the idea that these are yet States in the Union with the State governments usurped or overthrown. What, then, is necessary to be done to restore rightful rule within their limits? They have the same constitutions and the same laws they had before the rebellion; they have not been abrogated nor changed; no attempt has been made to change them in any very important particular except in the change of the form of oath which officers of State should take when they are required to take an oath to support the constitution of the Confederacy instead of the oath to support the Constitution of the United States. Their constitutions in this respect are not really changed. Having no power to secede, not being out of the Union, the change in this regard is void and has no effect; so with whatever legislation has been had in contravention of the Constitution of the United States, it being the supreme law of the land operating there as elsewhere. What, then, is needed? Not constitution and laws; they have them already. But their offices, executive, ministerial, judicial, and legislative, have been usurped and their functions performed by men who refused to acknowledge their obligations to the Federal Government, and who have been sustained in this refusal by military force. What is needed, then are new incumbents in these offices, men who will acknowledge the authority of the Federal Government and pay respect and obedience to its laws. They require a reform in the administration of their State governments already existing. When this reform is wrought all conflict between the Federal Government and the State governments will cease.

These States do not, nor will they, occupy toward the general Government the relation of Territories. Hence no authority can be found to authorize this legislation in those provisions of the Constitution relating to Territories. Nor will they occupy the relation to the Government that conquered provinces occupy to the government making the conquest. Usually the laws of

the conquered are so different, so antagonistic to the laws of the conqueror as to require radical change to adapt them to their new relation. But such is not the case in these States. Their constitutions and their laws are such as have always been recognized by the Federal Government as republican in form and consonant with the principles of our Constitution. Hence the power to enforce upon these people the provisions of this bill must be found in some other provision of that instrument. The gentleman from Maryland [Mr. Davis] contends that he discovers the power in section four, article four, of the Constitution, which reads as follows:

"The United States shall guarantee to every State in the Union a republican form of government."

That provision cannot apply to States already having constitutions and laws republican in form.

Now, one who guarantees the performance of a contract is not the one who undertakes to perform its stipulations. So, when Congress is required to guarantee republican forms of government to the States, it requires only that Congress shall see that the States enjoy such a form of government, and protect them in its enjoyment.

Mr. Allen further objected to the bill as anti-republican, because it imposed State governments upon the people of the States without leaving them a really free choice in the matter.

The bill not only undertakes to direct what shall be in their constitutions on certain subjects, but it determines also who shall and who shall not enjoy the elective franchise and be eligible to office. This power not having been conferred by the Constitution upon Congress, belongs exclusively to the State. If any one controverts this position I would refer him to the first article, second section, of the Constitution, where, in providing for the election of Representatives to Congress, we read that "the electors in the several States shall have the qualifications requisite for electors to the most numerous branch of the State legislature," leaving the conclusion irresistible that it is to the State belongs the power of determining this question.

The bill is obnoxious to the further objection that it gives to the President of the United States the power, through his military governors and his provost marshals, to mold the Constitution and laws to suit himself on questions where Congress does not intervene, and between what power Congress exercises, and what the President, through his military, would exercise, the

people would have none left. These questions should be left to the people as they are left in other States, without the intervention of Congress or the Executive.

I confess, sir, that in my view it is a very grave offence to resist, by force of arms, the authority of the Government. But is it such an offence as requires Congress, in violation of constitutional right, to step in and take away from the offender the elective franchise? If so, I fear that some, who, in the modern acceptation of the term, are extremely loyal, would suffer from such a law. Some in Massachusetts, in Ohio, and in my own State have been guilty, in times past, of resisting the authorities of the United States in enforcing the Fugitive Slave law.

If the people are not capable of making constitutions and laws for themselves, then our form of free Government is a failure, and let us say so, and take the necessary steps to change it. But do not, under the forms of a republic and under the constitution of a republic, play the dictator. Let us not, under the pretext of giving to the States a republican Government, force upon them one in which the main features of a republic are swallowed up in congressional dictation.

Again, this bill requires that the constitution which the State shall adopt shall contain a provision "that no debt, State or confederate, created by or under the sanction of the usurping power shall be recognized or paid by the State." That is also a question that ought to be left to the State to determine. There were many men in those States when the rebellion first broke out who had their property taken by the usurping State authorities under a promise to pay for it, men who were then, and are yet, true to the Union, but who were left without any protection from the Federal Government, who were left to the mercy of the usurping power; and for Congress to compel the State to repudiate such an obligation and leave one whom the Government did not, and could not, protect to beggary and want would, in my judgment, be to commit an injustice for which there can be no excuse. Let the State, in the exercise of a wise discretion, determine what ought to be paid and what ought to be rejected. The burden of such payments will fall upon the people of the States if they see fit to assume them. Let us not in a mere wanton exercise of power do that which will appear unjust in the eyes of the world. We can trust them on that question if we can trust them with the management of a State government.

But there is another provision by which Congress assumes to exercise a power which does not belong to it. I allude to the provision which requires these State to incorporate into their

constitutions a clause prohibiting involuntary servitude. There are three provisions in this section that Congress declares shall be in their State constitutions; provisions over which the people of the State to be affected by them are to have no control; questions reserved to the States by the Constitution; questions which Congress cannot determine for them without exceeding its authority, and without violating the principles of republican government.

The bill contains other provisions not within the power of Congress. One abolishes slavery in these States as far as an act of Congress can abolish it. It not only abolishes it, but it takes away from the courts, as far as an act of Congress can take away, the power of passing upon the right of Congress to abolish it. It declares that, if any one declared free by this act shall be held under pretence of claim to service or labor, the courts, upon *habeas corpus*, shall discharge such a one.

Another provision attempts to give legal effect to the President's proclamation by prescribing the punishment of those who shall attempt to restrain the liberty of any one declared free by that proclamation.

In these two sections, as well as in section seven, the advocates of this bill "overleap" all constitutional barriers and press on to the accomplishment of their purposes, in contempt of the rights of the States and of the people, sowing broadcast, as they go, the seeds of distrust and revolution, fulfilling the prediction that when they obtained the power they would trample under foot and dishonor the Constitution. If this House have determined to pass this bill, I have no reason to suppose that anything I can say will be heard; since to its advocates the freedom of what slaves are left is of more moment than the Constitution, which secures the civil liberty of our own race.

But gentlemen say we must bury slavery out of our sight. If the people desire it buried let it be done, but let its funeral be conducted according to the covenants of the Constitution. Let us not break the faith pledged by the fathers. Let us not forget that by a faithful and strict compliance with our obligations in giving to each State and each individual that which belongs to them, under the Constitution, we vindicate the law and increase our own security, and that by violating its provisions we ourselves become revolutionists.

Let us not, in our effort to destroy slavery if it be alive or to bury it if it be dead, destroy the fundamental law of our Government, and leave our own race a prey to anarchy or despotism. Some one suggested that when slavery was buried upon its tomb-

stone should be written, "Slavery—died of the rebellion." I warn gentlemen to beware, lest beside the grave of slavery be found another grave and another tombstone, whereon history will write, "Civil liberty—died of revolution."

Nathaniel B. Smithers [Del.], a member of the committee, supported the bill.

In a nation allegiance and protection are correlative. Therefore the loyal people of a seceded State are the repositories of its power and unorganized sovereignty. Providing the preliminary arrangements for reorganization must of necessity begin *de novo* with the rude elements of an unformed political society, the first step in the formation of a government based upon the will of the people is to determine of what persons that people shall be deemed to consist. By the terms of the bill all white male citizens are to be enrolled; but inasmuch as rebels are citizens of the United States, though arrayed against its authority, a test must necessarily be applied to ascertain who, being loyal, are entitled to participate in framing the organic law. The bill does not regard any right as pertaining to those adhering to the rebellion. They are excluded from all share in the Government formed under its auspices. The test proposed is an oath to support the Constitution of the United States. The persons thus taking the oath must constitute a majority of those who are enrolled. These persons so enrolled and testifying to their loyalty are deemed to constitute the people. By their assent the machinery of government is to be set in motion. On their consent the Constitution to be ordained is to rest, not only in the origin of the convention, but in its ratification by their express will.

How, then, can it be pretended that the Government is not based upon the consent of the governed? Is it because persons are excluded who refuse to qualify themselves by taking the oath of allegiance? Surely it can be no deprivation of any political right to declare that he who renounces obedience to the Government shall not have the privilege to determine concerning the form of State government to be established.

I deny that a rebel has any political rights. I deny that in any legitimate sense he is or ought to be held as one of the people authorized to form or administer government. That he is not recognized by this bill as entitled to citizenship is the result of his own refusal to acknowledge allegiance to the United States.

But it may also be alleged, Mr. Speaker, that the bill is objectionable because it provides that a number less than a majority of those who were formerly citizens of the State may ordain the constitution.

If this comprises all the loyal people it is difficult to discover on what principle it can be denounced as anti-republican. If they are satisfied with the law of restoration, in accordance with the act of Congress, who has the right to complain? By their own volition they accept the terms of reorganization, and it ill behooves those not subject to the laws which they enact for their own government to deny them the privilege of entering into the administration of their own domestic affairs.

The proportion to be established by the bill is a matter for consideration; not with the view of avoiding the charge of a violation of the principle of republican government, but of ascertaining whether there is a body capable of self-rule and of maintaining civil administration in the State.

But, Mr. Speaker, we are also met with the objection that this bill, by the provision of emancipation, interferes with the rights of the several States within its purview to regulate their domestic institutions. This is no novel suggestion. It is as old as the struggle for the adoption of the Constitution. It constituted a material portion of the argument of those who arrayed themselves against the formation of the National Government. From that time until now it has been constantly thrust forward in every discussion involving the right of Congress to adopt measures requisite for the national advantage. Do we propose to exercise the power of regulating the currency? We are met by the dogma of State rights, enlisted in the interest of local banks. Do we endeavor to exert our authority to regulate commerce? We are confronted with the same phantom of State rights, pressed into the service of some municipal corporation. Do we determine to save the Government, reeling beneath the blows of a formidable rebellion organized and operated by the instrumentality of African slavery? We dare not accomplish its suppression and prevent the contingency of future insurrections for fear we shall invade the hallowed precincts of State rights.

Mr. Speaker, it is time that there was an end to this delusion. The danger to this people is not from centralization, but disintegration. If indeed there were such antagonism between the two systems of government [national and State] that one or the other must perish, it would be for the people to judge which should be sacrificed: whether that which renders us great and

powerful and prosperous should give way to the maintenance of petty municipalities that could secure neither respect abroad nor concord at home. Should the dread alternative be presented, I mistake the temper of the people, and their estimation of the solid and substantial benefits of the Union, if they would not choose a consolidated and centralized Government rather than underlie the calamities incident to individual States or miserable confederacies, the inevitable prey of intestine strife and foreign domination.

On April 29 Thomas Williams [Pa.] spoke in favor of Congress reconstructing the governments of the seceded States as if they were Territories, and against military reconstruction by executive power.

These States are either *in* the Union, or they are *not*. Some people may think it makes no practical difference how we conclude on this point while the war is flagrant. That is not my judgment. It has seemed to me that all the irresolution, all the unsteadiness in our counsels, all the doubt and hesitation and delay, all the apparent obtuseness and obliquity of the moral sense, and many of the differences between good and loyal men here, were mainly referable to the fact of the failure to settle this great question, and settle it correctly, in advance. The war was inaugurated on the theory that they were *in*, when the great fact of war, which individuals cannot wage in the social state, and peoples do not wage upon themselves, was a proclamation that they were *out*. The Democrats of the North were willing to accept the fact that they were out, *without war*—to adopt the principle of the *laissez-nous faire*—the "let us alone" of the rebel authorities, and to treat with them upon the idea of a *reconstruction*, upon that kind of compromise which involves generally a traffic in principles, and that sort of mutuality where all is demand on the one side and concession on the other. They were willing to waive the right and the treason absolutely, and declined the alternative of war on the ground that the obligation was an imperfect one, whose performance depended upon the mere will of the contracting parties, and could not be enforced. With them it was peaceful secession, with *reconstruction by treaty*. The ruling thought was, of course, to spare, to save, to do as little harm as possible to those who were not our enemies, but our brethren—*sisters*, perhaps, I should say, albeit a little "wayward," whose anger was to be kissed away. The rebels were Democrats, whom it would be a sin to kill, and a greater

sin to rob of their sacred property in slaves. Better a hundred thousand free white Northern youth should die than one negro slave should be lost to his proprietor, or employed in arms against him. To carry out this policy we wanted conservative generals who would be sure to hurt nobody, and saw men made *heroes*—by newspaper process, as *great* men are now made since that manufacture seems to have passed out of the hands of Providence—not because they fought, and fought successfully, but because they would not fight at all.

But the light which was struck out from the collision of hostile bayonets, struggling up through the haze in which we were enveloped, began to dawn slowly upon the country. It was soon reflected back upon these Chambers, and statesmen began to feel that they were in the presence of a great fact that could not be conjured down by empiricism, or reasoned down except by the logic of artillery.

And now let us inquire for a moment how the public law of Christendom, as declared in the opinions of the publicists, and the practice of enlightened nations, squares with the present proposal.

It will be found, I think, that the most eminent of these writers are agreed in the opinion that the parties to a civil war, having no common judge, or common superior on earth, "must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies," and that "when a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, *the State is dissolved*, and the war between the two parties stands on the same ground, *in every respect*, as a public war between two different nations." This is the language of Vattel (pp. 425, 427), and the learned Barbeyrac, in his notes on the treatise of Grotius, (Book 3, cap. 6, sec. 27), affirms the same doctrine.

It is in direct antagonism therefore to the *law* which governs now, as to the *facts*, to say that these States are still in the Union as they were before. The theory that this Union was indissoluble refers only to *the right*, to its organic law, and to the purposes of the men who welded these States together; but never was intended to imply that it could not be ruptured by violence, as it has unquestionably been, leaving to the wronged and adhering States their remedy for the breach, not by enforcing a specific performance, which is impossible, but by the recovery of the territory which is ours by the contract, and the expulsion of the delinquents, with the forfeiture of all their rights in and under the Union, from which they have withdrawn.

To say with a gentleman from Kentucky [William H. Wadsworth] that this is an admission of the *right* to secede is to confound the *fact*, which is one thing, with the *right*, which is another. To assert with the gentleman from Missouri [Francis P. Blair, Jr.] that this is a concession of their independence, which would authorize their recognition by foreign powers, is to forget that we have rights which no violation of the contract by the other party can destroy. It would be just as sensible to insist that a judgment of outlawry was a release of the traitor from his allegiance, and authorized the government to which he fled to espouse his quarrel and adopt him as its citizen.

Upon this question of the forfeiture of political rights some further light may be borrowed from the practice of nations in the application of the *jus postliminii*, which refers, according to Grotius and Bynkershoek, as well to cases of territorial recapture where a whole community is involved as to those where the goods of a subject once seized as prize of war are afterward retaken from the hands of the captors. Here it will be found that even the provinces of a confederation which have been wrested from it by an enemy have not always been reinstated in their original privilege, as reason would seem to adjudge that they ought to be.

The speaker here instanced refusals of the States General of Holland to readmit into the Union provinces which had been wrested therefrom by the Spaniards and reorganized by the Dutch.

These, however, were cases of seizure and occupation by an enemy; ours, of a voluntary abdication of Federal rights and an organized resistance by governmental action to the Federal law. There is no case here, therefore, for the application of the law of postliminy. Some of these States, on the contrary, constructed out of Territories purchased by this Government, were lifted from the posture of subject and dependent provinces upon the platform of the Union, on the condition of obedience to its laws, and by their voluntary abdication of the privileges so conferred have, as it seems to me, by an inevitable logic, lapsed back again into the territorial condition. Where they have been recaptured the local governors have fled, the local organizations have been dissolved, and their territories are now under military occupation by the armies of the Union, or under provisional governors appointed by the Executive. This fact alone, as it seems to me, involves the admission that they are no longer in

the Union. If they are, that occupation is unlawful. If their governments are dissolved, however, they must, of course, be reconstructed under the auspices of the conquering power, and that not by the Executive, but by the legislature of the Union, whose sword he bears, and which only, consistently with the genius of our institutions, the past practice of the Government, and the letter as well as spirit of the Constitution, can venture to determine what use shall be made of the territories conquered by it, and when and upon what terms they shall be readmitted into full communion as members of this Government. It is not certainly the military power that is to reorganize, and modify, and breathe new life into their defunct constitutions. Until the end of subjugation is achieved and the resistance entirely overcome, so as to give place safely to the reëstablishment of the civil authority, a military occupation is indispensable, of course. When that period arrives the sword must be sheathed, and the Territory return to the direction of the law-making power, which will prescribe the rule for its government, and allow to its people the privilege of reorganizing under republican forms. I call it Territory and invoke the law that governs there, because I know of no intermediate condition. To permit any executive officer to declare its law, and set it in motion, and place it under the control of a minority—a mere tithe of its citizens—with power to send delegates to Congress with representation unimpaired and unaffected—even though he should reënact a part of its abrogated constitution—would be, as I think, a monstrous anomaly, a violation of fundamental principles, and a precedent fraught with great danger to republican liberty. Here is the dilemma. To come back into the Union a State must either be born anew or come back with all its right unimpaired, except those material ones which have been destroyed in the progress of the war. There is, I think, no middle ground, as there is no power either here or elsewhere to prescribe terms which shall abridge the rights or privileges of a State that has *not* been out of the Union, or returns to it in virtue of its original title.

When I suggest, however, that these States are *out*, it is with this important qualification, that they are out in point of *fact*, with a forfeiture of all their franchises as members thereof, whenever the issue of battle shall have been decided against them; but subjects of it still—members, if you choose—in legal contemplation, so far as regards their obligations and duties under the Constitution, and our right to visit them with punishmen for the delinquency, proportioned to the magnitude of their

offence. They are in for correction, but not for *heirship;* just like the unnatural child who has attempted the crime of parricide, and only succeeded in dyeing his murderous hands in the blood of his loyal brethren. It is bad logic to infer that because they are out without our consent, and have forfeited their rights thereby, that fact must be attended with a like forfeiture of our own. Nor would I, as already intimated, be understood as admitting that they are out as to foreign powers, who must respect our *title,* although our *possession* may be ousted, and treat the contest in all respects as a domestic one. No American of the right spirit would allow even a question of this sort to enter into our diplomatic correspondence with foreign powers, or consent to compromise our dignity and self-respect, which are at last the best security of nations, by uncovering the maternal bosom to the rude and insulting gaze of the stranger, and inviting his interference, either by misrepresenting the aims of our loyal citizens, or beseechingly deprecating his displeasure. I trust that our just pride as a people will not be again wounded by the production of another book like the diplomatic confessions of 1862.

It is suggested, however, by a gentleman from New York, on the other side of the House [Fernando Wood] that while we on this side are claiming to be for the Union, the enunciation of these doctrines by my able colleague [Thaddeus Stevens] amounts to a declaration that we are no longer a Union party. The meaning of this, if it means anything, is, that because the rebel States are *out*, without any agency of ours, but with a large share of the responsibility on the heads of those who, like the gentleman himself, encouraged the defection by their servility or by the assurance that they were opposed to coercion—as they oppose it now—and taught them to believe that they could go out with perfect impunity, and that New York and Pennsylvania would go out along with them—the mere statement of the fact that they were out is evidence that the party of the Administration on this floor is not in favor of the preservation of the Union! Well, we are in favor, at all events, of preserving all that is left of it, and intend, with the blessing of God, to win back the residue, and pass it through the fire until it shall come out purged of the malignant element that has unfitted it for freedom. But what does the honorable gentleman himself, what do those who vote with him really think on this subject? Does he, do they believe that the rebel States are not out? If he does not look upon them as a new and independent power in the commonwealth of nations why does he propose to

treat with them, not with the revolting States singly, but with "the authorities at Richmond"? How is it that in his own resolution he proposes, *in totidem verbis,* the "offer to the insurgents of an opportunity to *return to the Union*"? Who are the "authorities at Richmond"? Will he inform us whether they are a people known to our Constitution, or how these States are to *return* to the Union if they were never out of it? He stands, self-condemned by his own logic, as no Union man. I will allow him, however, the advantage of the admission that it is but a slipshod logic that cannot distinguish between the *law* and the *fact*. But that is true of himself and his party which he unjustly charges upon my colleague. The difference is just this, that, although the rebels have spurned and spit upon their Northern auxiliaries, rejected all their overtures, and declared that they will no longer associate with them upon any terms, and are not willing that they should even come "betwixt the wind and their nobility," he wishes to *treat* for the privilege of *serving* them, while we propose to *fight* for the purpose of chastising them into submission. This may be the result only of a difference of taste; but all history attests that there always are, as there always will be, men who love to wear the livery of a master, and are uncomfortable without it; who regard the collar as a badge of distinction, and would, at all events, rather carry it than quarrel with it. No wonder, therefore, at the opinion so often expressed by men of this sort in relation to the black man, that he would neither run away, nor bear arms against his master or anybody else. They did him injustice in supposing that he was like themselves. Pompey, who was an *involuntary* slave, is tending toward the north star with a musket in his hand, while his whole non-combatant substitute, a *voluntary* slave, is rushing southward with the olive-branch in his hand, into the patriarchal arms.

The objection rests, however, as I suppose, upon the remark that our right to deal with the rebel States after they shall have been reduced to submission by force of arms is not a question *under* the Constitution, but *outside* of it. I desire to say, once for all, that I do not concur in this opinion, because I find the war power *in* the Constitution with *all* its incidental consequences. If it is not there, the case is without remedy.

The doctrine of my colleague [Mr. Stevens], that these States are out of the Union, may seem at first blush extreme, but it is none the less palatable to me on that account. War is a radical disease, and radical diseases are to be treated only by radical means. One earnest and decided man is

worth, in times like these, a regiment of temporizers. Timid counsels have ruined many a state; they have never saved one, and never will. It may be a paradox, but if *conservatism* has ever operated to save a nation in such a crisis as ours, it has only been, as here, by acting as the dead-weight upon the plowshare, which has retarded its progress, but made it run so deep into the virgin soil as to make its work a *radical* one.

If these States are in the Union, with all their rights and privileges unimpaired, they may return to-morrow, even without submission, after being conquered in the field, to conquer their conquerors in the councils of the nation. The most accomplished of the Roman poets remarks that "conquered Greece subdued her barbarian conqueror, and introduced the arts into unpolished Latium." The contrary will be the case here. The barbarian will come back into your halls. The Northern Democrat will rush into his arms. The two elements, like kindred drops, by an attraction a good deal stronger than that of miscegenation, will melt incontinently into one. The old bargain will be renewed—"Give us the spoils, and you may take the honors and the power." The proclamation of freedom will be revoked; your acts of Congress repealed; your debt repudiated unless you will assume theirs; and yourselves, perhaps, ejected from these halls. And the effect will be that, for all your great expenditures and all your bloody sacrifices, you will have won back, not *peace,* but a master—the "old master," in negro phraseology—who governed you before—as turbulent, as vindictive, and as ferocious as ever.

Bring them back, and you cannot even bind them by gratitude, or purge them by oaths, of which they make no account, as the whole history of the rebellion, which began in perjury, abundantly shows—which are like the ribbons that were insultingly stretched by the Parisian mob in front of the Tuileries to protect the ill-fated king and queen of France—and which grave Senators have so recently denied your power to prescribe. The President has dealt kindly with the *neutrals.* Has he propitiated any of them? Our predecessors here have followed the example. Look at the facts attending our organization, and say whether even confidence and charity are followed by either gratitude or loyalty. No, you must throw the dissevered fragments, the "*disjecta membra*" of this great Government, into a caldron, with a hot fire beneath, and you may evaporate the virus, but not otherwise.

Taking them, however, to be *out,* or that the case has passed from under the municipal into the domain of public law, what is

the authority which that law gives us over the rights and property of an enemy?

On this point Bynkershoek says that "if we take for our guide nature, that great teacher of the law of nations, we shall find that anything is lawful against an enemy" (p. 2); and, further, that a nation that has injured another is considered, with everything that belongs to it, as being confiscated to the nation that receives the injury (p. 4); and also that, "if we follow the strict law of war, even immovables may be sold and their proceeds lodged in the public treasury, as is done with movables, though throughout almost all Europe immovables are only registered, that the treasury may receive during the war their rents and profits, and, at the termination of the war, the immovables themselves are by treaty restored to their former owners." The same doctrine is laid down by Wildmon (Vol. 2, p. 9); and in the case of Brown *vs.* The United States (8 Cranch, 110), the broad principle was assumed that war gave the sovereign full right to take the property of the enemy wherever found, and that the mitigations of this rigid rule, which the wise and humane policy of modern times has brought into practice, may more or less affect the exercise of the right, but cannot impair the right itself. By the law of nature and of nations the treatment of the conquered depends on the particular circumstances of the case; everything is lawful; everything belonging to the offending party is confiscated; the practice of nations has authorized the forfeiture even of the real estate of individuals; the conqueror may lay burdens on the conquered, not only by way of compensation, but of punishment; he may deprive them of their rights, and owes them no more than what humanity and equity require; he may indemnify himself for the expense and damages he has sustained; he may render them incapable of further mischief. *Indemnity, security,* and *punishment* are all, therefore, means of self-defence which may be legitimately used.

I think I may safely say that human history presents no parallel to this rebellion. Since the revolt of the rebel angels there has been no example of an insurrection so wanton, so wicked, so utterly causeless, and so indescribably ferocious and demoniac as the present. It was a rebellion against the majority rule for the purpose not of reforming, but of overthrowing the Government, and erecting upon its ruins another of an oligarchic cast, whose corner-stone was property in man. It was the product of a system which threw all the lands of the South into the hands of a few men. It involved an act of aggravated treason against a humane, paternal, and unoffending Govern-

ment. It has been conducted with a degree of inhumanity that has no example except in barbarian wars. It has involved to us an enormous expenditure of money and of blood. Its suppression has become impossible without removing the cause of strife, and disabling our enemy by liberating his slaves, and arming them against him. It cannot be repaired. There is no reparation possible that would be commensurate with the injury. Can you breathe new life into the bones that ornament the necks and fingers of Southern dames, or bleach unburied, without even the humble privilege of a grave, on Southern battlefields? Can you reclothe them with the comely vesture that has been given to the vultures of the Southern skies? Who shall restore the shattered limb; who fill the vacant chair at the family fireside; who give back the husband and the father, or dry the tears of the widow and the orphan? What trump, but that of the dread archangel, who gathers the tribes of the earth for the last solemn judgment, shall awaken the gallant dead who sleep in bloody garments, in their beds of glory, from their deep repose? Mock not the grief that is unutterable by the suggestion of indemnity or reparation! "Give me back my legions!" was the passionate exclamation of the Roman Augustus, when a swift messenger brought to him the tidings of the slaughter of Varus and his brave companions in the forests of Germany. "Give me back my children!" is the wailing cry that will burst from the bosom of the Northern mother, who weeps like Rachel for her first-born—or mock me not with the idea of reparation. There is no reparation for it, as there can be no punishment, except in the divestiture of the rights and the seizure of the estates of the guilty leaders. There is no security except in the distribution of the latter, and the complete exorcism of the hell-born and hell-deserving spirit that has wrought all this world-wide ruin.

Gentlemen object that to seize the inheritance would be to visit the sins of the guilty upon the innocent. They plead for the wife whose counsels have driven the husband into rebellion. They weep crocodile tears for the offspring who have been taught to spit upon the flag of their country. The widow and the children of those, however, who have fallen in the effort to suppress this unholy rebellion have no share in their sympathies. The chances of war may strip them of their inheritance, but that makes no difference with them. They take no account of the fact that nature and Providence have alike decreed that the sins of the fathers, and even their *misfortunes,* shall be visited upon their children, and that the law which authorizes the sale of the estate for the debts of the former has everywhere affirmed its

justice. The felon-brood may run its plowshare over the bones of the loyal martyr, while his children are perhaps eating the bread of charity in their Northern homes, and it is all right, because the former are the salt of the earth, and a just punishment would only exasperate them into a new rebellion. Let them rebel. A just poverty will render their efforts harmless, and, by teaching them the value and respectability of labor, make them only wiser and better men. With my consent they shall never trample upon the relics of a Northern soldier. I would carve out inheritances for his children upon the soil that his sword has ransomed, and his blood baptized and fertilized. God's justice demands it, and the heart and conscience of the American people will say Amen.

M. Russell Thayer [Pa.] spoke less vindictively than his colleague. He demanded the reconstruction of the seceded States: (1) guaranties of "unconditional and perpetual loyalty to the Government and subordination to its power"; (2) extirpation forever of slavery; and (3) compulsory repudiation of the rebel debt.

I for one am willing to extend to the people of those States, upon their returning to their allegiance, every benefit and of restoring to them every right which is consistent with the permanent reëstablishment of the authority of the United States. It is our duty to make the path to this object as easy as possible. Any such path, containing the necessary conditions for this purpose, will to most of them appear at first rugged and humiliating. This is the necessary result of their failure to overthrow the Government of the United States. It is necessary to guard the elective franchise and the privilege of holding office in those States against the intrusion and treachery of all who have in any sense been leaders in the present rebellion. For this purpose prudence requires that all who have held office under the pretended rebel government should be excluded from these privileges. It does not, however, appear to me to be necessary to exclude *all* who have held office under the *State* governments. The chief officers of those governments, such as governors and other high officers, all of whom have been chief actors in the rebellion and have promoted it by every means in their power, should be excluded; but I do not believe that either necessity or sound policy requires the exclusion of the large number of ministerial subordinates who have participated in the adminis-

tration of local affairs, who have not been leaders of the rebellion, and who are willing to return to their allegiance to the United States.

To all other classes of the free male white population of these States I would confidently surrender the privileges of the elective franchise and the same rights of citizenship which we ourselves enjoy, upon their laying down their arms and returning to their true allegiance. Nothing, I believe, could be further from the wishes of the people of the United States than to deprive the masses of the Southern people, who are willing to return to their allegiance to the Government of their fathers, of one solitary right which they themselves enjoy.

The compulsory repudiation of the rebel debt is a just and merited punishment to be inflicted upon those who have lent substantial aid to the rebellion; and it has the further merit that it reaches with its retributive justice those foreign speculators in our sufferings who, at a safe distance, have wickedly connived at, encouraged, and aided in the attempt to break in pieces our nationality, and to destroy our free institutions. I would not, however, in doing this, unsettle any State debt which may have been contracted for the purpose only of carrying on the civil affairs of the State, and which had not for its object the prosecution of the war or the strengthening of the pretended confederacy.

That slavery must, as a necessary consequence of this war, forever disappear from the American Republic I believe to be a conclusion long since reached by a large majority of the loyal people of the United States. So far as relates to the border States, which have nobly stood by their allegiance to the National Government, I am not in favor of any interference with it, because under our present Constitution we have no such right of interference, and honor and duty alike require that we should refrain from such interference. I am in favor of leaving to the people of those States the entire control and management of this question. I fully believe that they will find it for their interest and welfare at no great distance of time to make their institutions in this respect correspond with those of the free States. The recent action of the people of Maryland upon this subject, by which, on the 6th day of April, they declared themselves by a large majority in favor of immediate emancipation, and thus forever destroyed the political significance of Mason and Dixon's line, gives assurance, I believe, of what will be the ultimate action of the people of all the border States in reference to this matter.

Thaddeus Stevens [Pa.] upheld his theory that the seceded States were *de facto* out of the Union, and replied to those (especially Francis P. Blair, Jr.) who had denounced him as a "secessionist."

Gentlemen deny that the rebel States, so far as they are concerned, are out of the Union. It follows that, being in the Union, they have all the rights of other States. If they have such rights and should come here at the next presidential election and claim them, where does such doctrine lead you to? It leads you into subjection to traitors and their Northern allies. If they are in the Union, where are their representatives on this floor? Every one of the United States is entitled to have members here and Senators in the other branch. Where are these evidences of existing States? They are at Richmond, where the Congress of the Union does not sit.

But it is said that the Constitution does not allow them to go out of the Union. That is true, and in going out they committed a crime for which we are now punishing them with fire and sword. What are we making war upon them for? For seceding, for going out of the Union against law. The law forbids a man to rob or murder, and yet robbery and murder exist *de facto* but not *de jure*.

The gentleman from Missouri says that those who declare the States outlawed to the Union preach the doctrine of secession as much as Jeff. Davis. Does the man who declares that murder or larceny exists give countenance to those felonies? The one is as reasonable a deduction as the other. If the fiction sometimes used in courts of equity that whatever ought to be shall be considered as existing be true in fact, then the rebel States are in the Union. If the naked facts palpable to every eye, attested by many a bloody battlefield, and recorded by every day's hostile legislation both in Washington and Richmond, are to prevail, then the rebellious States are no more in the Union, *in fact*, than the loyal States are in the Confederate States. Nor should they ever be treated so until they repent and are rebaptized into the National Union.

The gentleman from Missouri, fatally bent on mischief, anxious to distract and destroy the Republican party, and to alienate the President from his true friends, that he and his household may reign supreme, speaks of our attempts to sacrifice the whites to the blacks, to introduce amalgamation of the races, and to create negro equality. When the gentleman thus accuses the Republican party he knows that he utters a foul and malignant

libel. The Republican party never held such doctrines, never uttered such a wish. I rejoice that in the vote which was taken soon after his speech not a man was found with him who ever belonged to the Republican party. He only was found voting with the hereditary enemies of the Administration. That was right. "He went to his place."

The gentleman speaks of my remarks as an "entanglement of contradiction" and " a catalogue of inconsistencies." As this touches only my capacity for argument, I take no offence at it. The gentleman cannot think more humbly of my abilities than I do myself. When he comes to speak of motives, however, it is a different thing. To show the temper which animated him I will give a few extracts from his carefully prepared speech. He says:

"No gentleman, either North or South, ever asserted the secession cause so boldly in the forum as the gentleman from Pennsylvania. It looks like an attempt to play into the hands of some rival candidate for the presidency, who would array a party against the President to drive him to surrender his convictions and break his oath to support the Constitution. I am apprehensive that the gentleman is anxious to saddle the President with the odium of doctrines which are known to be those of rival aspirants for the presidency."

The gentleman says that the Republicans do not agree with the President on the question of colonization; that he is for the segregation of the races, while we are for leaving them on the soil to cultivate it for wages. In that he is probably correct. There is a difference of opinion among the friends of freedom on that question. But that does not imply hostility to each other. It is a question on which men may honestly differ. I have never favored colonization except as a means of introducing civilization into Africa. Its effect upon slavery was injurious. It was a salve to the consciences of slaveholders and their advocates. As a means of removing the Africans from the country it was puerile. All the revenue of the United States would not pay for the transportation of one half their annual increase. The scheme of colonizing them in South America (which, I believe, was the gentleman's plan) was a very shallow vision. They were averse to removing from their native land; their forcible expatriation would be as atrocious a crime as stealing them in Africa and reducing them to bondage. Five hundred were lately seduced to go to an island near St. Domingo. Such as have not died in six months have been brought back at our expense. I hope this will be the last of the unwise and cruel

schemes of colonization which were fostered and procured by the gentleman's advice.

As to rival candidates for the presidency I know of none such. I do not believe that the present discreet Executive has made any movement or expressed any wish for reëlection. I think the same of all the members of the Cabinet. I suppose that no man, whether in or out of the Cabinet, would oppose his wish to the will of the people if they should call upon him to serve. But his appetite for office must be morbid who would covet the presidential chair in these troublesome times unless he believed he could render essential service to the nation.

The charge that these principles are invented to serve a presidential candidate is absurd. I held and promulgated precisely the same doctrine in 1861 when there was no thought of the presidential election. I believe now among the people there is entire unanimity. Every man, except the friends of the great Cunctator [Gen. McClellan], believes Mr. Lincoln to be an honest and patriotic man, and, so far as I have observed, looks to him to end this rebellion and extirpate slavery. I do not believe he is in any danger of becoming unpopular through his own acts; nor do I believe that even the constant boast by the gentleman from Missouri and his kindred that they are the especial friends and organs of the President can sink him. If that cannot, certainly nothing else can.

Francis Kernan [Dem.], of New York, spoke against the bill.

By the provisions of the bill, although the one-tenth or one-half or all the citizens of one of these States shall cease all resistance, submit to the authority of the Constitution and laws of the United States, and take the oath of allegiance required, they are not permitted to resume the administration of their State government under its old constitution, or to be represented in the Federal Government, or to frame a new constitution for their State, in accordance with that of the United States, unless they incorporate in that new constitution certain provisions which by this bill we dictate to them, and which relate to matters within the exclusive authority of the people of the State.

James M. Ashley [O.].—I desire to say to the gentleman from New York that so far as the House committee are concerned they have determined to make the same requirements apply to all States alike hereafter to be admitted. Colorado, Ne-

braska, and Nevada are all required to comply with these same conditions.

MR. KERNAN.—The admission of a State formed out of territory belonging to the United States is not a parallel case. The States to which the bill under consideration is to apply are *existing* States; the bill recognizes them as such. They are not to be readmitted to the Union; they are now in law a part of the Union. We are carrying on this war to enforce the authority of the Constitution and laws over them. When resistance ceases, when the usurped authority of those in rebellion in these States is overthrown, the constitution and laws of the State which existed when the rebellion arose will be again in force and vigor, and should be administered by those citizens of the State who never joined in the rebellion, and those who by amnesty are relieved from the penalties of treason.

Mr. Speaker, in my judgment this bill is in violation and subversive of the fundamental principles upon which both our national and State Governments are founded.

The powers granted to the Government of the United States by the Constitution were confined to national purposes and objects. As to these powers it is sovereign and supreme, and rightfully commands and can compel the obedience of every citizen of every State. But it has no right to interfere with the people of any State in the formation or administration of their State government. Congress has no right to dictate to a State what shall be the provisions of its State constitution. When Congress does so, and the Federal Government attempts to compel the people of the States to submit to its decrees in this respect, a revolution is attempted in the Government as it was established under the Constitution. The sole power granted to the national in reference to State governments is contained in the clause by which each State is to be guaranteed a republican form of government. Subject to this provision, or condition, the right of the people of each State to retain the old or form a new State constitution and government is absolute.

If Congress may impose upon the people of a State the conditions prescribed by this bill as conditions precedent to the exercise of their right to maintain, form, or administer a State government, we may require them to ordain as a part of a State constitution almost any other provision. Congress has no such power. The Constitution of the United States is based upon pre-existing State governments which the people of the respective States may maintain or change at pleasure, being only bound to have them republican in character, subject to the Constitution

and within the Union. This bill is in direct conflict with and subversive of all these principles and rights. It prohibits the loyal citizens of a State in which the rebellion has existed from administering their State government under and in subordination to the United States Constitution and laws after the rebellion has been suppressed and all disloyal men expelled from the exercise of their usurped power. It prohibits the loyal citizens of the State from reorganizing their State government by the adoption of a new State constitution and electing their State officers, except and unless they will incorporate in such constitution provisions not required by the Federal Constitution, and which are prescribed by a majority of the people of other States acting through their Representatives in Congress. Until they will do this, no matter how loyal to the Union the majority or all of them may have become, they are to be governed and controlled as to all their State affairs by arbitrary military power responsible only to the President of the United States. Nay, until they will comply with the conditions we prescribe they are not to be allowed Representatives in the Congress of the United States. They are as absolutely the subjects of despotic power as were the inhabitants of the Roman provinces who were plundered and tyrannized over by military governors like Verres. And yet this bill is called one "to guarantee to the people of these States a republican form of government!!"

I have supposed we were striving to maintain our old governments, national and State, in all their beautiful harmony, and with all their nicely balanced powers and wisely constructed checks; that this was war prosecuted to preserve these, and secure the blessings they did in the past, and will in the future, confer upon us as a people. But if this bill passes and is put in force, we will have destroyed the system of government transmitted to us, and commenced the construction of a consolidated National Government which will soon extinguish the States and, I fear, the essential liberties of their people. How long, think you, will the people of the Northern States bear patiently the burdens and sacrifices of this destructive war for the accomplishment of such a purpose?

When rebellious citizens have usurped the administration of the State government, turned its powers against the Federal Government and compelled the minority of the people to submit to their usurpation, the duty and the sole authority of the United States is to overthrow the power of the usurpers and restore the loyal people, or the people who, under promise of amnesty, submit to the identical State government the protection and ad-

ministration of which they were deprived for a time by the insurrection or rebellion. But the United States has no authority or right, when the rebellion is suppressed and all illegal resistance overcome, to say, as we do by this bill, to the loyal people of the State, We will not restore or guarantee to you the republican State government which you had established rightfully, and which existed when the usurpers deprived you of its administration, but we will compel you to form another according to our dictation; and if, as freemen, knowing your rights, you refuse to comply, we will deprive you of all political rights and privileges in national or State affairs, and govern you by military power until you submit.

It seems to me that in pursuing this course, so far from guaranteeing to them the republican government which they had rightfully formed for their State, we aid the usurpers and rebels in overturning the legitimate preëxisting State governments, by effectually completing what they began.

We are bound to secure to the people of each State under such State government as they shall see fit to establish, subject to the Constitution of the United States, the right to administer their own affairs, the right to enact and change their own laws as to all local matters. We have guaranteed that to them, and we must keep our guarantee, at least to the loyal men. For my part, I say that we are bound to do it if there are but a hundred men in the State who have stood by the Union.

It is said that these State governments have been overthrown, and therefore the general Government has a right to assume this power. It seems to me that all that can be justly claimed is that rebellious men, disloyal men, revolutionary men, have seized upon the machinery of the State government.

I wish to see our armies conquer the rebel armies, and drive out the usurpers who have been carrying on this rebellion. The people of these States must be required to submit to all the United States laws. We must insist that they submit to all the laws in relation to the revenue, in relation to the currency, the post office, and all other subjects within the jurisdiction of the Federal Government. When they do this there is no necessity that we should, nor in my judgment have we any right to, interfere as to their State governments. They have a right to maintain them as they were when the rebellion commenced, or they may change them.

Mr. Speaker, I am aware that it is sometimes said here that the institution of slavery as it exists in these States is inconsistent with "republican Government," and that therefore under

the clause of the Constitution above quoted Congress has a right to compel the people of the States to abolish it.

Sir, I am no admirer or advocate of slavery. I object to it, believing it to be a great moral and political evil—a wrong to the slave, and, in the long run, a curse to the master. I shall rejoice to see it abolished, if it is done without violating the Constitution of the United States or interfering with the reserved rights of the people of the States to regulate their local institutions. We should not violate the Constitution of the United States nor imperil the perpetuity of the Union under it to interfere with it where it exists in the States. We of the non-slave-holding States are not responsible for it, nor are we likely to deal with it wisely for the benefit of the slave or for the peace of the country.

But it is too plain for argument that the institution of slavery as it has existed in the States of the Union is compatible with a republican Government within the meaning of the United States Constitution. The States which adopted it were slave States mainly, and the continuance or abolition of the institution was carefully reserved to the people of each State. But the Government which is prescribed to the people of the States by this bill is, in its origin, in violation of the spirit of republicanism. What is a "republican form of government"?

Madison, in the thirty-ninth number of "The Federalist," asks and answers the question:

> "What, then, are the distinctive characters of the Republican form?" . . . "If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers, directly or indirectly, from the great body of the people." . . . "It is *essential* to such a government that it be derived from the great body of the society." . . . "It is *sufficient* for such a government that the persons administering it be appointed either directly or indirectly by the people."

Can there be any doubt, therefore, that the governments in existence in these States at the time the rebellion was inaugurated were republican within the meaning of the Constitution? To make them such it is essential that they be derived from the people governed, not imposed upon them by other governments, States, or people. Nevertheless, we propose by this bill, under the pretence of fulfilling our guaranty to them of a republican form of government, to compel them to adopt a constitution and government as to their local State matters, not originating from themselves, or in accordance with their wishes, but dictated to

them by us; and we will trample upon all their rights, and rule over them by our appointees, levying upon and collecting taxes from them for our treasury without their having any representation until they do our bidding in reference to the details of their State constitution. This is indeed guaranteeing to them a new kind of republican government! Are we willing to occupy the position before the world, or the American people, in which the passage of this bill will place us? I hope not. Let us suppress the rebellion in these States; drive out those who have usurped the State government, and restore it and the administration of it to those who have been loyal always in their hearts, I trust and believe many such will be found, and to those whom we think it wise and proper to recognize as citizens in each of those States under an amnesty.

Daniel W. Gooch [Mass.] supported the bill, particularly that part of it which established a military government for the seceded States until such time as the civil government was reconstructed.

As the government which has given its adhesion to the rebel confederacy can never be recognized by the United States, a new government must be organized during the military occupation, which can, at the proper time, be recognized by Congress. All these acts by the President, or the military power under him, in thus aiding and assisting the loyal people in these States, impose no obligation upon Congress to recognize them until such time as it shall deem proper to do so, and any recognition the military power may see fit to give to these governments can never fix their status in the Union. Congress alone has the power to determine what government is the legitimate one in a State, and its decision is binding on the other departments of the Government. The opinion of the Supreme Court of the United States in Luther *vs.* Borden *et al.* is precisely to this point:

"Under this article of the Constitution [article four, section four] it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a Republican form of government, Congress must necessarily decide what government is established in the State before it can be determined whether it is Republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government and could not be questioned in a judicial tribunal."

The question of the recognition of a government in one of the revolted States does not differ at all from the question of recognition of the government in any State in which the legitimate government has been interrupted, overthrown, or destroyed, and the Federal power invoked to determine which the established and legitimate government is. The question is a political one, and is to be decided by Congress, not by the Executive or the judiciary, and the most authoritative decision which Congress can give to the question is the admission of Senators and Representatives to seats in the councils of the nation; and, as each House is the judge of the elections, returns, and qualifications of its members, each must determine for itself what government it will recognize as the established one in any State, and when the Senate and the House have by the admission of members to seats decided in favor of the same government in any State the question is settled, and the decision binding on the other departments of this Government.

Nehemiah Perry [Dem.], of New Jersey, opposed the bill. He declared that it was a "political artifice" intended for effect in the coming presidential election.

The operation of this scheme would be, by a political fiction, to bring back the whole State into apparent but unreal relation with the Union, enable it, or the fragment acting in its name, to elect United States Senators, and by pretended elections to send its full complement of Representatives to the House of Representatives. And here the President's design is perfectly evident, to secure a majority of the delegates to the nominating convention of his party, and to provide for his own election by the House of Representatives in the event of there not being an election by the people. By this plan the narrow foothold maintained by our armies in North Carolina, Louisiana, Texas, Alabama, Florida, Arkansas, and elsewhere may send the pretended full delegations of those States to this House.

But, Mr. Speaker, this plan to "reëstablish" State governments is based on the assumption that they have been destroyed. This, sir, I deny; nor can they be destroyed unless the rebels are finally victorious, and establish their independence.. We may be utterly destroyed by a superior power, State after State might be overrun, our capital might be captured and destroyed, but in such a case only can our Constitution be torn in fragments or our Union destroyed. When we have absolutely succumbed to the power of an enemy all our institutions will

crumble into one fatal ruin, and our glorious democratic Republic be consolidated into the kingdom of a tyrant. But till this happens our Union and Constitution possess a principle of perpetual vitality, no death of a State and no severance of it from the Union. The life-blood may cease to flow for a time between the center and the extremities, but immediately on the removal of those hindrances and obstructions the life-bearing current will again leap through vein and artery, and the whole frame will once more rejoice in renewed health and vigor.

Fernando Wood [Dem.], of New York, opposed the bill.

I contend that, whatever may become of the Federal Union, the States themselves have a positive existence. The Federal Union is the creation of the States, and hence cannot become more powerful than the creator. The States which claim the right to withdraw from the Union do not alter their positions as States; they retain the same attitude toward each other that they held anterior to the American Revolution and to the adoption of the Constitution. In seceding from the Union they are, therefore, still distinct political communities with their own State constitutions and forms of government deriving authority from the people. Whatever doubt as to their relation to the Federal Government, there can be none as to their relation to each other and as to their individual local domestic independence.

William D. Kelley [Pa.] supported the theory of his colleague, Mr. Stevens, that the States in seceding had neither retained nor resumed their individual sovereignty, but had committed suicide in so far as their constitutional rights were concerned, and were in the status of Territories.

Is there a State of South Carolina? Pray who represents it on this floor? Who in the other end of the Capitol? Will you tell me what judge comes from a circuit whereof that State is a part to sit in the councils of our Supreme Court, or what judge holding authority from the President and Senate of the United States administers the laws in its district court? Who or where are the marshals, collectors of its ports, or postmasters, who hold power from our Government and act in its name and behalf? So, too, of the other confederated States. Where or how do you feel the influence of any of them in this Government? How do

you enforce the Constitution and laws within the territory once governed by the constitutions of those States? Ah, sir, the sovereign people, or, to speak more precisely, the political people of each of those States, have overthrown the State. Through its corporate power each State destroyed its corporate life, and no one of them exists.

Sir, the destruction of a State by the severance of the constitutional ligaments that bind it to this Government is one thing; but the government of the people upon the territory, the ultimate right to govern, is quite another. The sovereign right of eminent domain is not with the State. Do not, therefore, let me be misunderstood as arguing that the people of a State may oust the jurisdiction and right of the nation, or transfer any territory within the limits or jurisdiction of the United States to a foreign power. They cannot. Nor can they take themselves out of the jurisdiction of the country unless they leave the limits of its territory. To permit this would be to dissolve our Government; and whoever attempts it must be punished as a traitor. The President and Congress of the United States are bound to resist such an attempt, though it require the expenditure of every able-bodied man and the last dollar of treasure. Their oath to support and defend the Constitution binds them to reconquer possession of territory which is attempted to be thus taken from the people and the Government, as it does to defend the country against any other foe who strikes at the nation's life or attempts to divide its territory.

But the people of our once sister States have not merely destroyed their State governments; they have established others, unrecognized by our Constitution, and have confederated in a foreign and hostile government. Thus they are alien enemies, though they occupy territory within the limits of the Union. That territory belongs to the people of the Union and their posterity through all time, and none but a traitor or coward would surrender it.

The States are out of the Union, but the territory belongs to the United States, and the people, if they remain upon it, must be governed by the Constitution and laws of the United States. The State constitutions having been overthrown, it belongs to Congress to provide for the reconquest of the territory and for its government; and it is the duty of the Executive to effect that conquest by any and all means which are known to modern warfare and are within the law of nations. These are the only limitations, not only upon the power, but upon the duty of the Government.

Mr. Kelley then stated that, according to this theory, new States might be constructed out of the seceded territory not necessarily coterminus with the old ones.

I care not whether the States to be instituted be as large as Texas or as small as Delaware. When any given portion of the country shall be peopled by loyal men, who shall meet in convention and adopt a constitution and present it to Congress asking admission into the Union, it will be our duty to consider the constitution and to determine on the question of admission. Neither the Constitution nor the President's amnesty proclamation makes it necessary that the limits or name of a future State shall be determined by what existed prior to the overthrow of the now rebellious States.

On May 4 Samuel S. Cox [O.] spoke against the bill.

These plans of regeneration involve a change in the structure of the Government. They break down the spirit of municipal independence, in destroying which, as De Tocqueville has shown, you destroy the spirit of liberty. No matter what form is left, the despotic tendency will inevitably appear when the local authority is usurped. If you leave any form of government, it is the will of the Executive, it is a despotic centralization: Russian, Asiatic, the rule of military bashaws or provincial kinglets. Whether appointed by Congress or the President they hold their power from Washington, and they must remain at the head of their troops, and at the call of their chief. Our Republic, then, deserves not its name. It is no longer the "United States." It is a united State, a geographical unit, holding together subject provinces by the brute force of petty tyrants.

Believing that the scope and aim of the proclamation will not restore the Union nor propitiate any portion of the South, except demagogues and hirelings, who sell their birthright for the price of power, let us inquire what motive could have induced the President to proclaim it, in a moment of success to our arms and depression to the South. One suggestion will satisfy as to the motive. I am sorry to believe it; but the President desires renomination. He is a man whose mind has every angle but the right angle. In his nature cunning contends with fanaticism. From the time he developed his irrepressible conflict doctrine, so much praised by the gentleman from Illinois [Mr. Arnold], until its latest expression in his last message, his course has been equivocal. But meanwhile how shrewdly he has

balanced between the factions of his party. His inaugural recognized his obligations to the Constitution. He would not interfere with slavery. How prodigal were his promises to the border. How quick to plant his foot on Phelps, Hunter, and Frémont, for playing Augustulus. He desired some day to play Augustus. Abolitionism should be hatched under no influences but his own. How he lectured one of his editors for impatience. Conservatives held up his hands while he prevailed against these radicals. He toyed with emigration, colonization, and compensation schemes. He made a gradual emancipation theory with a short fuse which soon exploded. It hurt no one. But the time came for him to play revolutionist; and with seeming reluctance he issued the proclamation of emancipation. He desired the people to pass on it. They did. They condemned it in 1862. He adhered to it. In his Springfield letter, and in his last message, he dedicates all power to its execution. Meanwhile, a contest springs up as to the State suicide doctrine. It divides his party, and even the Cabinet. He has Missouri on his hands. Radicals are rampant. He acts conservative a while until the days of November, 1864, begin to approach, then, lo! this message as the climax of his long series of ambiguities. That I may do the President no injustice, I quote from his own partisan, Senator Samuel C. Pomeroy [Kan.], in his circular, who says:

"The people have lost all confidence in Mr. Lincoln's ability to suppress the rebellion and restore the Union. He has been weak and vacillating, wasteful of national blood and treasure, profligate and corrupt."

There is only one solution for these inconsistencies. He is trying to please both wings of his party to secure his nomination. With dexterous chicanery he has phrased and framed his late plan so that it may admit of two voices. He will not give up his emancipation proclamation or the confiscation and penal laws. "To abandon them now," he says, "would be not only to relinquish a lever of power, but would also be a cruel and an astounding breach of faith." This should suit the radicals. For a lighter shade of his party he promises what is a mere delusion —an adjudication of the questions of their legality by the Supreme Court. True, he has declared all means like these which he now promulgates unconstitutional; yet he would submit them to the court! When, and how? Why, after he has made the slave a freedman by the sword! What a mockery is such a submission. But it will do to make him a candidate, and, more than that, it might elect him President. If his plan of making one tenth rule in the States should succeed, then he will have

ready at hand the electoral votes of Florida, Arkansas, Louisiana, Tennessee, North Carolina, and other States. He began this business in Florida the other day, and the blood which flowed at Olustee is the result of this scheme of personal ambition!

Surely a candidate with so fair a chance for a gigantic, almost a continental fraud as this, must commend himself to a party whose use of power has made a debt of $2,000,000,000 and an expenditure equal to the expenditure of all former Administrations. Hence, when this amnesty to rebels was announced, it was regarded as a political movement only, and the excitement did not equal that of a prize fight. No one was affected by it. It was nothing but a bold attempt to perpetuate power, at the hazard of revolutionary war in the North and protracted war in the South.

The pretence of the President is to reconstruct the Union. Where did he get his authority to build anew what we can never agree has been destroyed? Is it a part of the war power or the pardoning power? It is the "best mode the Executive can suggest, with his present impressions." Will any one point out the clause of the Constitution which would even create an "impression" that the Executive has the function either of lawgiver, State constructor, or supreme dictator? His meekness in referring to Congress and the judiciary the legality of his acts after they are accomplished is a piece of effrontery to which Louis Napoleon has not yet arrived. Where did this unfledged Cæsar get his warrant to create sovereignty?

I propose to discuss the President's plan in the following order:

First, the oath; second, the republican form of the government to be reconstructed; third, the question whether the State governments in the rebel States are vital; fourth, some wise and practical plan such as will aid in restoring the Union under the Constitution.

1. *The oath.*—There is a sort of *odium historicum* attached to all political test oaths. They are not original with the President. They have been the bane and foil of good government ever since bigotry began and revenge ruled. You cannot make eight million people, nearly all in revolt at what they regard as the detestable usurpations of abolition, forswear their hatred to abolition.

The abolition oath is the basis of the new republican form of government. All who do not agree to that are excluded. All who do not agree to the pestilent theory of State death are also excluded. Hence this plan would allow any recent rebel who

takes the oath to make a unit in the one-tenth, and excludes the Union man, who has not forsworn his faith in the vitality of the States, and who will not swear to support policies and laws to which he can never adhere. What becomes of the many thousand loyal men of Tennessee, of Texas, of North Carolina, of Arkansas, of Louisiana? They are set aside for those whose oaths will bind them long enough to vote, and who, to save their lives and property, will swear with facility. Going upon the doctrine that all the rebellious districts are unsound, assuming the ground that the territory South, being belligerent, outlaws all, whether loyal or not, the President applies this bitter cup to the Union men who have never flinched in their love for the flag. These men must quaff the cup of bitter waters before they can stand before the world as the builders of the new temple proposed by the President! If they were worthy of association in this great cohort of States they would scorn reënfranchisement by such a plan. If there were no other reason to reject this juggling scheme, justice to "the faithful found among the faithless" South would demand its rejection.

The truth is, a test oath to require citizens to support his policy as to slaves is not an oath of allegiance to republican government, but to the Republican party. It is an oath of fealty to Abraham Lincoln. He sends out heralds to proclaim: "Ho! ye; all who will prepare to forswear your sentiments and enter into an arrangement to make new States with one-tenth over nine-tenths, and thus form electoral colleges to vote for me, I swear by my army and navy that you, though you are pardoned criminals, shall be the corner-stones in the new States, and shall have the shield of the Executive and the protection of the flag!" In vain we search Spanish-American annals for so shameless a pronunciamento for revolution and anarchy. It is thus, Mr. Speaker, that your party seeks to unhinge the massive portals which lead within the chambers of reserved popular power, those doors which, for so many years on golden hinges turning, opened so readily to the States as they entered within the sacred adytum of our political faith.

There is one answer to these propositions always on the lip of the anti-slavery devotee. He holds that no slave State can be accounted republican. This would be news, indeed, to the Jeffersons, Washingtons, Madisons, and Adamses, who established these States as republican, twelve out of thirteen being slave at the outset. This would be news, indeed, to the pioneers of the Northwest, to the early settlers of Ohio, who remember the deed of cession of Virginia, whereby our sovereignty was forever

declared to be equal to and inviolate as that of the slave State of Virginia.

But what sort of republicanism is that which builds a State from a small minority of its people? The majority of a people, expressing its own will, forms a republic. A minority, or even a majority, following the will of a despot, forms a monarchy. One-tenth of the legal voters ruling nine-tenths is an oligarchy. Reconstruction of republican governments on such a basis is as absurd as the structures built by the architects in Gulliver, who began their houses at the roof in the air! The President quotes the guaranty of the Constitution as to republican State governments, and promises under its sanction protection to these pseudo-republics! But he forgets that, if the Southern States are deceased, or out of the Union, there is the third section of article fourth of the Constitution which provides for the admission of States. Does the President in his theory propose to disregard this clause? Unless Congress consent all these scaffoldings, erected by his own will, will tumble to naught. If States can be declared dead, or burned out by the fires of war, perhaps New England may some day find her theory come home, in a reconstruction of her six States into one, and the reduction of her twelve Senators into two! Lines of longitude, as well as of latitude, may sometimes reconstruct States.

The basis of our Federal Government is *States*, having constitutions and laws—the emanation of the popular will. This will is expressed through suffrage. This suffrage in States is regulated by their own constitution and laws. State voters thus qualified, and they only, can vote for members of Congress. When, therefore, the President undertakes to breathe into a State the breath of life by a new code of suffrage, even if the State were defunct, he usurps a power never granted, and a sovereignty belonging solely to the people. If these States in rebellion are destroyed—if the *tabula rasa* remains, upon which the President can write new constitutions, with new qualifications for voters—then secession and revolution have done legally what no one but a rebel or traitor ever believed could be done.

This brings me to the radical question of the day. The message of the President and the bill of the gentleman from Maryland assume that the State governments in the rebel States are out of existence or usurped, and that the territory should be governed as such by the United States until new State governments shall be formed. The President does not commit himself to this plan as the only one. Very well. But one thing he has assumed—that the old States are gone. But let us do him

justice. He suggests that on "reconstructing a loyal State government in any State, the name of the State, boundary, the subdivisions, etc., may be maintained"; provided always the abolition policy prevail. This is like the prescript of the old Sultan, who, in commanding an obnoxious vizier to be ensacked and thrown into the Bosporus, generously hoped his turban and clothes might remain unmoistened.

I know it is said that he repudiates the policy of reducing the States to Territories. His plan is to select, as nearly as may be, the old building spot; perhaps use some of the old foundations, say one-tenth; but he changes radically the plan and structure of the building, and takes away from its lord the sovereign control of the establishment. He insists that there shall be homogeneity of arrangement in the structure; that for different conditions, classes, systems, climate, and position the same relations shall be instituted. This plan is not only absurd in philosophy, unsound in economy, but revolutionary in practice. He, in fact, says, "I shall fight on to keep the Southern States *out* until they conform to my views as to negroes. My abolition condition to Union is inexorable! The proclamation shall be on a par with the Constitution. Let no one bleed for one without dying for the other!" God help the nation, plunged in an abyss of blood, for such crudities!

Surely, if the State suicide doctrine be sound, this plan of rebuilding is not. Let me consider that State suicide doctrine. It professes to be based on the decision of the Supreme Court in the *Hiawatha* case. That decision is perverted to sustain this theory. The court condemned certain property captured, because the property was within the lines of the enemy actually holding those lines by force, though without right, and not because of the moral or political relation of the owner. The court decided nothing as to the legal and political status of the owner, but because the property would help the enemy it was to be taken as prize of war. There is in that decision no recognition of the right of secession, much less of the monstrous and cruel doctrine that rebels in arms can abolish the legal rights of loyal men or the institutions of States.

If war blots out the States insurgent by virtue of its territorial and belligerent character, then war does by its violence what secession would do by its ordinances. The right to expunge a State is coördinate with the right to secede. If a State can be forced out by the vote of its own sovereignty or by combinations of men without a constitutional amendment, then any State can be expelled by Federal action. If the Union becomes

disagreeable to a State, then the State may become disagreeable to the Union; and, if a State may retire at pleasure, why cannot a State be repudiated at will? These rights, if they exist, which I deny, correlate. They are inseparable. Suppose it had been proposed to expel South Carolina from the Union for her contumacy, or Massachusetts for her intermeddling, what a burst of indignation we should have had from each! They would have exclaimed: "Show us the power to throttle our State sovereignty by denying us participation in this blessed Union. What! strip us of our American citizenship, place us outside of your navigation and commercial laws and treaties; leave us at the mercy of foreign powers; belittle us to nothing; rob us of our common interests in a common treasure, territory, government, history, and glory. Never!" Yet wherein does this claim of holding these States South as conquered provinces by military force, degrading the equal dignity of the States by the creation of a new sovereign power, differ in principle from secession?

If secession be a nullity, and if the Constitution is not impaired nor the rights of the States destroyed, then I can see how arms, inspired by wise and persuasive measures, may, in time, redeem the States; but, on the other theory, all the tears, miseries, confiscations, and blood are in vain, in vain, in vain. Can we be surprised, therefore, that an analytic mind like that of the Postmaster-General should have at once descried in these fallacies of abolition a conspiracy in aid of the rebellion?

How, then, is it possible to restore local and State sovereignty and thus unite our hapless and lacerated country? History never presented so grand a problem for statesmanship. I approach it with something of that awe which solemnizes the soul when we enter within some vast and consecrated fabric—vistas and aisles of thought opening on every side, pillars and niches and cells within cells, mixing in seeming confusion, but all really in harmony, and rich with a light streaming through the dim forms of the past, and blessed with an effluence from God, though dimmed and half lost in the contaminated reason and passion of man.

Conscious of the magnitude of this rebellion, and oppressed with the feebleness of the policy directed against it, I still believe in the restoration of the old Union. Hence, whatever method I should advocate for the conduct of the war, or the celebration of peace, I am forever concluded against one conclusion—the independence of the South. I believe the principle of unity to be absolutely superior to the right of sectional na-

tionality. The destiny of these United States is to continue united, and, perhaps, to add other States, until the whole continent is in alliance. Our fate is to expand and not to contract our influence or our limits. All other notions are but transitory and evanescent.

I am happy to be in accord with the President, if, indeed, he hold yet to the doctrine announced in his inaugural: "Physically speaking, we cannot separate." I had adopted the same sentiment, that there were Union foundations, by the very political geology of God, upon which the old Union could and would be rebuilt.

The sentiments of the President in his inaugural are founded in principle, and drawn by correct deductions from history. They are the germ of all true politics. Sorry am I that in a moment of pressure and temptation he should have been drawn from them by the weird whisperings of ambition under the baleful eclipse of fanaticism.

Military rule, anarchy, destruction of individual opinion, speech, and liberty will be our experiences, unless we take the straight, short, and right line of the Constitution. We may wander forty years in a political wilderness before we attain the promise of our youthful and exultant nationality.

Before attempting to show how this nationality may be restored, it would be best to define it. What, then, is nationality? Let the definition of the English logician, John Stuart Mill, answer: "We mean a principle of sympathy, not of hostility; of union, not of separation. We mean a feeling of common interest among those who live under the same government, and are contained within the same natural or historical boundaries. We mean that one part of the community shall not consider themselves as foreigners with regard to another part; that *they shall cherish the tie which holds them together; shall feel that they are one people; that their lot is cast together; that evil to any of their fellow-countrymen is evil to themselves; and that they cannot selfishly free themselves from their share of any common inconvenience by severing the connection.*"

Is it not strange to a dispassionate thinker that those who are not hostile in the sense of hate to the South, those who would woo them to the ancient order and Union by reason, old associations, the allurements of peace and patriotism, to make again of the circle of equal States the old Federal sovereignty, should be held to be the least national; while those who have so far forgotten the common interest of all under the same government, who regard themselves as alien to the South, even as the South

regard themselves as alien to us, should be held as the most national? I do proclaim it, on the basis of a logic incontestable, that he among us who wishes most evil to any part of the country IS THE MORAL TRAITOR AND SOCIAL ANARCH.

We are powerful in proportion as we are national. If we should follow the advice of passion and treat the Southern States now in civil war as England treated Ireland, we become weak and denationalized. If we pursue the South with a licentious uncivic soldiery, gloating with anticipations of the plunder of private effects, or with the promises already held out of parceling out the lands of the South as the bounty which revenge pays for pillage, thus whetting a tigerish appetite for a great festival of blood and rapine, we may be sure that the special Nemesis which Herodotus traced through the early eras of history will haunt the men who instigate and the men who execute such a fell and imbecile policy. If, as in Rome once and in Spanish-America now, we bribe one part of the nation by the robbery of another portion, then we may be sure that conflicts will be renewed when exhaustion is overcome, and our flag, like that of old Spain, will typify a river of blood between margins of gold. If we would avoid the constant aggregation and disintegration of feeble masses in different provinces, such as the history of South America demonstrates, we must learn to carry out, better than the President has done, his own principle of friendly legislation, instead of repellant alienation. Powerful as are our armies—gradually encroaching amid many mistakes and vicissitudes upon the territory which is insurgent—great as are our Parrott guns, and invulnerable as are our ironclads, one thing we have to learn yet from history, that our best soldiers are not like Charlemagne's paladins, possessed of enchanted weapons. The weapon which wounds the cause of rebellion, and yet which can transmute the rebel into the patriot, is the enchantment of friendship. He who would destroy a part of his own country, as if it were alien, has no more love for it than Saturn had for the children of his own loins whom he destroyed. Such a creature is not a patriot, even if he were a man. Patriotism never desires to weaken or disgrace, but always to strengthen and glorify the country.

Confidence and allegiance have been begotten and renewed in other lands rent with civil feuds; why not in this? To answer this I shall consider, first, the mode by which such results can be attained, and, secondly, the illustrations from history showing such results.

1. States or societies are made up of individuals. To re-

form society or control masses individuals must be reached. M. Guizot, in his "History of Civilization" (page 25), has demonstrated that two elements are comprised in the great fact we call civilization—the progress of society and the progress of individuals. The one is but the external phenomenon of which the other is the cause. Society is merely the theater for the immortal man. Society is made for man, not man for society. Society dies, changes, rots, regrows, and decays again; man blooms in immortal youth beyond this limited destiny. When, therefore, you adopt a policy to restore States or rebuild the dismantled social order, you must begin by reaching the character of men, influencing their literature, their tastes, their maxims, their laws and institutions, their industries, their wealth and its distribution and means of attainment, their occupations, their divisions into classes, and all their relations to each other. Whenever you have harmonized these so as to give *contentment* you may be assured that no military compression or civil oppression can long keep the individuals interested from a common consent to the common government.

Habitual discipline and regard for government on the part of rulers and ruled, aided by religion and a common interest, is the power which keeps men from becoming anarchical.

Combined with this civil discipline is the feeling of allegiance. Without this feeling no State can be permanent. When the rulers fail to give that protection which is the consideration and correlative of allegiance, then allegiance fails, and society declines, despotism supervenes, or foreign conquest is imposed. Let statesmen remember that this is the capital defect of our rulers, and the proximate cause of our troubles. Thus remembering, let them study history with a view to the reinstatement of that protection to labor, liberty, property, and life which assures to the State the allegiance of the people. This feeling is sometimes called "loyalty." The French philosopher, M. Comte, has thus described its essence: *viz.:* that there be in the constitution of the state, whether a monarchy or democracy, *something* which is settled, something permanent, and not to be called in question."

The sacred something in *our* political system is the written Federal Constitution and the system of State governments, both having their basis on the sovereign will of the people of the States. Not less sacred, because not less above discussion, are the reserved rights of the States, and the still more important reservation of sovereignty in the people. This is the essential permanency of society in the United States. This was the

relation which all parties, whether at Charleston or Chicago, agreed should not be disturbed, which the President declared should not be disturbed by him, and the fear of whose disturbance has convulsed a nation of thirty millions. This mystic union of the Federal and State systems was the sacramental essence, the divine appointment, above the storms and eddies of discussion. In this were comprehended our ancient liberties and ordinances. Even the domestic institutions of the State were imbound with it. Indeed, it was the only fundamental law, pervading our society as gravitation pervaded the stellar spaces.

Those, whether North or South, who failed to keep this essence sacred and sealed are responsible for the consequences. Abolitionism, which lived by the disturbance of this system, was like secession, for both sprang from the same direful agitation and the same disturbance of the Constitution.

But is there no light through the clouds of war? Have we no *solution* for past wrongs, no immunity for future griefs? Are anger, hatred, scorn, revenge—the brood of wicked passions rankling in the heart—are these to remain? And shall there be no interregnum for the serene dynasty of peace and love, to walk white-handed through this bleeding and bloody land? Shall no one pour the lethean wave over the scenes of death and the sorrows of mourning? Shall there be no recantation of the oaths of fierce men, vowing revenge for homes wasted, property confiscated, brethren destroyed, and cities ruined? O God! Is there no hope that even time may not be allowed to assuage the hates and griefs of this bloody era? Shall the young men of to-day wear the rancor in their hearts till their hairs are whitened for the tomb and teach their children and children's children to perpetuate the hate of the fathers? If this is to be the fate of our Union, then God has mocked His creatures by fixing them in habitations bound together by the same skies, rivers, mountains, and lakes; mocked them by fixing in their hearts the principle of love, and cruelly flouted them by sending to this star a Prince of Peace as an Exemplar and Savior!

Who are the men, or the fiends, who talk of utter extermination? If it were possible it were execrable! To exterminate the Southern people rather than reach them, as Mr. Lincoln himself proposed, by friendly laws, is a crime more heinous than rebellion. Let the pitiless destruction of the Moors of Andalusia by Philip II, the merciless slaughter of the French in La Vendée, Claverhouse's bloody hunts after the Scottish Covenanters, the stained and cadaverous cheek of Ireland, the bloodshot eye of maddened Poland, the grim submission of re-

vengeful Venetia, teach us by their history that powder cannot cement nor bombs bear messages of love. Superadd to your force conciliation, and then your force may not be mere brute violence. Force has welded by its blows, but they were tempered in the fire of old and loving associations. "I do not fight the South because I hate her," said Mr. Crittenden; "I love her still." Conquest by force is only physical; subjugation implies mental acquiescence on the part of the vanquished in the ideas of the victor. Such a war, therefore, will produce only the *status quo ante bellum,*[1] leaving an absolute reciprocal negation; each party denying the claims of the other, and leaving no common ground for a truce to intellectual conflict.

The fact that war has come and that separation is impossible, makes more urgent the ascendency of a party whose first and only preference is for the Union through compromise, and who shall, at least, be allowed to try the experiment of reconciling the States by guaranties similar to those proposed in 1861. If it be found impossible to restore the old association of States by such negotiation, *then, and not till then, can statesmen begin properly to ponder the other problems connected with subjugation and recognition.* We may yet change the war from the diabolical purposes of those in power, by changing that power to other hands, and we are not ready to sever our Union while that hope remains. Of the two evils of subjugation or recognition I make my choice of—neither.

2. To restore allegiance and inspire nationality let the individual rebel in arms against us be reached by the arm of our soldier, and when a noncombatant by the moderation and paternal care of the Government. Let the military power of the Confederates be broken. Use those and only those severities of war which civilization warrants and which will make the military power of the South feel the power of the nation; but do not place any longer in their hands the armament of despair. They have had that weapon for over two years. Let our rulers forego their ostracism of the misguided citizen. Let an amnesty be tendered which has hope in its voice. Give forgiveness to the erring, hope to the desponding, protection to the halting, and allay even fancied apprehensions of evil by the measures of moderation. Thus, by confiscating confiscation, abolishing abolition, and canceling proclamations, by respecting private property and State rights, prepare that friendliness which will beget confidence in the individual citizen. Thus will minorities be transferred into majorities South, and the States discarding

[1] The situation before the war.

the rebel authorities betake themselves to their normal and proper sphere under the old order. If this cannot be done by the present rulers, let other rulers be selected.

History teaches in vain if it does not contain lessons of moderation in civil wars. How were the feuds of the Grecian federation accommodated? How were the civil wars of Rome ended? How were the intestine troubles of England assuaged? How was La Vendée pacified by the generous Hoche? How is it ever that unity of empire and consentaneity of thought are induced? How, except by the practice of that mildness which cares for and does not curse the people.

The closest analogy to our condition is to be found in the English civil war beginning in 1640. The English people are our ancestors. They had what we have—a similar code of personal freedom, great municipal independence, and a popular Parliament. The causes of the war were complicated by religious controversy; but the questions involved concerning the royal prerogative and the popular privilege are closely allied to our struggle. We know how the first Charles lost his head; how Cromwell's iron hand rescued, for a time, England from anarchy. At his death, eleven military governments, under major-generals like Monk, held almost absolute sway. Conspirators were punished with death. Confiscations were common. Party vengeance was rampant then as now, but the people's representatives considered that they had to decide between a new civil war and a restoration. Then came the famous declaration of Charles II from Breda. It removed all hesitation and the restoration began. The king in that paper declared that he desired to compose the distraction and confusion of his kingdom, to assume his ancient rights, and accord to them their ancient liberties, without further "blood-letting." He *conjured* them to a perfect union for the resettlement of all rights, under a free Parliament.

When this declaration was read in Parliament—though it was the false word of a designing tyrant—yet the restoration of the second Charles was voted by acclamation! Nor would the same sort of declaration from Abraham Lincoln be less powerful to restore the sovereign States to their old allegiance, especially if followed by a national convention and the restoration of a party not unfriendly to the entire union of all the States, with their "just rights." No distrust followed this declaration of the English king. He came to England. His journey to London was one perpetual fête—one continued shout of rejoicing! Faction ceased. History records that Cavaliers were

reconciled with Roundheads. Exiles showed no resentment in the joy of their return. A violent reaction against revolution began; war ceased; and the foundation was then laid for the permanent stability which 1688 gave to England.[1]

Let us have done with juggling amnesties and ambitious schemes, with philanthropic ferocity and enforced elections. Under no such policy, pitched in the key-note of the President's proclamation, or chanted in the mellifluous tones of the gentleman from Maryland [Mr. Davis], can the South ever be held in honorable alliance and harmony. A government inspired thus would be out of all relations to the States of this Union. It would have neither "the nerves of sensation which convey intelligence to the intellect of the body-politic, nor the ligaments and muscle which hold its parts together and move them in harmony." It would be as Russia is to Poland, as England to Ireland, the government of one people by another. It would never succeed with our race. It would never succeed with a territory whose configurations are so peculiar and whose interests are so varied as ours.

No citizenship is worth granting to those who dishonor themselves to receive it. No common bond of allegiance or nationality is possible on such terms. Mean and degrading conditions which unfit the citizen for manly equality are more despicable than rebellion. You cannot expel the poison of sedition by adding to its virulence. You cannot draw men from crime by stimulating the motive which led to it. But the principle of mercy is all-powerful and eternal. It is the very gospel of God; the very love which saves mankind. Inspired thus, what might be done if a wise and sagacious Executive should extend the same beneficent policy to the factions which are bleeding our beloved land!

Like the fugitive prophet upon Mount Horeb, we may approach and interrogate Deity itself in our despondency and for our deliverance. And, though, like him, we may hear the roar of the whirlwind of war, though we may tremble amid the earthquake of its wrath, and, though God may not be in the storm, or the earthquake, yet we may find Him in the still, small voice whose depth and sweetness are not those of tempestuous force or elemental strife, but soft as an angel's lute or a seraph's song, promising redress for wrong and deliverance from calamity. Horeb stands as a monumental lesson to our rulers forever, speaking the still, small voice of divine conciliation amid the thunders of the law. I wait for that voice to be spoken.

[1] The accession of William and Mary under constitutional guaranties.

My soul waiteth for it "more than they that watch for the morning; I say, more than they that watch for the *morning!*"

George S. Boutwell [Mass.] supported the measure, saying, however, that it did not go far enough.

There is one feature of the bill which does not receive my approval, and to which I assent only in deference to what I suppose is the present judgment of this House and of the country. I speak of the limitation of the elective franchise to white male citizens. The right of suffrage is not a natural right, but it is the highest thing among political rights. No community which denies the right of suffrage to any considerable number of its adult male inhabitants can ever be safe from intestine commotion, for wherever this right is so denied the people cannot be safe or even free from oppression. And, even if a community in which the right of suffrage is thus limited should be free from actual oppression, still the Government could not escape the suspicions and charges which result from an unjust distribution of political power. In free countries the rights of the people are frequently acquired and they are generally preserved by the ballot. When the ballot fails the resort is to the sword. When you deny the ballot to one-third or one-half of the people of the vast territory covered by the provisions of this bill, what do you leave for them or offer to them but a resort to the sword as the means of removing or redressing the grievances of which they are already the foredoomed victims?

I had indulged the hope, until recently, that this House would recognize the political rights of the colored race by securing the elective franchise to certain classes, or at least to a single class of those who hereafter should enjoy the protection of the Constitution. The vote upon the amendment of the Senate to the bill establishing the Territory of Montana dissipated at once and for the present this hope. The country will speedily revise our proceedings in this particular. Mark the progress of events! It is not yet two years since you were willing to contribute to the cause of the Union by the emancipation of the negro. I do not now speak of gentlemen on the other side of the House. I address myself to the friends of the Administration.

But now the President's proclamation of emancipation is accepted with signal unanimity by the people of the country. It has already received the considerate judgment of mankind; and may we not also reverently believe that it receives the con-

stant favor of Almighty God? I am aware that gentlemen on the other side of the House still utter their accustomed denunciations of the measure; but their words are like the wonderful missile of the South Sea Islander, which cuts the air fiercely and then falls harmlessly at the feet of him from whose hand the weapon sped.

The people accept the freedom of the negro; having recognized his right to freedom, they bid him do service for the country. When he has served the country in the field the justice of the nation will guarantee to him the power to maintain his rights in civil life.

Thus are events our masters; and thus does the country hesitate even in the presence of these events to do those acts of justice which are due to one race and necessary for the salvation of the other. When, and by what means, and for what period of time do you expect to set up and maintain loyal governments in the rebellious districts of the Union unless you confer the elective franchise upon the negro? The military power must at some moment not remote be withdrawn. The remnant of the dominant class will be powerful for a generation. There is a large number of poor whites, unaccustomed to independent thought or to independent action. The colored people are loyal, and in many States they are almost the only people who are trustworthy supporters of the Union. Will you reject them? I ask whether you will reject the civil and political power of the colored people in the State of South Carolina, for example? If I could direct the force of public sentiment and the policy of this Government, South Carolina, as a State and with a name, should never reappear in this Union. Georgia deserves a like fate. When the Constitution was formed she united herself with South Carolina and forced the recognition of the institution of slavery in our Constitution. Florida does not deserve a name in this Union. What then? Let these three States be set apart as the home of the negro. Invite him there by giving to him local political power. Give him the right of suffrage in those States, and the colored population, as rapidly as it can be spared from the industrial pursuits of the North, will aggregate upon the shores of the Atlantic and the Gulf of Mexico. Give them local self-government and let them defend themselves as a portion of this Republic.

I do not ask that in any one of the loyal States where a negro population exists, the right of suffrage shall be given to them, but in these three districts, South Carolina, Georgia, and Florida, I would provide for the right of suffrage to colored

persons. They have earned it by their services in the field, and there is a degree of injustice in asking a man to peril his life in the cause of the country and in defence of institutions in the creation and conduct of which he has no voice whatever.

I ask for this people justice, in the presence of this exigency when the life of the nation is in peril and when every reflecting person must see that the cause of that peril is in the injustice we have done to the negro race. They are four millions. They will remain on this continent. They cannot be expatriated. It is our duty to elevate them, to provide for their civilization, for their enlightenment, that they may enjoy the fruits of their labor and their capacity.

George H. Pendleton [Dem.], of Ohio, opposed the bill. He said that, carrying out its principle, the supremacy of Congress over State governments, to its logical conclusion would destroy the rights of the loyal States as well as those of the disloyal ones.

This doctrine is monstrous. It has no foundation in the Constitution. It subjects all the States to the will of Congress; it places their institutions at the feet of Congress. It creates in Congress an absolute unqualified despotism. It asserts the power of Congress in changing the State governments to be "plenary, supreme, unlimited"—"subject only to revision by the people of the whole United States." The rights of the people of the State are nothing, their will is nothing. Congress first decides, the people of the whole Union revise. My own State of Ohio is liable at any moment to be called in question for her constitution. She does not permit negroes to vote. If this doctrine be true Congress may decide this exclusion is anti-republican, and, by force of arms, abrogate that constitution and set up another permitting negroes to vote. From that decision of the Congress there is no appeal to the people of Ohio, but only to the people of Massachusetts, and New York, and Wisconsin, at the election of Representatives; and, if a majority cannot be elected to reverse the decision, the people of Ohio must submit. Woe be to the day when that doctrine shall be established, for from its centralized despotism we will appeal to the sword!

Sir, the rights of the States were the foundation corner of the Confederation. The Constitution recognized them, maintained them, provided for their perpetuation. Our fathers thought them the safeguard of our liberties. They have proved

so. They have reconciled liberty with empire; they have reconciled the freedom of the individual with the increase of our magnificent domain. They are the test, the touchstone, the security of our liberties. This bill, the avowed doctrine of its supporters, sweeps them all instantly away. It substitutes despotism for self-government; despotism the more severe because vested in a numerous Congress elected by a people who may not feel the exercise of its power. It subverts the Government, destroys the Confederation, and erects a tyranny on the ruins of republican governments. It creates unity—it destroys liberty—it maintains integrity of territory, but destroys the rights of the citizen.

Sir, if this be the alternative of secession, I should prefer that secession should succeed. I should prefer to have the Union dissolved, the Confederate States recognized; nay, more, I should prefer that secession should go on, if need be, until each State resumes its complete independence. I should prefer thirty-four republics to one despotism. From such republics, while I might fear discord and wars, I would enjoy individual liberty, and hope for reunion on the true principles of confederation. From one strong centralized despotism, overriding the rights of the people, overriding the rights of the States, I can see no escape except in apathetic contentment with slavery, or the oft-repeated, often-failing, always bloody struggles of despairing hope. I would rather live a free citizen of a republic no larger than my native county of Hamilton, than be the subject of a more splendid empire than a Cæsar in his proudest triumphs ever ruled, or a Napoleon in his loftiest flights ever conceived.

Sir, I cling to the hope that these evils may yet be averted. While I would prefer separation to the unity which this bill would create, I would fain hope that we may not be compelled to accept either alternative. If, before it is too late, the people will see the designs of those now in power, and will replace them with men who do not wish revolution, but do heartily wish a restoration of the Union, men—who will seek by peace the results which war has rendered well-nigh impossible—who will try to attain by conciliation the ends which never can be reached by subjugation—who will seek in consent the foundation of the right of the Government, in States rights the guaranties of the liberty of the citizen—in the Constitution the measure of the power of the Government and the extent of the surrender of perfect freedom imposed by the citizen upon himself—we may hope that we may again have union and liberty; that interest,

which alone binds together nations occupying a territory like our own, will assert its power and heal the wounds of war, and bring us again into the bonds of fraternal peace.

But, if they will not now see these designs and avert them, however long and bloody and desolating this war, it will end—I predict it now while the thunders of battle ring in our ears and the exultant shouts of victory rise upon the air—in recognition of the Confederacy, in final separation, and in a longer, bloodier, and more desolating war on the part of our people—of your constituents, sir, and mine—to throw off the despotism which will ere then have been firmly established over them.

The bill was passed on May 4 by a vote of 73 to 59.

It did not come up for discussion in the Senate until late in the session—July 1. After considerable discussion and some amendment it was passed on that date by a vote of 26 to 3.

The House disagreed with the Senate amendments, and on July 2 the Senate withdrew its amendments by a vote of 18 to 14.

The bill was presented to the President during the last hour of the last day of the session (July 4) and he refused to sign it, preferring that the plan be presented to the people for their consideration. Accordingly, on July 8, he issued the following proclamation:

Proclamation Concerning Reconstruction

By President Lincoln, July 8, 1864

Presenting the bill, and giving the reasons that had led him to submit it to the people, the President said:

Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known, that, while I am (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared, by a formal approval of this bill, to be inflexibly committed to any single plan of restoration; and, while I am also unprepared to declare that the free-State constitutions and governments already adopted and installed in Arkansas and Louisiana shall be set aside and held for naught, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort, or to declare a

constitutional competency in Congress to abolish slavery in States, but I am at the same time sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted, nevertheless I am fully satisfied with the system for restoration contained in the bill as one very proper plan for the loyal people of any State choosing to adopt it, and that I am, and at all times shall be, prepared to give the executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently returned to their obedience to the Constitution and laws of the United States, in which cases military governors will be appointed, with directions to proceed according to the bill.

The radical Senators, Henry Winter Davis [Md.] and Benjamin Wade [O.], addressed "to the supporters of the Government" a "Protest" in which they said that they had read the President's proclamation "without surprise, but not without indignation." The implied condemnation of the supporters of the measure in his statement that its passage had been delayed till the very last moment was insincere. The reverse was the case; he had himself intrigued to secure this result, so as to obtain an excuse for refusing it. Indeed, one of the Senators closest to the President (James R. Doolittle, of Wisconsin) had written to the heads of the Louisiana government, which, as also the Arkansas government, had been formed according to the President's plan, and which would be reconstructed anew if the plan of Congress were adopted, that the House bill would be held as long as possible in the Senate and finally killed by a pocket veto of the President.

Senators Davis and Wade charged that the President's persistence in his own plan of reconstruction by executive authority was inspired by his desire to use, if necessary, the electoral votes of Louisiana and Arkansas to secure his reëlection. They also pointed to the abortive military expedition against Florida as evidence of the same purpose. They warned the country that trouble would certainly ensue if the votes of Louisiana and Arkansas turned the balance in his favor.

"Is it to be supposed that his competitors, defeated by these means, will acquiesce?"

In conclusion they warned the President that they and other members of the national legislature supported "a cause and not a man," that "the authority of Congress is paramount and must be respected, and, if he wished their support, he must confine himself to his *executive* duties: to obey and execute, not make the laws; to suppress armed rebellion by arms, and leave political reorganization to Congress."

In his annual message of December 6, 1864, the President announced that 12,000 citizens in each of the States of Arkansas and Louisiana had organized, in accordance with his proclamation, loyal State governments with free constitutions, and that there were movements in the same direction in Missouri, Kentucky, and Tennessee.

The last speech of the President was upon reconstruction. It was delivered on April 10, the day following the surrender of Lee at Appomattox.

"At Home Again in the Union"

Speech on Reconstruction by President Lincoln

The subject of reconstruction is fraught with great difficulty. Unlike a case of war between independent nations, there is no authorized organ for us to treat with—no one man has authority to give up the rebellion for any other man. We simply must begin with and mold from disorganized and discordant elements. Nor is it a small additional embarrassment that we, the loyal people, differ among ourselves as to the mode, manner, and measure of reconstruction. As a general rule, I abstain from reading the reports of attacks upon myself, wishing not to be provoked by that to which I cannot properly offer an answer. In spite of this precaution, however, it comes to my knowledge that I am much censured for some supposed agency in setting up and seeking to sustain the new State government of Louisiana.

In this I have done just so much as, and no more than, the public knows. In the annual message of December, 1863, and in the accompanying proclamation, I presented a plan of reconstruction, as the phrase goes, which I promised, if adopted by any State, should be acceptable to and sustained by the executive Government of the nation. I distinctly stated that this was not the only plan which might possibly be acceptable, and I also distinctly protested that the Executive claimed no right to say when or whether members should be admitted to seats in Congress from such States. This plan was in advance submitted to the then Cabinet, and distinctly approved by every member of it. . . . The message went to Congress, and I received many commendations of the plan, written and verbal, and not a single objection to it from any professed emancipationist came to my knowledge until after the news reached Washington that the people of Louisiana had begun to move in accordance with it.

I have been shown a letter on this subject, supposed to be an able one, in which the writer expresses regret that my mind has not seemed to be definitely fixed upon the question whether the seceded States, so-called, are in the Union or out of it. It would, perhaps, add astonishment to his regret were he to learn that since I have found professed Union men endeavoring to answer that question, I have purposely forborne any public expression upon it. As appears to me, that question has not been nor yet is a practically material one, and any discussion of it, while it thus remains practically immaterial, could have no effect other than the mischievous one of dividing our friends. As yet, whatever it may become, that question is bad as the basis of a controversy, and good for nothing at all—a merely pernicious abstraction. We all agree that the seceded States, so-called, are out of their proper practical relation with the Union, and that the sole object of the Government, civil and military, in regard to these States, is to again get them into their proper practical relation. I believe that it is not only possible, but in fact easier, to do this without deciding or even considering whether those States have ever been out of the Union than with it. Finding themselves safely at home, it would be utterly immaterial whether they had been abroad. Let us all join in doing the acts necessary to restore the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether, in doing the acts, he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it. The amount of constituency, so to speak, on which the Louisiana government rests, would be more satisfactory to all if it contained fifty thousand, or thirty thousand, or even twenty thousand, instead of twelve thousand, as it does. It is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers. Still, the question is not whether the Louisiana government, as it stands, is quite all that is desirable. The question is: Will it be wiser to take it as it is and help to improve it, or to reject and disperse? Can Louisiana be brought into proper practical relation with the Union sooner by sustaining or by discarding her new State government? Some twelve thousand voters in the heretofore slave States of Louisiana have sworn allegiance to the Union, assumed to be the rightful political power of the State, held elections, organized a State government, adopted a free State constitution, giving the benefit of public school equally to black and white, and empowering the legislature to confer the elective franchise upon the colored man. This legislature has already voted to ratify the constitutional amendment recently passed by Congress, abolishing slavery throughout the nation. These twelve thousand persons are thus fully committed to the Union and to perpetuate freedom in the State—committed to the very things, and nearly all things, the nation wants—and they ask the nation's recognition and its assistance to make good this committal. Now, if we reject and spurn them, we do our utmost to disorganize and disperse them. We, in fact, say to the white man: You are worthless or worse; we will neither help you nor be helped by you. To the blacks we say: This cup of liberty which these, your old masters, held to your lips, we will dash from you, and leave you to the chances of gathering the spilled and scattered contents in some vague and undefined when, where, and how. If this course, discouraging and paralyzing both white and black, has any tendency to bring Louisiana into proper practical relations with the Union, I have so far been unable to perceive it. If, on the contrary, we recognize and sustain the new government of Louisiana, the converse of all this is made true. We encourage the hearts and nerve the arms of twelve thousand to adhere to their work, and argue for it, and proselyte for it, and fight for it, and feed it, and grow it, and ripen it to a complete success. The colored man, too, in seeing all united for him, is inspired with vigilance, and energy, and daring to the same end. Grant that he desires the elective franchise, will he not attain it sooner by saving the already advanced steps toward it than by running backward over them? Concede that the new government of Louisiana is only to what it should be as the egg is to the fowl, we shall sooner have the fowl by hatching the egg than by smashing it. . . .

What has been said of Louisiana will apply generally to other States. And yet so great peculiarities pertain to each State, and such important and sudden changes occur in the same State, and withal so new and unprecedented is the whole case, that no exclusive and inflexible plan can safely be prescribed as to details and collaterals. Such exclusive and inflexible plan would surely become a new entanglement. Important principles may and must be inflexible. In the present situation, as the phrase goes, it may be my duty to make some new announcement to the people of the South. I am considering, and shall not fail to act when satisfied that action will be proper.

THE NATION MOURNING AT LINCOLN'S BIER
By Tenniel in London "Punch"

On the outskirts of the crowd assembled to hear the address was one John Wilkes Booth, an actor, who had come to Washington the previous Saturday and was

stopping at the National Hotel. With him was a young man named David E. Herold.

It was when Lincoln made use of this expression: "It is also unsatisfactory to some that the election franchise is not given to the colored man. *I would myself prefer that it were now conferred on the very intelligent, and on those who serve our cause as soldiers,*" that, as Herold related, Booth nudged him and said in a tone of bitter resentment: "That means *nigger* equality; now, by God! I'll put him through."

CHAPTER IX

Reconstruction by Executive Authority

President Johnson's Severe View of Treason and Its Punishment—Sec. William H. Seward Converts the President from His Policy Toward Traitors—The President's Proclamation of Amnesty and Pardon—He Appoints Provisional Governors for the Seceded States—His Letter to Gov. William L. Sharkey [Miss.]—Constitutional Conventions of Southern States—Their Domination by ex-Secessionists—Acts of State Legislatures Nullify XIIIth Amendment—Report of Congressional Committee (William P. Fessenden, Chairman) on Acts of These Conventions and Legislatures—Opposition by the Country and Congress to Executive Reconstruction—Reports of Gen. Carl Schurz and Lieut.-Gen. Ulysses S. Grant on Political Conditions in the South—Address of Schuyler Colfax [Ind.] on His Election as Speaker of the House of Representatives—Privileges of the Floor Refused to Claimants of Seats in the House—Thaddeus Stevens [Pa.] Moves Appointment of Joint Committee to Investigate Political Conditions in the South—Senate Tables Credentials of Mississippi Claimants—Charles Sumner [Mass.] Introduces Resolutions Exacting Guaranties from States Applying for Restoration to the Union—First Annual Message of President Johnson: It Treats of Restoration of Rebel States to the Union and Protection for the Freedmen—John W. Farnsworth [Ill.] Introduces in the House Resolutions Opposed to the President's Reconstruction Policy—Appointment of Joint Committee (Senate and House) to Investigate Political Conditions in the South—Debate in the Senate: in Favor of Appointing the Committee: Jacob M. Howard [Mich.], William P. Fessenden [Me.]; Opposed, James R. Doolittle [Wis.], Willard Saulsbury [Del.], James Guthrie [Ky.]—Henry Wilson [Mass.] Introduces in the Senate Bill to Nullify Laws of Lately Rebellious States Discriminating against the Civil Rights of the Negro—Debate: in Favor of the Bill, Sen. Wilson, Charles Sumner [Mass.]; Opposed, Reverdy Johnson [Md.], Sen. Saulsbury, Edgar Cowan [Pa.].

UPON his accession as President (April 15, 1865) Andrew Johnson answered the general and natural inquiry as to what would be his policy by saying:

"I have to say that my policy must be left for development as the Administration progresses. The message of the declaration must be made by the acts as they transpire. The only assurance I can now give of the future is by reference to the past."

Three days later (April 18), while the body of Lincoln still lay in the White House, an Illinois delegation headed by Gov. Richard J. Oglesby paid the new President their respects.

James G. Blaine, in his "Twenty Years of Congress," has given an account of Johnson's speech in reply:

He spoke with profound emotion of the tragical termination of Mr. Lincoln's life: "The beloved of all hearts has been assassinated." Pausing thoughtfully, he added, "And when we trace this crime to its cause, when we remember the source whence the assassin drew his inspiration, and then look at the result, we stand yet more astounded at this most barbarous, most diabolical act. We can trace its cause through successive steps back to that source which is the spring of all our woes. No one can say that, if the perpetrator of this fiendish deed be arrested, he should not undergo the extremest penalty of the law known for crime: none will say that mercy should interpose. But is he alone guilty? Here, gentlemen, you perhaps expect me to present some indication of my future policy. One thing I will say: every era teaches its lesson. The times we live in are not without instruction. The American people must be taught—if they do not already feel—that treason is a crime and must be punished. The Government must be strong not only to protect but to punish. When we turn to the criminal code we find arson laid down as a crime with its appropriate penalty. We find theft and murder denounced as crimes, and their appropriate penalties prescribed; and there, too, we find the last and highest of crimes—treason. The people must understand that treason is the blackest of crimes and will surely be punished. Let it be engraven on every mind that treason is a crime, and traitors shall suffer its penalty. I do not harbor bitter or resentful feelings toward any. When the question of exercising mercy comes before me it will be considered calmly, judicially—remembering that I am the Executive of the nation. I know men love to have their names spoken of in connection with acts of mercy, and how easy it is to yield to that impulse. But we must never forget that what may be mercy to the individual is cruelty to the state."

The President spoke in similar vein to other delegations. To a representative body of Southern loyalists who had been driven to the North he repeated his views with great earnestness and deep feeling:

CAPTURE OF JEFFERSON DAVIS

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"It is hardly necessary for me on this occasion to declare that my sympathies and impulses in connection with this nefarious rebellion beat in unison with yours. Those who have passed through this bitter ordeal and who participated in it to a great extent are more competent, as I think, to judge and determine the true policy that should be pursued. I know how to appreciate the condition of being driven from one's home. I can sympathize with him whose all has been taken from him: I can sympathize with him who has been driven from the place that gave his children birth.

"*I have become satisfied that mercy without justice is a crime.* The time has come when the people should be taught to understand the length and breadth, the height and depth of the crime of treason. One who has become distinguished in the rebellion says that 'when traitors become numerous enough trea-

son becomes respectable, and to become a traitor is to constitute a portion of the aristocracy of the country.' God protect the American people against such an aristocracy! When the Government of the United States shall ascertain who are the conscious and intelligent traitors the penalty and the forfeit should be paid."

To a Pennsylvania delegation headed by ex-Secretary Simon Cameron he said:

"There has been an effort since this rebellion began to make the impression that it was a mere political struggle, or, as I see it thrown out in some of the papers, a struggle for the ascendency of certain principles from the dawn of the government to the present time, and now settled by the final triumph of the Federal arms. If this is admitted, the Government is at an end; for no question can arise but they will make it a party issue, and then to whatever length they carry it the party defeated will be only a party defeated, with no crime attaching thereto. But I say treason is a crime, the very highest crime known to the law, and there are men who ought to suffer the penalty of their treason! . . . To the unconscious, the deceived, the conscripted, in short, to the great mass of the misled, I would say mercy, clemency, reconciliation, and the restoration of their government. But to those who have deceived, to the conscious, intelligent, influential traitor who attempted to destroy the life of a nation, I would say, on you be inflicted the severest penalties of your crime."

The President inherited the Cabinet of his predecessor:

William H. Seward [N. Y.], Secretary of State.
Hugh McCulloch [Ind.], Secretary of the Treasury.
Edwin M. Stanton [O.], Secretary of War.
Gideon Welles [Conn.], Secretary of the Navy.
James Harlan [Ia.], Secretary of the Interior.
William Dennison [O.], Postmaster-General.
James Speed [Ky.], Attorney-General.

McCulloch, Welles, and Speed favored a conservative plan of reconstruction; Stanton, Harlan, and Dennison a radical plan.

Seward's position was in doubt. It was not until May 1 that he had recovered sufficiently from the murderous

assault upon him by Lewis Payne Powell to be informed of public affairs. By the 10th of the month he was well enough to confer with the President, and by the 20th he returned to his duties in his department.

In his conference with the President, Seward, who, more than any living man with the possible exception of Charles Sumner, had cause to hate the South, inclined to mercy toward that section. Says Mr. Blaine: "He was firmly persuaded that the wisest plan of reconstruction was the one which would be speediest; that for the sake of impressing the world with the strength and the marvelous power of self-government, with its law, its order, its peace, we should at the earliest possible moment have every State restored to its normal relations with the Union. He did not believe that guaranty of any kind beyond an oath of renewed loyalty was needful. He was willing to place implicit faith in the coercive power of self-interest operating upon the men lately in rebellion. He agreed neither with the President's proclaimed policy of blood, nor with that held by the vast majority of his own political associates, which, avoiding the rigor of personal punishment, sought by exclusion from political honor and emolument to administer wholesome discipline to the men who had brought peril to the Government and suffering to the people. He believed, moreover, that the legislation which should affect the South, now that peace had returned, should be shared by representatives of that section, and that, as such participation must at last come if we were to have a restored republic, the wisest policy was to concede it at once, and not nurture by delay a new form of discontent and induce by withholding confidence a new phase of distrust and disobedience among the Southern people."

Secretary Seward's views made a strong impression on the President, indeed, so completely won him from his former views that he was ready to proclaim a policy of reconstruction without attempting the indictment of even one traitor or issuing a warrant for the arrest of a single participant in the Rebellion aside from those

suspected of personal crime in connection with the noted conspiracy of assassination.

Leading men of the South, seeing this change of temper in the President, helped to fix it. Dropping their former contemptuous attitude toward him and cultivating his friendship they applauded his consistent adherence to the Democratic theory that the rights of a State were inherent and inalienable.

On May 29 two decisive steps were taken in the work of reconstruction. Both steps proceeded on the theory that every act needful for the rehabilitation of the seceded States could be accomplished by the Executive

"MY POLICY" [SEWARD'S] IN 1868—AND THE "DEAD DUCK" STILL LIVES
From the collection of the New York Historical Society

Department of the Government. This was known to be the favorite doctrine of Mr. Seward, and the President readily acquiesced in its correctness. Mr. Seward had no difficulty in persuading him that he possessed, as President, every power needful to accomplish the complete reconstruction of the rebellious States.

The first of these important acts was a proclamation of amnesty and pardon to "all persons who have directly or indirectly participated in the existing Rebellion" upon the condition that such persons should take

an oath declaring that henceforth they would "faithfully support, protect, and defend the Constitution of the United States and the union of the States thereunder," and that they would also "abide by and faithfully support all laws and proclamations which have been made during the existing Rebellion, with reference to the emancipation of slaves."

Certain classes were exempted from the benefits of amnesty: (1) Confederate diplomatists and foreign agents; (2) those who had left offices in the Federal judiciary to engage in the Rebellion; (3) officers in the Confederate army above the rank of colonel; (4) those who had left seats in Congress to join the Rebellion; (5) those who had resigned from the Federal army to join the Rebellion; (6) those who had maltreated prisoners in contravention of the laws of war (this was aimed at those who had abused negro prisoners); (7) absentees from the United States for the purpose of aiding the Rebellion (this was aimed at certain persons going over the Canadian border and concocting schemes for burning Northern cities, introducing infectious diseases in the loyal States, etc.); (8) Rebel officers who were West Point graduates; (9) Confederate State governors; (10) citizens of loyal States who had left these to aid the Rebellion; (11) those who had been engaged in destroying commerce on the high seas and Great Lakes; (12) prisoners of war still in custody for offences against the Government; (13) rebels owning taxable property over $20,000 in value (discrimination between rich and poor rebels was insisted on by the President and prevailed against the opposition of Seward, who assented to it only on the prospect that few men were left in the Confederacy who possessed the wealth mentioned).

This proclamation was much like that issued by President Lincoln on December 8, 1863, with the saving exception of a proviso which invited individuals of the excluded classes to apply for clemency to the President and virtually assured them of pardon except in cases of aggravated guilt.

Within nine months after the proclamation about 14,000 pardons were sought for and granted.

The second act looking toward the restoration of the South to its national rights was an executive proclamation appointing William W. Holden provisional governor of North Carolina and authorizing him to call a State convention "to present such a republican form of State government as will entitle the State to the guaranty of the United States therefor and its people against invasion, insurrections, and domestic violence."

It was specially provided in the proclamation that in "choosing delegates to any State convention no person shall be qualified as an elector or eligible as a member unless he shall have previously taken the prescribed oath of allegiance, and unless he shall also possess the qualifications of a voter as defined under the constitution and laws of North Carolina as they existed on the 20th of May, 1861, immediately prior to the so-called ordinance of secession." Says Mr. Blaine: "Mr. Lincoln had in mind, as was shown by his letter to Governor Hahn of Louisiana, to try the experiment of negro suffrage, beginning with those who had served in the Union army and who could read and write; but President Johnson's plan confined the suffrage to white men, by prescribing the same qualifications as were required in North Carolina before the war."

The President directed all the departments of the Federal Government to reëstablish their functions in the State, and this was done.

On June 13 Mississippi was treated in the same manner as North Carolina, William L. Sharkey being appointed Provisional Governor. On June 17 this treatment was accorded to Georgia (James Johnson, Provisional Governor), and to Texas (Andrew J. Hamilton, Provisional Governor); on June 21, Alabama (Lewis E. Parsons); on June 30, South Carolina (Benjamin F. Perry), and on July 13, Florida (William Marvin), completing the list of States in which loyal governments had not been formed during Lincoln's administration.

This plan rendered it possible, and indeed certain,

that State officers would be chosen for the permanent organization of the States who had not taken oath of allegiance to the Federal Government. Accordingly it met at once with great opposition among the people and their representatives in Congress. These said that it would hand over all the State governments to the very traitors who had instigated the Rebellion, and that the negroes, being deprived of the elective franchise, would not be able to maintain their freedom. The latter sentiment wrought on the President so powerfully that, against his own wish, he was compelled to address a circular to his provisional governors, suggesting that the elective franchise should be extended to all persons of color "who can read the Constitution of the United States and write their names, and also to those who own real estate valued at not less than two hundred and fifty dollars and pay taxes thereon."

In writing to Governor Sharkey of Mississippi in relation to this subject the President argued that his recommendations touching colored suffrage could be adopted "with perfect safety," and that thereby "the Southern States would be placed, with reference to free persons of color, upon the same basis with the free States." That Mr. Johnson, says Mr. Blaine, made this recommendation simply from policy and not from any proper conception of its inherent justice is indicated by the closing paragraph in his letter to Governor Sharkey. Indeed, by imprudent language the President made an unnecessary exposure of the character of his motives, and deprived himself of much of the credit which might otherwise have belonged to him. "I hope and trust," he wrote to his Mississippi governor, "that your convention will do this, and as a consequence the Radicals, who are wild upon negro franchise, will be completely foiled in their attempt to keep the Southern States from renewing their relations to the Union by not accepting their Senators and Representatives."

The whole scheme of reconstruction, as originated by Mr. Seward and adopted by the President, was in operation by the middle of July. The rapid and thor-

ough change in the President's position was clearly discerned by the people. His course of procedure was dividing the Republican party and already encouraging the hopes of those in the North who had been the steady opponents of Mr. Lincoln's war policy, and of those in the South who had sought for four years to destroy the republic. It soon became evident that the Northern Democrats who had been opposed to the war, and the Southern Democrats who had been defeated in the war, would unite in political action. Public interest was therefore transferred for the time from the acts of the President at the national capital to the acts of the reconstruction conventions about to assemble in the South.

Reconstruction Conventions in the South

Every convention called in the South to reconstruct the State governments assumed that the old State consitutions were in full force, and proceeded to amend these only so far as, in their opinion, it was necessary to secure their recognition by the Federal Government. In not one instance did they submit for ratification these constitutions to the people of the States which were affected, but, assuming their adoption, at once ordered the election of Representatives in Congress. These elections were dominated by former secessionists, with the result that men of this class, with few exceptions, were chosen to enter the halls of the national legislature. Upon this action a joint committee of Congress (William P. Fessenden, of Maine, chairman) subsequently commented as follows:

> "Hardly is the war closed before the people of the insurrectionary States come forward and haughtily claim, as a right, the privilege of participating at once in that Government which they have for four years been fighting to overthrow. Allowed and encouraged by the Executive to organize State governments, they at once placed in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring in many

> instances those who had rendered themselves peculiarly obnoxious. In the face of the law requiring an oath that would necessarily exclude all such men from Federal offices, they have elected, with very few exceptions, as Senators and Representatives in Congress, the very men who have actively participated in the rebellion, insultingly denouncing the law as unconstitutional."

The oath referred to in the committee's report is that popularly known as the "Ironclad oath," prescribed by the Act of July 2, 1862, to be taken by every person elected or appointed to any office of honor or profit under the Government of the United States, the President alone excepted. The officer before entering upon his duties was compelled to swear that he had "never voluntarily borne arms against the United States"; that he had "voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility to the National Government"; that he had "neither sought nor accepted nor attempted to exercise the functions of any office whatever under authority or pretended authority in hostility to the United States"; that he had "never yielded a voluntary support to any pretended government within the United States, hostile or inimical thereto."

Nevertheless former secessionists, such as Alexander H. Stephens, sought election to the Senate and House, boasting that they would prove the unconstitutionality of the Ironclad oath and demand their seats.

Mr. Stephens secured an election to the Senate and was present in Washington at the ensuing session of Congress, asking admission to a seat, says Mr. Blaine, as coolly as if every living man had forgotten that for four years he had been exerting his utmost effort to destroy the Constitution under which he now claimed the full rights of a citizen. Mr. Stephens even went so far as to point out to the loyal men in Congress how they were depriving him of his rights by demanding an oath of loyalty and good faith as the condition on which he should be entitled to take part in legislating for the restored Union.

Accordingly the same committee declared further that:

"Professing no repentance, glorying apparently in the crime they had committed, avowing still, as the uncontradicted testimony of Mr. Stephens and many others proves, an adherence to the pernicious doctrine of secession, and declaring that they yielded only to necessity, these men insist with unanimous voice upon their rights as States, and proclaim that they will submit to no conditions whatever as preliminary to their resumption of power under that Constitution *which they still claim the right to repudiate.*"

The report of the Congressional Committee further stated that:

"The Southern press, with few exceptions, abounds with weekly and daily abuse of the institutions and people of the loyal States; defends the men who led, and the principles which incited, the rebellion; denounces and reviles Southern men who adhered to the Union; and strives constantly and unscrupulously, by every means in its power, to keep alive the fire and hate and discord between the sections; calling upon the President to violate his oath of office, overturn the Government by force of arms, and drive the representatives of the people from their seats in Congress. The national banner is openly insulted and the national airs scoffed at, not only by an ignorant populace, but at public meetings. In one State [Virginia] the leading general of the rebel armies [Robert E. Lee] is openly nominated for governor by the House of Delegates, and the nomination is hailed by the people with shouts of satisfaction and openly indorsed by the press."

The committee averred that:

"Witnesses of the highest character testify that, without the protection of United States troops, Union men, whether of Northern or Southern origin, would be obliged to abandon their homes. The feeling in many portions of the country toward the emancipated slaves, especially among the ignorant and uneducated, is one of vindictive and malicious hatred. The deep-seated prejudice against color is assiduously cultivated by the public journals and leads to acts of cruelty, oppression, and murder, which the local authorities are at no pains to prevent or punish."

It was further declared by the committee:

"That the evidence of an intense hostility to the Federal Union, and an equally intense love for the late Confederacy, nurtured by the war, is decisive. While it appears that nearly all are willing to submit, at least for the time being, to the Federal authority, it is equally clear that the ruling motive is a desire to obtain the advantages which will be derived from a representation in Congress."

It was also proved before the committee, on the admissions of witnesses who had been prominent in the Rebellion, that "the generally prevailing opinion in the late Confederacy defends the legal right of secession and upholds the doctrine that the first allegiance of the people is due to the States and not to the United States." It was further admitted by the same class of witnesses that "the taxes levied by the United States will be paid only on compulsion and with great reluctance," and that "the people of the rebellious States would, if they could see a prospect of success, repudiate the national debt." It was stated by witnesses from the South, with evident pride, that "officers of the Union army, on duty in the South, and Northern men who go there to engage in business, are generally detested and proscribed," and that "Southern men who adhered to the Union are bitterly hated and relentlessly persecuted."

When the Southern legislatures assembled they passed laws practically nullifying the Thirteenth Amendment. Says Mr. Blaine: Both in the civil and criminal code the treatment of the negro was different from that to which the white man was subjected. He was compelled to work under a series of labor laws applicable only to his own race. The laws of vagrancy were so changed as, in many of their provisions, to apply only to him, and under their operation all freedom of movement and transit was denied. The liberty to sell his time at a fair market rate was destroyed by the interposition of apprentice laws. Avenues of usefulness and skill in which he might specially excel were closed against him lest he should compete with white men.

The attitude of the South caused a great advance in radical sentiment at the North. Men who had hitherto been unwilling to accord the elective franchise to the negro even in their own States began to believe that the grant of this throughout the Union was the only safeguard that could be given to save him from being practically remanded to slavery. This opinion of the people was reflected in the views of their national representatives, and observers of the signs of the times prophesied that the President's plan of reconstruction, under which the Southern States had perpetrated their acts, would be overturned at the coming session of Congress.

Investigations of Southern Conditions

During the summer of 1865 the President commissioned General Carl Schurz to travel through the South investigating political conditions in order to see if there was warrant to reëstablish governments of the States lately in rebellion. General Schurz started on his mission early in July and was engaged upon it until the middle of autumn, traveling through South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas. His conclusions as summarized by Mr. Blaine were as follows:

The loyalty of the masses and of most of the leaders of the South "consists in submission to necessity." Except in individual instances there is "an entire absence of that national spirit which forms the basis of true loyalty and patriotism.

"The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up; and, although the freedman is no longer considered the property of the individual master, he is considered the slave of society, and all independent State legislation will share the tendency to make him such. The ordinances abolishing slavery, passed by the conventions under the pressure of circumstances, will not be looked upon as barring the establishment of a new form of servitude. Practical attempts," Mr.

Schurz continued, "on the part of the Southern people to deprive the negro of his rights as a freedman may result in bloody collision, and will certainly plunge Southern society into resistless fluctuations and anarchical confusion."

These evils, in the opinion of Mr. Schurz, "can be prevented only by continuing the control of the National Government in the States lately in rebellion until free labor is fully developed and firmly established. This desirable result will be hastened by a firm declaration on the part of the Government that national control in the South will not cease until such results are secured." It was Mr. Schurz's judgment that "it will hardly be possible to secure the freedman against oppressive legislation and private persecution unless he be endowed with a certain measure of political power." He felt sure of the fact that, the "extension of the franchise to the colored people upon the development of free labor and upon the security of human rights in the South being the principal object in view, the objections raised upon the ground of the ignorance of the freedmen become unimportant."

Mr. Schurz made an intelligent argument in favor of negro suffrage. He was persuaded that the Southern people would never grant suffrage to the negro voluntarily, and that "the only manner in which the Southern people can be induced to grant to the freedmen some measure of self-protecting power, in the form of suffrage, is to make it a condition precedent to readmission." He remarked upon the extraordinary delusion then pervading a portion of the public mind regarding the deportation of the freedmen. "The South," he said, stands in need of an increase and not a diminution of its laboring force to repair the losses and disasters of the last four years. Much is said of importing European laborers and Northern men. This is the favorite idea among planters who want such emigrants to work on their plantations, but they forget that European and Northern men will not come to the South to serve as hired hands on the plantations, but to acquire property

for themselves; and even if the whole European emigration, at the rate of two hundred thousand a year, were turned into the South, leaving not a single man for the North and West, it would require between fifteen and twenty years to fill the vacuum caused by the deportation of freedmen."

Mr. Schurz desired not to be understood as saying that "there are no well-meaning men among those who are compromised in the Rebellion. There are many, but neither their number nor their influence is strong enough to control the manifest tendency of the popular spirit." Apprehending that his report might be antagonized by evidence of a contrary spirit shown in the South by the action of their conventions, Mr. Schurz declared that it was "dangerous to be led by such evidence into any delusions. As to the motives," said Mr. Schurz, "upon which the Southern people acted when abolishing slavery (in their conventions) and their understanding of the bearings of such acts, we may safely accept the standard they have set up for themselves." The only argument of justification was that "they found themselves in a situation where *they could do no better.*" A prominent Mississippian (General W. L. Brandon) said in a public card, according to Mr. Schurz, "My honest conviction is that we must accept the situation until we can once more get control of our own State affairs . . . I must submit for the time to evils I cannot remedy." Mr. Schurz expressed his conviction that General Brandon had "only put in print what a majority of the people say in more emphatic language."

By the time General Schurz's report reached him (in November, 1865) the President had gone too far in his reconstruction policy to recede from it. Accordingly he secured a report upon the same points from Lieut.-Gen. Ulysses S. Grant, who had just completed a very brief tour of military inspection through a number of the States covered by General Schurz. General Grant's report was brief but positive; he declared his belief that "the mass of thinking men of the South accept the present situation of affairs in good faith." At the same

time he thought that four years of war had left the Southern people in a condition hardly to yield proper obedience to civil authority, and he therefore recommended that small garrisons should be maintained throughout the region "until such time as labor returns to its proper channels and civil authority is fully established."

He advised, however, that no negroes be stationed in the garrisons, as their presence would demoralize labor and cause their camps to be a resort of the freedmen.

The white people, he said, were "anxious to return to self-government within the Union as soon as possible," and were willing and anxious to receive protection from the Government during the process of reconstruction. All they desired was not to be humiliated.

"The questions," continued General Grant, "heretofore dividing the people of the two sections—slavery and the right of secession—the Southern men regard as having been settled forever by the tribunal of arms," and some of the leading men regarded it as having been fortunately settled for the whole country.

He advised that the Freedmen's Bureau be placed under the officers of the various Southern military departments, for economy's sake and to secure uniform and responsible action. His general comment on the bureau was adverse—it tended to impress the freedman with the idea that he would not be compelled to work and that the lands of the former masters would be divided among their former slaves.

In the succeeding debates on reconstruction these reports were drawn from the President by Congress; that of General Schurz was quoted largely by the Opposition, and that of General Grant by the Administration, in support of the opposing contentions.

The new Congress (the Thirty-ninth) assembled on December 4, 1865. Each chamber was Republican by a large majority. Schuyler Colfax [Ind.] was elected Speaker of the House of Representatives. In accepting the office he said:

Safeguarding Civil Rights

Speaker Colfax

The duties of Congress are as obvious as the sun's pathway in the heavens. Representing, in its two branches, the States and the people, its first and highest obligation is to guarantee to every State a republican form of government. The rebellion having overthrown constitutional State governments in many States, it is yours to mature and enact legislation which, with the concurrence of the Executive, shall establish them anew on such a basis of enduring justice as will guarantee all necessary safeguards to the people, and afford, what our Magna Charta, the Declaration of Independence, proclaims is the chief object of government—protection to all men in their inalienable rights. [Applause.] The world should witness, in this great work, the most inflexible fidelity, the most earnest devotion, to the principles of liberty and humanity, the truest patriotism, and the wisest statesmanship.

Heroic men, by hundreds of thousands, have died that the Republic might live. The emblems of mourning have darkened White House and cabin alike. But the fires of civil war have melted every fetter in the land, and proved the funeral pyre of slavery. [Applause.] It is for you, Representatives, to do your work as faithfully and as well as did the fearless saviors of the Union on their more dangerous arena of duty. Then we may hope to see the vacant and once abandoned seats around us gradually filling up, until this hall shall contain Representatives from every State and district; their hearts devoted to the Union for which they are to legislate, jealous of its honor, proud of its glory, watchful of its rights, and hostile to its enemies. And the stars on our banner, that paled when the States they represented arrayed themselves in arms against the nation, will shine with a more brilliant light of loyalty than ever before.

No Senators nor Representatives were seated at this time from the formerly rebellious States, though there were several claimants present. The feeling of the House of Representatives in this matter was clearly shown by its refusal to vote on a resolution of William E. Niblack [Ind.] according the claimants the customary privileges of the floor.

Thaddeus Stevens [Pa.] moved that a joint committee of fifteen be appointed, nine members from the House and six from the Senate, to investigate the condition of the States formerly in secession and report upon whether or not they were entitled to representation in Congress. The resolution was received by the House, but when presented next day in the Senate it was ordered to lie over one day. Credentials were received in the Senate from William L. Sharkey and James L. Alcorn, elected by the legislature of Mississippi, and were laid on the table.

On the same day Charles Sumner [Mass.] introduced in the Senate resolutions significant of the gathering opposition to the President's reconstruction policy. These defined the duty of Congress in respect to guaranties of the national security and national faith in the rebel States. They declared that, in order to provide proper guaranties for security in the future, "Congress should take care that no one of the rebellious States should be allowed to resume its relations to the Union until after the satisfactory performance of five several conditions, which must be submitted to a popular vote and be sanctioned by a majority of the people in each of those States respectively."

Mr. Sumner demanded first "the complete reëstablishment of loyalty, as shown by an honest recognition of the unity of the republic and the duty of allegiance to it at all times without mental reservation or equivocation of any kind. How Mr. Sumner, says Mr. Blaine in his "Twenty Years of Congress," could determine that "the recognition of the unity of the republic" was *honest,* how he could know whether there was not, after all, a mental reservation on the part of the rebels now swearing allegiance, he did not attempt to inform the Senate. The second condition demanded "the complete suppression of all oligarchical pretensions and the complete enfranchisement of all citizens, so that there shall be no denial of rights on account of race or color." The third condition was "the rejection of the rebel debt and the adoption in just proportions of the national debt and the national obligations to Union soldiers, with sol-

emn pledges never to join in any measure, directly or indirectly, for their repudiation or in any way tending to impair the national credit." The fourth condition was "the organization of an educational system for the equal benefit of all, without distinction of color or race." The fifth had some of the objectionable features of his first, demanding "the choice of citizens for office, whether State or national, of constant and undoubted loyalty, whose conduct and conversation shall give assurance of peace and reconciliation." The rebel States were not to be, in Mr. Sumner's language, "precipitated back to political power and independence, but must wait until these conditions are, in all respects, fulfilled." In addition he desired a declaration of the Senate that "the Thirteenth Amendment, abolishing slavery, has become and is a part of the Constitution of the United States, having received the approval of the legislatures of three-fourths of the States adhering to the Union." He declared that "the votes of the States in rebellion are not necessary in any way to its adoption, but they must all agree to it through their legislatures as a condition precedent to their restoration to their full rights as members of the Union." With these resolutions Mr. Sumner submitted another long series declaratory of the duty of Congress in respect to loyal citizens in the rebel States. His first series had defined what the lately rebellious States must agree to by popular vote, and now he outlined quite fully what would be the duty of Congress respecting the admission of those States to representation in the Senate and the House. The central fact of the whole series was that the color of the skin must not exclude a loyal man from civil rights.

On the next day (December 5) the two chambers met to hear the first annual message of the President.

Admit the States with Conditional Guaranties

First Annual Message of President Johnson

After deploring the assassination "by an act of parricidal treason" of his predecessor, whom he extolled

as the savior of the Union and a statesman to whose memory the whole world was rendering justice, he said that the sad event had cast upon himself a "heavier weight of cares than had ever devolved upon any one of his (Lincoln's) predecessors," and that he therefore asked "the support and confidence" of Congress and the people.

The Union of the United States of America was intended by its authors to last as long as the States themselves shall last. *"The Union shall be perpetual,"* are the words of the Confederation. *"To form a more perfect Union,"* by an ordinance of the people of the United States, is the declared purpose of the Constitution.

The Constitution contains within itself ample resources for its own preservation. It has power to enforce the laws, punish treason, and insure domestic tranquillity. In case of the usurpation of the government of a State by one man, or an oligarchy, it becomes a duty of the United States to make good the guaranty to that State of a republican form of government, and so to maintain the homogeneousness of all. Does the lapse of time reveal defects? A simple mode of amendment is provided in the Constitution itself, so that its conditions can always be made to conform to the requirements of advancing civilization. No room is allowed even for the thought of a possibility of its coming to an end. The Constitution is the work of "the people of the United States," and it should be as indestructible as the people.

It is not strange that the framers of the Constitution, which had no model in the past, should not have fully comprehended the excellence of their own work. Fresh from a struggle against arbitrary power, many patriots suffered from harassing fears of an absorption of the State governments by the general Government, and many from a dread that the States would break away from their orbits. But the very greatness of our country should allay the apprehension of encroachments by the general Government. The subjects that come unquestionably within its jurisdiction are so numerous that it must ever naturally refuse to be embarrassed by questions that lie beyond it. Were it otherwise, the Executive would sink beneath the burden; the channels of justice would be choked; legislation would be obstructed by excess; so that there is a greater temptation to exercise some of the functions of the general Government through the States than to trespass on their rightful sphere. "The ab-

solute acquiescence in the decisions of the majority" was, at the beginning of the century, enforced by Jefferson "as the vital principle of republics," and the events of the last four years have established, we will hope forever, that there lies no appeal to force.

The maintenance of the Union brings with it "the support of the State governments in all their rights"; but it is not one of the rights of any State government to renounce its own place in the Union, or to nullify the laws of the Union. The largest liberty is to be maintained in the discussion of the acts of the Federal Government; but there is no appeal from its laws, except to the various branches of that Government itself, or to the people, who grant to the members of the legislative and of the executive departments no tenure but a limited one, and in that manner always retain the powers of redress.

"The sovereignty of the States" is the language of the Confederacy, and not the language of the Constitution. The latter contains the emphatic words, "The Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

Certainly the Government of the United States is a limited government; and so is every State government a limited government. With us, this idea of limitation spreads through every form of administration, general, State, and municipal, and rests on the great distinguishing principle of the recognition of the rights of man. The ancient republics absorbed the individual in the state, prescribed his religion, and controlled his activity. The American system rests on the assertion of the equal right of every man to life, liberty, and the pursuit of happiness; to freedom of conscience, to the culture and exercise of all his faculties. As a consequence, the State government is limited, as to the general Government in the interests of union, as to the individual citizen in the interest of freedom.

States, with proper limitations of power, are essential to the existence of the Constitution of the United States. At the very commencement, when we assumed a place among the powers of the earth, the Declaration of Independence was adopted by States; so also were the Articles of Confederation; and when "the people of the United States" ordained and established the Constitution, it was the assent of the States, one by one, which

gave it vitality. In the event, too, of any amendment to the Constitution, the proposition of Congress needs the confirmation of States. Without States, one great branch of the legislative government would be wanting. And, if we look beyond the letter of the Constitution to the character of our country, its capacity for comprehending within its jurisdiction a vast continental empire is due to the system of States. The best security for the perpetual existence of the States is the "supreme authority" of the Constitution of the United States. The perpetuity of the Constitution brings with it the perpetuity of the States; their mutual relation makes us what we are, and in our political system their connection is indissoluble. The whole cannot exist without the parts, nor the parts without the whole. So long as the Constitution of the United States endures the States will endure; the destruction of the one is the destruction of the other; the preservation of the one is the preservation of the other.

I have thus explained my views of the mutual relations of the Constitution and the States, because they unfold the principles on which I have sought to solve the momentous questions and overcome the appalling difficulties that met me at the very commencement of my administration. It has been my steadfast object to escape from the sway of momentary passions, and to derive a healing policy from the fundamental and unchanging principles of the Constitution.

I found the States suffering from the effects of a civil war. Resistance to the general Government appeared to have exhausted itself. The United States had recovered possession of their forts and arsenals; and their armies were in the occupation of every State which had attempted to secede. Whether the territory within the limits of those States should be held as conquered territory, under military authority emanating from the President as the head of the army, was the first question that presented itself for decision.

Now, military governments, established for an indefinite period, would have offered no security for the early suppression of discontent; would have divided the people into the vanquishers and the vanquished; and would have envenomed hatred, rather than have restored affection. Once established, no precise limit to their continuance was conceivable. They would have occasioned an incalculable and exhausting expense. Peaceful emigration to and from that portion of the country is one of the best means that can be thought of for the restoration of harmony; and that emigration would have been prevented; for what

emigrant from abroad, what industrious citizen at home, would place himself willingly under military rule? The chief persons who would have followed in the train of the army would have been dependents on the general Government, or men who expected profit from the miseries of their erring fellow citizens. The powers of patronage and rule which would have been exercised, under the President, over a vast and populous and naturally wealthy region are greater than, unless under extreme necessity, I should be willing to intrust to any one man; they are such as, for myself, I could never, unless on occasions of great emergency, consent to exercise. The willful use of such powers, if continued through a period of years, would have endangered the purity of the general administration and the liberties of the States which remained loyal.

Besides, the policy of military rule over a conquered territory would have implied that the States whose inhabitants may have taken part in the rebellion had, by the act of those inhabitants, ceased to exist. But the true theory is that all pretended acts of secession were, from the beginning, null and void. The States cannot commit treason, nor screen the individual citizens who may have committed treason, any more than they can make valid treaties or engage in lawful commerce with any foreign power. The States attempting to secede placed themselves in a condition where their vitality was impaired, but not extinguished—their functions suspended, but not destroyed.

But if any State neglects or refuses to perform its offices there is the more need that the general Government should maintain all its authority, and, as soon as practicable, resume the exercise of all its functions. On this principle I have acted, and have gradually and quietly, and by almost imperceptible steps, sought to restore the rightful energy of the general Government and of the States. To that end, provisional governors have been appointed for the States, conventions called, governors elected, legislatures assembled, and Senators and Representatives chosen to the Congress of the United States. At the same time the courts of the United States, as far as could be done, have been reopened, so that the laws of the United States may be enforced through their agency. The blockade has been removed and the custom houses reëstablished in ports of entry, so that the revenue of the United States may be collected. The Post-Office Department renews its ceaseless activity, and the general Government is thereby enabled to communicate promptly with its officers and agents. The courts bring security to persons and property; the opening of the ports invites the restoration of industry and commerce; the post-office renews the facilities of social intercourse and of business. And is it not happy for us all that the restoration of each one of these functions of the general Government brings with it a blessing to the States over which they are extended? Is it not a sure promise of harmony and renewed attachment to the Union that, after all that has happened, the return of the general Government is known only as a beneficence?

I know very well that this policy is attended with some risk; that for its success it requires at least the acquiescence of the States which it concerns; that it implies an invitation to those States, by renewing their allegiance to the United States, to resume their functions as States of the Union. But it is a risk that must be taken; in the choice of difficulties, it is the smallest risk; and to diminish, and, if possible, to remove, all danger I have felt it incumbent on me to assert one other power of the general Government—the power of pardon. As no State can throw a defence over the crime of treason, the power of pardon is exclusively vested in the executive Government of the United States. In exercising that power I have taken every precaution to connect it with the clearest recognition of the binding force of the laws of the United States, and an unqualified acknowledgment of the great social change of condition in regard to slavery which has grown out of the war.

The next step which I have taken to restore the constitutional relations of the States has been an invitation to them to participate in the high office of amending the Constitution. Every patriot must wish for a general amnesty at the earliest epoch consistent with public safety. For this great end there is need of a concurrence of all opinions, and the spirit of mutual conciliation. All parties in the late terrible conflict must work together in harmony. It is not too much to ask, in the name of the whole people, that, on the one side, the plan of restoration shall proceed in conformity with a willingness to cast the disorders of the past into oblivion; and that, on the other, the evidence of sincerity in the future maintenance of the Union shall be put beyond any doubt by the ratification of the proposed amendment to the Constitution, which provides for the abolition of slavery forever within the limits of our country. So long as the adoption of this amendment is delayed, so long will doubt and jealousy and uncertainty prevail. This is the measure which will efface the sad memory of the past; this is the measure which will most certainly call population and capital and security to those parts of the Union that need

them most. Indeed, it is not too much to ask of the States which are now resuming their places in the family of the Union to give this pledge of perpetual loyalty and peace. Until it is done, the past, however much we may desire it, will not be forgotten. The adoption of the amendment reunites us beyond all power of disruption. It heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people, renewed and strengthened, bound more than ever to mutual affection and support.

The amendment to the Constitution being adopted, it would remain for the States, whose powers have been so long in abeyance, to resume their places in the two branches of the national legislature, and thereby complete the work of restoration. Here it is for you, fellow citizens of the Senate, and for you, fellow citizens of the House of Representatives, to judge, each of you for yourselves, of the elections, returns, and qualifications of your own members.

The full assertion of the powers of the general Government requires the holding of circuit courts of the United States within the districts where their authority has been interrupted. In the present posture of our public affairs, strong objections have been urged to holding those courts in any of the States where the rebellion has existed; and it was ascertained by inquiry that the circuit court of the United States would not be held within the district of Virginia during the autumn or early winter, nor until Congress should have "an opportunity to consider and act on the whole subject." To your deliberations the restoration of this branch of the civil authority of the United States is therefore necessarily referred, with the hope that early provision will be made for the resumption of all its functions. It is manifest that treason, most flagrant in its character, has been committed. Persons who are charged with its commission should have fair and impartial trials in the highest civil tribunals of the country, in order that the Constitution and the laws may be fully vindicated; the truth clearly established and affirmed that treason is a crime, that traitors should be punished, and the offence made infamous; and, at the same time, that the question may be judicially settled, finally and forever, that no State of its own will has the right to renounce its place in the Union.

The relations of the general Government toward the four million inhabitants whom the war has called into freedom have engaged my most serious consideration. On the propriety of

attempting to make the freedmen electors by the proclamation of the Executive, I took for my counsel the Constitution itself, the interpretations of that instrument by its authors and their contemporaries, and recent legislation by Congress. When, at the first movement toward independence, the Congress of the United States instructed the several States to institute governments of their own, they left each State to decide for itself the conditions for the enjoyment of the elective franchise. During the period of the Confederacy there continued to exist a very great diversity in the qualifications of electors in the several States; and even within a State a distinction of qualifications prevailed with regard to the officers who were to be chosen. The Constitution of the United States recognizes these diversities when it enjoins that, in the choice of members of the House of Representatives of the United States, "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." After the formation of the Constitution it remained, as before, the uniform usage for each State to enlarge the body of its electors, according to its own judgment; and, under this system, one State after another has proceeded to increase the number of its electors, until now universal suffrage, or something very near it, is the general rule. So fixed was this reservation of power in the habits of the people, and so unquestioned has been the interpretation of the Constitution, that during the Civil War the late President never harbored the purpose—certainly never avowed the purpose—of disregarding it; and in the acts of Congress during that period nothing can be found which, during the continuance of hostilities, much less after their close, would have sanctioned any departure by the Executive from a policy which has so uniformly obtained. Moreover, a concession of the elective franchise to the freedmen, by act of the President of the United States, must have been extended to all colored men, wherever found, and so much have established a change of suffrage in the Northern, Middle, and Western States, not less than in the Southern and Southwestern. Such an act would have created a new class of voters, and would have been an assumption of power by the President which nothing in the Constitution or laws of the United States would have warranted.

On the other hand, every danger of conflict is avoided when the settlement of the question is referred to the several States. They can, each for itself, decide on the measure, and whether it is to be adopted at once and absolutely or introduced gradually

and with conditions. In my judgment, the freedmen, if they show patience and manly virtues, will sooner obtain a participation in the elective franchise through the States than through the general Government, even if it had power to intervene. When the tumult of emotions that have been raised by the suddenness of the social change shall have subsided it may prove that they will receive the kindliest usage from some of those on whom they have heretofore most closely depended.

But while I have no doubt that now, after the close of the war, it is not competent for the general Government to extend the elective franchise in the several States, it is equally clear that good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor. I cannot too strongly urge a dispassionate treatment of this subject, which should be carefully kept aloof from all party strife. We must equally avoid hasty assumptions of any natural impossibility for the two races to live side by side, in a state of mutual benefit and good-will. The experiment involves us in no inconsistency. Let us, then, go on and make that experiment in good faith, and not be too easily disheartened. The country is in need of labor, and the freedmen are in need of employment, culture, and protection. While their right of voluntary migration and expatriation is not to be questioned, I would not advise their forced removal and colonization. Let us rather encourage them to honorable and useful industry where it may be beneficial to themselves and to the country; and, instead of hasty anticipations of the certainty of failure, let there be nothing wanting to the fair trial of the experiment. The change in their condition is the substitution of labor by contract for the status of slavery. The freedman cannot fairly be accused of unwillingness to work so long as a doubt remains about his freedom of choice in his pursuits and the certainty of his recovering his stipulated wages. In this the interests of the employer and the employed coincide. The employer desires in his workmen spirit and alacrity, and these can be permanently secured in no other way. And if the one ought to be able to enforce the contract, so ought the other. The public interest will be best promoted if the several States will provide adequate protection and remedies for the freedmen. Until this is in some way accomplished there is no chance for the advantageous use of their labor; and the blame of ill success will not rest on them.

I know that sincere philanthropy is earnest for the immediate realization of its remotest aims; but time is always an

element in reform. It is one of the greatest acts on record to have brought four million people into freedom. The career of free industry must be fairly opened to them; and then their future prosperity and condition must, after all, rest mainly on themselves. If they fail, and so perish away, let us be careful that the failure shall not be attributable to any denial of justice. In all that relates to the destiny of the freedman we need not be too anxious to read the future; many incidents which, from a speculative point of view, might raise alarm will quietly settle themselves.

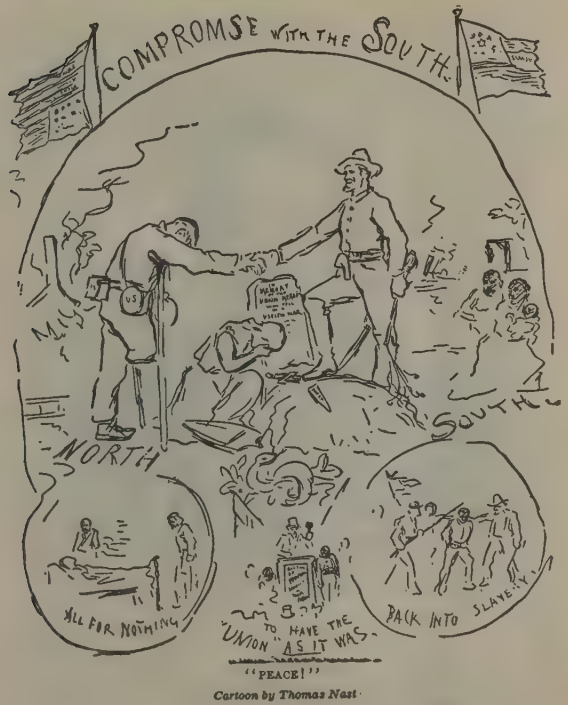
Opposition to the President's plan of reconstruction was at once shown in extreme form by resolutions introduced in the House on December 6, 1865, by John F. Farnsworth [Ill.].

Resolved (as the sense of this House), That, as all just powers of government are derived from the consent of the governed, that cannot be regarded as a just government which denies to a large portion of its citizens [*i. e.*, negroes], who share both its pecuniary and military burdens, the right to express either their consent or dissent to the laws which subject them to taxation and to military duty, and which refuses them full protection in the enjoyment of their inalienable rights.

Resolved, That, . . . while we have rewarded the foreigner, who is ignorant of our language and institutions, and who has but just landed upon our shores, with the right of citizenship for a brief service in the armies of the United States, good faith, as well as impartial justice, demands of this Government that it secure to the colored soldiers of the Union their equal rights and privileges as citizens of the United States.

Resolved, That we agree with the President of the United States that "mercy without justice is a crime"; and the admitting of rebels and traitors, upon whose hands the blood of slain patriots has scarcely dried, and upon whose hearts is the damning crime of starving to death loyal men taken as prisoners in battle, to the rights of citizenship and of suffrage, while we deny those rights to the loyal black man, who fought for the Union, and who fed and protected our starving soldiers, is a fit illustration of that truism.

Mr. Farnsworth demanded the previous question on his resolutions, which was refused by a vote of the House. These resolutions, together with a number of others relating to conditions to be exacted of the States lately in rebellion before they should be recognized as members of the Union, were referred to the joint committee of the House which had been appointed on December 4, 1865.



Cartoon by Thomas Nast

On the Joint Committee

Debate in the Senate, December 12, 1865

In the debate in the Senate on the appointment of this committee the lines of division between the Administration and the Opposition were clearly intimated.

Jacob M. Howard [Mich.] on December 12, wished it to be definitely pledged that, until the committee reported, neither chamber would admit representatives of the rebel States.

Sir, what is the present position and status of the rebel States? In my judgment, they are simply conquered communities; subjugated by the arms of the United States—communities in which the right of self-government does not now exist. We hold them, as we know well, as the world knows today, not by their own free will and consent as members of the Union, but solely by virtue of our superior military power, which is exerted to that effect throughout the length and breadth of the rebel States. There is in those States no rightful authority, according to my view, at this time, but that of the United States, and every political act, every governmental act exercised within their limits, must necessarily be exercised and performed under the sanction and by the will of the conqueror.

In short, sir, they are not to-day loyal States; their population are not willing to-day, if we are rightly informed, to perform peaceably, quietly, and efficiently the duties which pertain to the population of a State in the Union and of the Union; and, for one, I cannot consent to recognize them, even indirectly, as entitled to be represented in either House of Congress at this time.

James R. Doolittle [Wis.] opposed the appointment of a special committee on the subject, which, he said, since it involved constitutional matters, properly and in accordance with the practice of the Senate, should be referred to the Judiciary Committee. Passing by the injustice of an unequal representation on the joint committee, operating as it did against the Senate, he objected on principle to any joint committee acting upon the question.

Mr. President, I believe that under the Constitution, upon all subjects of legislation but one, the two Houses are equal and coördinate branches of Congress. That one relates to their representation in the bodies, to their membership, that which constitutes their existence, which is essential to their life and their independence. That is confided to each House, and to each House alone, to act for itself. One House can no more share it with the other than it can share it with the Supreme Court or with the President. It is a matter over which its jurisdiction

is exclusive of every other jurisdiction. It is a matter in which its decisions, right or wrong, are absolute and without appeal. Sir, in my opinion, the Senate of the United States cannot give to a committee beyond its control this question of the representation in this body without a loss of its self-respect, its dignity, its independence; without an abandonment of its constitutional duty and a surrender of its constitutional powers.

Mr. President, there is a still graver objection to this resolution as it stands. The provision that, "until such report shall have been made and finally acted on by Congress, no member shall be received into either House from any of the so-called Confederate States," is a provision which, by law, excludes those eleven States from their representation in the Union. Sir, pass that resolution as it stands, and let it receive the signature of the President, and you have accomplished what the rebellion could not accomplish, what the sacrifice of half a million men could not accomplish in warring against this Government—you have dissolved the Union by act of Congress.

The Senator from Michigan talks about the status of these States. He may very properly raise the question whether they have any legislatures that are capable of electing Senators to this body. That is a question of fact to be considered; but as to whether they are States, and States still within the Union, notwithstanding their civil form of government has been overturned by the rebellion and their legislatures have been disorganized—that they are still States in this Union is the most sacred truth and the dearest truth to every American heart, and it will be maintained by the American people against all opposition, come from what quarter it may. Sir, the flag that now floats on the top of this Capitol bears thirty-six stars. Every star represents a State in this Union. I ask the Senator from Michigan does that flag, as it floats there, speak the nation's truth to our people and to the world or it is a hypocritical, flaunting lie? That flag has been borne at the head of our conquering legions through the whole South, planted at Vicksburg, planted at Columbia, Savannah, Charleston, Sumter; the same old flag which came down before the rebellion at Sumter was raised up again, and it still bore the same glorious stars; "not a star obscured," not one.

WILLIAM P. FESSENDEN.—Were not some of those stars obscured?

MR. DOOLITTLE.—No, sir. These people have been disorganized in their civil governments in consequence of the war; the rebels overturned civil government in the first place, and we

entered with our armies and captured the rebellion; but did that destroy the States? Not at all. We entered the States to save them, not to destroy them. Our constitutional duty is to save them. and save every one of them, and not to destroy them. The guaranty in the Constitution is a guaranty to the States, and to every one of the States, and the obligation that rests upon us is to guarantee to South Carolina a republican form of government as a State in this Union, and not as a Territory. The doctrine of the territorial condition of these States, that they are mere conquered, subjugated Territories, as if we had conquered Canada or Mexico, will not stand argument for a moment. It is utterly at war with the ground on which we stand and have stood from the beginning. The ground we occupied was this: that no State nor the people of any State had any power to withdraw from the Union. They could not do it peacefully; they undertook to do it by arms; we crushed the attempt; we trampled their armies under our feet; we captured the rebellion; the States are ours; and we entered them to save and not to destroy.

The Senator then began to discuss the proceedings of the House of Representatives, when he was reminded by the president *pro tem.* of the Senate that such a discussion was not within the rules of order. Senator Doolittle then attained his object in parliamentary fashion by discussing the proceedings of a recent anti-administration caucus. Referring to its dominant spirit, not in his capacity as a Representative in Congress but as "a man known to history," he said:

I refer to the Hon. Thaddeus Stevens. His history is known to all men; and one thing we know of him certainly, that he is most bitterly, uncompromisingly hostile to the policy of the present Administration on the subject of reconstruction. He goes with him who goes the farthest, holding that even the State of Tennessee is an alien State at war with the United States; and, if I am not misinformed, in the convention at Baltimore which nominated Messrs. Lincoln and Johnson for President and Vice-President, he objected to the nomination of Andrew Johnson because he was an alien enemy! Sir, I have seen nothing in the history of that gentleman to lead me to suppose that he has in any respect changed his opinions, for it is not long since we read a speech of his delivered in the State

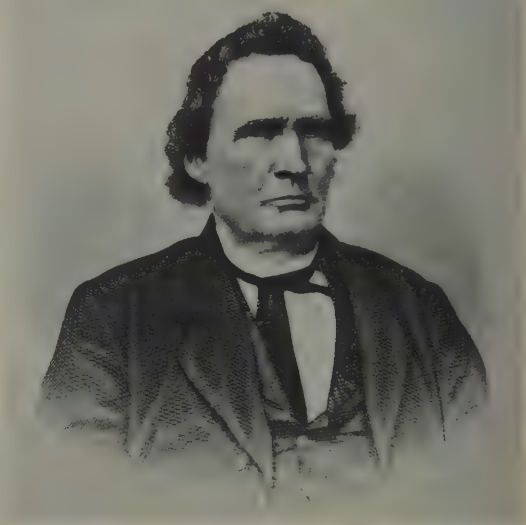
of Pennsylvania, marked with his usual ability, with his great boldness, with that cool assurance which sometimes almost rises to the sublime, in which he proposed, if I do not mistake, almost the entire and universal confiscation of the whole of the Southern States.

The appointment of the joint committee, said Senator Doolittle, was pressed through the caucus in "hot haste" by Mr. Stevens, with the "cool tact and talent" for which he is distinguished.

Who does not know that the leader of that assemblage did not desire to wait, nor did he dare to wait, until the President had spoken to the country in his annual message?

The Constitution of the United States requires the President from time to time to give to Congress information of the state of the Union. Who has any right to presume that the President will not furnish the information which his constitutional duty requires? He has at his control all the agencies which are necessary. There is the able Cabinet who surround him, with all the officers appointed under them: the postmasters under the Post-Office Department, the treasury agents under the Treasury Department, and almost two hundred thousand men under the control of the War Department in every part of this "disaffected" region, who can bring to the President information from every quarter of all the transactions that exist there.

Sir, we are here claiming to be the friends of the late lamented President, and the friends of him upon whom by his death the responsibilities of power have fallen. We sided in their election. They were nominated at Baltimore after the great experiment of reconstruction had already begun. Mr. Lincoln had already for months, for almost a year, been pursuing substantially the same policy of reconstruction which has since been followed by his successor. Andrew Johnson was himself one of the agencies which had been employed by Mr. Lincoln in the State of Tennessee in the hope of restoring civil government there; and it was under these circumstances, not with the approval of all men at Washington, but with the approval of the great masses of the people of this country, that Abraham Lincoln was renominated as President, and that Andrew Johnson was nominated to be Vice-President of the United States, and they were triumphantly indorsed and sustained by the people; and I tell Senators now, in my opinion—I speak with all respect to other gentlemen—that the President of the



United States will be sustained, in the views which he takes in his message, by the people of this country is as certain as the revolutions of the earth; and it is our duty to act harmoniously with him, to sustain him, to hold up his hands, to strengthen his heart, to speak to him words of faith, friendship, and courage.

Mr. President, I know that in all these Southern States there are a thousand things to give us pain, sometimes alarm, but, notwithstanding the bad appearance which from time to time presents itself in the midst of that boiling caldron of passion and excitement which the war has left still raging there, the real progress which we have made has been most wonderful. I say to you, Senators, it is my deliberate opinion that, if, when we adjourned last spring, an angel from the skies could have come down here and told us that at our meeting now our country would be in so hopeful a condition as it is, we would not have believed it; it would have been beyond our credence, beyond our belief. I am one of those who look forward with hope, for I believe God reigns and rules in the affairs of mankind. I look beyond the excitement of the hour and all the outbreaking passion which sometimes shows itself in the South, which leads them to make enactments in their legislatures which are disgraceful to themselves, and can never be sanctioned by the people of this country, and also, in spite of all the excitement of the North, I behold the future full of confidence and hope. We have only to come up like men, and stand as the real friends of the country and the Administration, and give to the policy of the President a fair and substantial trial, and all will be well.

Senator Fessenden indignantly replied:

Talk about the Administration! Sir, we are a part of the Administration, and a very important part of it. I have no idea of abandoning the prerogatives, the rights, and the duties of my position in favor of anybody, however that person or any number of persons may desire it. In questions of such infinite importance as this, involving the integrity and welfare of the Republic in all future time, we are solemnly bound, and our constituents will demand of us, that we examine them with care and fidelity, and act on our own convictions, and not upon the convictions of others.

I do not agree with the honorable Senator from Wisconsin that by passing a simple resolution raising a committee of our own body, and referring to it certain papers, if we conclude to

do so, we are infringing upon the rights of anybody or making an intimation with regard to any policy that the President may have seen fit to adopt and recommend to the country. Sir, I trust there are no such things as exclusive friends of the President among us, or gentlemen who desire to be so considered. I am disposed and ready to support him to the best of my ability, as every gentleman around me is, in good faith and with kind feeling in all that he may desire that is consistent with my views of duty to the country, giving him credit for intentions as good as mine, and with ability far greater, I am ready to asseverate.

But, sir, I do not agree with the doctrine that, because a certain line of policy has been adopted by one branch of the Government, or certain views are entertained by one branch of the Government, therefore, for that reason alone and none other, that is to be tried, even if it is against my judgment; and I do not say that it is or is not. That is a question to be considered. I have a great respect, not for myself, perhaps, but for the position which I hold as a Senator of the United States; and no measure of Government, no policy of the President or of the head of a department, shall pass me, while I am a Senator, if I know it, until I have examined it and given my assent to it; not on account of the source from which it emanates, but on account of its own intrinsic merits, and because I believe it will result in the good of my country. We have just gone through a state of war. While we were in it it became necessary all around to do certain things for which perhaps no strict warrant will be found; contrary, at any rate, to previous experience. That I admit most distinctly. Sir, I defended them from the beginning. I laid down the principle that the man who, placed in a position such as the President and other officers occupied, would not, in a time of war, and when his country was in peril, put his own reputation at hazard as readily as he would anything else in order to do his duty was not fit for his place. I upheld many things then that perhaps I would not uphold now because they are not necessary. The time must come when the Senate and House of Representatives, the Congress, must revert to its own original position.

Willard Saulsbury [Del.] opposed forming the joint committee.

Sir, suppose this committee should report that those States are not entitled to representation in this body, are you bound

by their action? Is there not a higher law, the supreme law of the land, which says, if they be States, that they shall each be entitled to two Senators on this floor? And shall a report of a joint committee of the two Houses override and overrule the fundamental law of the land? Sir, it is dangerous as a precedent, and I protest against it as a humble member of this body. If they be not States, then the object avowed for which the war was waged was false.

James Guthrie [Ky.] upheld the President's plan of reconstruction.

I know it has been said that the President has no authority to do these things. I read the Constitution and the laws of this country differently. He is to "take care that the laws be faithfully executed"; he is to suppress insurrection and rebellion. The power is put in his hands, and I do not see why, when he marches into a rebel State, he has not authority to put down a rebel government and put up a government that is friendly to the United States, and in accordance with it; I do not see why he cannot do that while the war goes on, and I do not see why he may not do it after the war is over. The people in those States lie at the mercy of the nation. I see no usurpation in what he has done, and, if the work is well done, I, for one, am ready to accept it. Are we to send out a commission to see what the men whom he has appointed have done? It is said that they are not to be relied on; that they have been guilty of treason, and we will not trust them. I hope that no such ideas will prevail here. I think this will be a cold shock to the warm feelings of the nation for restoration, for equal privileges and equal rights. They were in insurrection. We have suppressed that insurrection. They are now States of the Union; and, if they come here according to the laws of the States, they are entitled, in my judgment, to representation, and we have no right to refuse it. They are in a minority, and they would be in a minority even if they meant now what they felt when they raised their arms against the Government; but they do not, and, of those whom they will send here to represent them, nineteen out of twenty—even some of those who took up arms against us—will be just as loyal as any of us.

I really hope to see some one move a modification of the test oath, so that those who have repented of their disloyalty may not be excluded, for I really believe that a great many of those who took up arms honestly and wished to carry out the doctrine

of secession, and who have succumbed under the force of our arms and the great force of public opinion, can be trusted a great deal more than those who did not fight at all.

The joint committee as proposed by the House was then agreed upon by a vote of 33 to 11.

The members appointed upon the joint committee were: Senate—William P. Fessenden [Me.], chairman; James W. Grimes [Ia.], Ira Harris [N. Y.], Jacob M. Howard [Mich.], George H. Williams [Ore.], Republicans, and Reverdy Johnson [Md.], Democrat. House of Representatives—Thaddeus Stevens [Pa.], Elihu B. Washburne [Ill.], Justin S. Morrill [Vt.], John A. Bingham [O.], Roscoe Conkling [N. Y.], George S. Boutwell [Mass.], Henry T. Blow [Mo.], Republicans, and Andrew J. Rogers [N. J.], and Henry Grider [Ky.], Democrats.

On the following day (December 13) Henry Wilson [Mass.] brought forward in the Senate the bill "to maintain the freedom of the inhabitants in the States lately in rebellion," which he had introduced upon the first day of the session. This declared null and void all those present laws in force in these States which maintained inequality in the rights of citizens, particularly on account of race, and it prohibited the enactment of such laws in the future. Any person violating the act was to be punished by fine and imprisonment.

James G. Blaine, in his "Twenty Years of Congress," has summarized this debate as follows:

Civil Rights

Senate, December 13-20, 1865

Senator Wilson declared that he had "no desire to say harsh things of the South nor of the men who have been engaged in the Rebellion."

"I do not ask their property or their blood; I do not wish to disgrace or degrade them; but I do wish that they shall not be permitted to disgrace, degrade, or oppress anybody else. I offer this bill as a measure of humanity, as a measure that the

needs of that section of the country imperatively demand at our hands. I believe that if it should pass it will receive the sanction of nineteen-twentieths of the loyal people of the country. Men may differ about the power or the expediency of giving the right of suffrage to the negro; but how any humane,

THE OLD NURSE AND HER FOUNDLING

Sumner [in 1872].—Mr. Wilson, you must not turn away from this child. Greeley turns his back on me, and I look to you to take it under your wing at Philadelphia. Will you?

From the collection of the New York Public Library

just, and Christian man can for a moment permit the laws that are on the statute books of the Southern States, and the laws now pending before their legislatures, to be executed upon men whom we have declared to be free I cannot comprehend."

Reverdy Johnson [Md.] replied to Mr. Wilson in a tone of apology for the laws complained of, but took

occasion to give his views of the status of the States lately in rebellion.

"I have now, and I have had from the first, a very decided opinion that they are States in the Union and that they never could have been placed out of the Union without the consent of their sister States. The insurrection terminated, the authority of the Government was thereby reinstated; *eo instanti*[1] they were invested with all the rights belonging to them originally—I mean as States. In my judgment our sole authority for the acts which we have done during the last four years was the authority communicated to Congress by the Constitution to suppress insurrection. If the power can only be referred to that clause, in my opinion, speaking, I repeat, with great deference to the judgment of others, the moment the insurrection was terminated there was no power whatever left in the Congress of the United States over those States; and I am glad to see, if I understand his message, that in the view I have just expressed I have the concurrence of the President of the United States."

Charles Sumner [Mass.] sustained Senator Wilson's bill in an elaborate argument delivered on the 20th of December. He declared that Mr. Wilson's bill was simply to maintain and carry out the Proclamation of Emancipation. The pledge there given was that the Executive Government of the United States, including the military and naval authority thereof, would recognize and maintain the freedom of such persons.

"This pledge is without limitation in space or time. It is as extended and as immortal as the Republic itself; to that pledge we are solemnly bound; wherever our flag floats, as long as time endures, we must see that it is sacredly observed. The performance of that pledge cannot be intrusted to another, least of all to the old slave masters, embittered against their slaves. It must be performed by the National Government. The power that gave freedom must see that freedom is maintained.

"Three of England's greatest orators and statesmen, Burke, Canning, and Brougham, at successive periods unite in declaring, from the experience of the British West Indies, that whatever the slave masters undertook to do for their slaves was always arrant trifling; that, whatever might be its plausible

[1] "In that instant."

form, it always wanted the executive principle. More recently the Emperor of Russia, in ordering the emancipation of the serfs, declared that all previous efforts had failed because they had been left to the spontaneous initiative of the proprietors. I assume that we shall not leave to the old slave proprietors the maintenance of that freedom to which we are pledged, and thus break our own promise and sacrifice a race."

In concluding his speech Mr. Sumner referred to the enormity of the wrongs against the freedmen as something that made the blood curdle.

"In the name of God, let us protect them; insist upon guaranties; pass the bill under consideration; pass any bill, but do not let this crying injustice rage any longer. An avenging God cannot sleep while such things find countenance. If you are not ready to be the Moses of an oppressed people, do not become their Pharaoh."

Willard Saulsbury [Del.] made a brief reply to Mr. Sumner, not so much to argue the points put forward by the Senator from Massachusetts, not so much to deny the facts related by him or to discuss the principles which he had presented, as to announce that "it can be no longer disguised that there is in the party which elected the President an opposition party to him. Nothing can be more antagonistic than the suggestions contained in his message and the speeches already made in both Houses of Congress." He adjured the President to be true and faithful to the principles he had foreshadowed, and pledged him "the support of two million men in the States which have not been in revolt, and who did not support him for his high office."

Edgar Cowan [Pa.], one of the Republican Senators who had indicated a purpose to sustain the President, was evidently somewhat stunned by Mr. Sumner's speech. He treated the outrages of which Mr. Sumner complained as exceptional instances of bad conduct on the part of the Southern people. "One man out of ten thousand," said Mr. Cowan, "is brutal to a negro, and that is paraded here as a type of the whole people of the South; whereas nothing is said of the other nine thou-

sand nine hundred and ninety-nine men who treat the negro well." Mr. Cowan's argument was altogether inapposite, for what Mr. Sumner and Mr. Wilson had complained of was not the action of individual men in the South, but of laws solemnly enacted by legislatures whose right to act had been recognized by the Executive Department of the National Government and which had indeed been organized in pursuance of the President's reconstruction policy.

Senator Cowan moved to refer the bill to the Judiciary Committee, but no action was taken on the motion. It was naturally considered unofficially by the Select Committee of Fifteen.

CHAPTER X

Reconstruction by Congressional Authority

Debate on Reconstruction in the House: in Favor of the Plan of the President, William E. Finck [O.], Henry J. Raymond [N. Y.], George R. Latham [W. Va.], Daniel E. Voorhees [Ind.]; Opposed, Thaddeus Stevens [Pa.], William D. Kelley [Pa.], William E. Niblack [Ind.], John W. Farnsworth [Ill.], Thomas A. Jenckes [R. I.], John A. Bingham [O.], Robert C. Schenck [O.], Rufus P. Spalding [O.], Samuel Shellabarger [O.], Henry C. Deming [Conn.]; House Refuses to Vote Its Confidence in the President's Plan.

WITHOUT waiting for the report of the special committee Thaddeus Stevens [Pa.] formally opened the debate upon reconstruction in the House of Representatives on December 18, 1865. His speech is thus summarized by James G. Blaine in his "Twenty Years of Congress":

Mr. Stevens took the most radical and pronounced ground touching the relation to the National Government of the States lately in rebellion. He contended that "there are two provisions in the Constitution, under one of which the case must fall." The Fourth Article says that "new States may be admitted by the Congress into this Union." "In my judgment," said Mr. Stevens, "this is the controlling provision in this case. Unless the law of nations is a dead letter, the late war between the two acknowledged belligerents severed their original contracts and broke all the ties that bound them together. The future condition of the conquered power depends on the will of the conqueror. They must come in as new States or remain as conquered provinces." This was the theory which Mr. Stevens had steadily maintained from the beginning of the war, and which he had asserted as frequently as opportu-

nity was given in the discussions of the House. He proceeded to consider the probable alternative. "Suppose," said he, "as some dreaming theorists imagine, that these States have never been out of the Union, but have only destroyed their State governments, so as to be incapable of political action, then the fourth section of the Fourth Article applies, which says, 'The United States shall guarantee to every State in this Union a republican form of government.' But," added he, "who is the United States? Not the judiciary, not the President; but the sovereign power of the people, exercised through their representatives in Congress, with the concurrence of the Executive. It means political government—the concurrent action of both branches of Congress and the Executive." He intended his line of debate to be an attack, at the very beginning, upon the assumption of the President in his attempt at reconstruction. "The separate action of the President, or the Senate, or the House," added Mr. Stevens, "amounts to nothing, either in admitting new States or guaranteeing republican forms of government to lapsed or outlawed States. Whence springs," asked he, "the preposterous idea that any one of these, acting separately, can determine the right of States to send Representatives or Senators to the Congress of the Union?"

Though many others had foreseen and appreciated the danger, Mr. Stevens was the first to state in detail the effect which might be produced by the manumission of the slaves upon the congressional representation of the Southern States. He pointed out the fact that by counting negroes in the basis of representation the number of Representatives from the South would be eighty-three; excluding negroes from the basis of representation, they would be reduced to forty-six; and so long as negroes were deprived of suffrage he contended that they should be excluded from the basis of representation. "If," said he, "they should grant the right of suffrage to persons of color, I think there would always be white men enough in the South, aided by the blacks, to divide representation and thus continue loyal ascendency. If

they should refuse to thus alter their election laws it would reduce the representation of the late slave States and render them powerless for evil." Mr. Stevens' obvious theory at that time was not to touch the question

THE GREAT RECONSTRUCTION BALL
Those Who Get It Up and Those Who Invite Themselves to It
From the collection of the New York Public Library

of suffrage by national interposition, but to reach it more effectively perhaps by excluding the entire colored population from the basis of congressional representation, until by the action of the Southern States themselves the elective franchise should be conceded to the colored population. As he proceeded in his speech Mr. Stevens waxed warm with all his ancient fire on the slavery question. "We have," said he, "turned, or are about to turn, loose four million slaves without a hut to shelter them or a cent in their pockets. The diabolical laws of slavery have prevented them from acquiring an education, understanding the commonest laws of contract, or of managing the ordinary business of life. This Congress is

bound to look after them until they can take care of themselves. If we do not hedge them around with protecting laws, if we leave them to the legislation of their old masters, we had better have left them in bondage. Their condition will be worse than that of our prisoners at Andersonville. If we fail in this great duty now when we have the power, we shall deserve to receive the execration of history and of all future ages."

In conclusion Mr. Stevens declared that "Two things are of vital importance: first, to establish a principle that none of the rebel States shall be counted in any of the amendments to the Constitution until they are duly admitted into the family of States by the law-making power of their conqueror; second, it should now be solemnly decided what power can revive, recreate, and reinstate these provinces into the family of States and invest them with the rights of American citizens. It is time that Congress should assert its sovereignty and assume something of the dignity of a Roman senate." He denounced with great severity the cry that "This is a white man's government." "If this republic," said he with great earnestness, "is not now made to stand on solid principle it has no honest foundation and the Father of all men will shake it to its center. If we have not yet been sufficiently scourged for our national sin to teach us to do justice to all God's creatures, without distinction of race or color, we must expect the still more heavy vengeance of an offended Father, still increasing his afflictions, as he increased the severity of the plagues of Egypt until the tyrant consented to do justice, and when that tyrant repented of his reluctant consent and attempted to reënslave the people, as our Southern tyrants are attempting to do now, he filled the Red Sea with broken chariots and drowned horses, and strewed the shores with the corpses of men. Sir, this doctrine of a white man's government is as atrocious as the infamous sentiment that damned the late Chief Justice to everlasting fame, and I fear to everlasting fire."

The Administration, says Mr. Blaine, saw that the speech of Mr. Stevens was the first gun fired in a deter-

mined war to be waged against its policy and its *prestige;* it therefore determined upon as forcible a reply as possible, and for this duty detailed a Republican supporter of the President, Henry J. Raymond, who, though he now appeared for the first time in Congress, was one of the most influential men in the country, having founded and conducted the New York *Times* and taken a prominent part in the anti-slavery agitation and the formation and direction of the Republican party. As an editor and polemical writer he had no peer but Horace Greeley, of the New York *Tribune,* who was in opposition to the President, and he had acquired force and facility as a debater by distinguished service in the New York legislature.

Mr. Raymond spoke on December 21. Unfortunately for the effect, both moral and argumentative, of his speech the floor was taken before him by a State Rights Democrat of mediocre ability, William E. Finck [O.], who had felt called upon to reply to Mr. Stevens.

Mr. Finck made a number of plausible points, though none were very profound. He said that if Tennessee were not a State within the Union, as Mr. Stevens had insisted was the case, then Andrew Johnson, citizen of Tennessee, was not eligible to hold the office of President. Allegiance and protection being reciprocal duties, by what right did we demand from the South the one and refuse to it the other? What became of the doctrine of equality when the white man was stripped of his political rights in order to have these conferred upon the negro? He wished to restore the Union to its true constitutional character, a confederated and not consolidated government.

Mr. Raymond clearly indicated at the beginning of his speech that the Administration was not over-grateful for the support of Democrats of the Vallandigham sort, whom Mr. Finck represented.

I cannot help wishing, sir, that these indications of an interest in the preservation of our Government had come somewhat sooner. If we could have had from that side of the House such indications of an interest in the preservation of the

Union, such heartfelt sympathy with the efforts of the Government for the preservation of that Union, such hearty denunciation of those who were seeking its destruction, while the war was raging, I am sure we might have been spared some years of war, some millions of money, and rivers of blood and tears.

Mr. Raymond's principal aim was to join issue with Mr. Stevens on his theory of *dead States.*

"The gentleman from Pennsylvania believes that what we have to do is to create new States out of this conquered territory, at the proper time, many years distant, retaining them meanwhile in a territorial condition, and subjecting them to precisely such a state of discipline and tutelage as Congress and the Government of the United States may see fit to prescribe. If I believe in the premises he assumes, possibly, though I do not think probably, I might agree with the conclusion he has reached; but, sir, I cannot believe that these States have ever been out of the Union or that they are now out of the Union. If they were, sir, how and when did they become so? By what specific act, at what precise time, did any one of those States take itself out of the American Union? Was it by the Ordinance of Secession? I think we all agree that an ordinance of secession passed by any State of the Union is simply a nullity because it encounters the Constitution of the United States, which is the supreme law of the land.

Did the resolutions of these States, the declarations of their officials, the speeches of members of their legislatures, or the utterances of their press accomplish the result? Certainly not. They could not possibly work any change whatever in the relations of these States to the general Government. All their ordinances and all their resolutions were simply declarations of a purpose to secede. Their secession, if it ever took place, certainly could not date from the time when their intention to secede was first announced. After declaring that intention, they proceeded to carry it into effect. How? By war. By sustaining their purpose by arms against the force which the United States brought to bear against it. Did they sustain it? Were their arms victorious? If they were, then their secession was an accomplished fact. If not, it was nothing more than an abortive attempt—a purpose unfulfilled. This, then, is simply a question of fact, and we all know what the fact is. They did not succeed. They failed to maintain their ground by force of arms—in other words, they failed to secede.

But the gentleman from Pennsylvania [Mr. Stevens] insists that they did secede, and that this fact is not in the least affected by the other fact that the Constitution forbids secession. He says that the law forbids murder, but that murders are nevertheless committed. But there is no analogy between the two cases. If secession had been accomplished, if these States had gone out, and overcome the armies that tried to prevent their going out, then the prohibition of the Constitution could not have altered the fact. In the case of murder the man is killed, the murder is thus committed in spite of the law. The fact of killing is essential to the committal of the crime; and the fact of going out is essential to secession. But in this case there was no such fact.

During all these four years of war Congress has been making laws for the government of those very States, and the gentleman from Pennsylvania has voted for them, and voted to raise armies to enforce them. Why was this done if they were a separate nation? Those laws were made for them as States.

The gentleman from Pennsylvania [Mr. Stevens] spoke of States forfeiting their State existence by the fact of rebellion. Well, I do not see how there can be any such forfeiture involved or implied. The individual citizens of those States went into the rebellion. They thereby incurred certain penalties under the laws and Constitution of the United States. What the States did was to endeavor to interpose their State authority between the individuals in rebellion and the Government of the United States, which assumed, and which would carry out the assumption, to declare those individuals traitors for their acts. The individuals in the States who were in rebellion, it seems to me, were the only parties who under the Constitution and laws of the United States could incur the penalties of treason. I know of no law, I know of nothing in the Constitution of the United States, I know of nothing in any recognized or established code of international law, which can punish a State as a State for any act it may perform. It is certain that our Constitution assumes nothing of the kind. It does not deal with States, except in one or two instances, such as elections of members of Congress, and the election of electors of President and Vice-President.

A State cannot be indicted; a State cannot be tried; a State cannot be hung for treason. The individuals in a State may be so tried and hung, but the State as an organization, as an organic member of the Union, still exists, whether its individual citizens commit treason or not.

William D. Kelley [Pa.].—I desire to ask the gentleman this question: by virtue of what does a State exist? Is it by virtue of a constitution and by virtue of its relations to the Union? That is, does a State of the Union exist, first by virtue of a constitution and secondly by virtue of its practical relations to the Government of the United States? And, further, I would ask whether those States, acting by conventions of the people, have not overthrown the Constitution which made them parts of the Union, and thereby destroyed or suspended—phrase it as you will—the practical relations which made them parts of the Union?

Mr. Raymond.—I will say, in reply to the gentleman from Pennsylvania [Mr. Kelley], that it is not the practical relations of a State at any particular moment which make it a State or a part of the Union. What makes a State a part of the Union is the Constitution of the United States; and the rebel States have not yet destroyed that.

Mr. Kelley.—The question I propound is whether a State does not exist by virtue of a constitution, its constitution, which is a thing which may be modified or overthrown?

Mr. Raymond.—Certainly.

Mr. Kelley.—And whether these rebellious constitutions or States have not been overthrown?

Mr. Raymond.—A State does not exist by virtue of any particular constitution. It always has a constitution, but it need not have a specific constitution at any specific time. A State has certain practical relations to the Government of the United States. But the fact of those relations being practically operative and in actual force at any moment does not constitute its relationship to the Government or its membership of the United States. Its practical operation is one thing. The fact of its existence as an organized community, one of the great national community of States, is quite another thing.

Mr. Kelley.—Let me interrupt the gentleman one moment longer. I will ask him whether, if the Constitution be overthrown or destroyed and its practical relations cease, there be any State left?

Mr. Raymond.—Why, sir, if there be no constitution of any sort in a State, no law, nothing but chaos, then that State would no longer exist as an organization. But that has not been the case, it never is the case in great communities, for they always have constitutions and forms of government. It may not be a constitution or form of government adapted to its relation to the Government of the United States; and that would be an

evil to be remedied by the Government of the United States. That is what we have been trying to do for the last four years. The practical relations of the governments of those States with the Government of the United States were all wrong—were hostile to that Government. They denied our jurisdiction, and they denied that they were States of the Union, but their denial did not change the fact; and there was never any time when their organizations as States were destroyed. A dead State is a solecism, a contradiction in terms, an impossibility.

These are, I confess, rather metaphysical distinctions, but I did not raise them. Those who assert that a State is destroyed whenever its constitution is changed, or whenever its practical relations with this Government are changed, must be held responsible for whatever metaphysical niceties may be necessarily involved in the discussion.

I regard these States as just as truly within the jurisdiction of the Constitution, and therefore just as really and truly States of the American Union now, as they were before the war. Their practical relations to the Constitution of the United States have been disturbed, and we have been endeavoring, through four years of war, to restore them and make them what they were before the war. The victory in the field has given us the means of doing this; we can now reëstablish the practical relations of those States to the Government. Our actual jurisdiction over them, which they vainly attempted to throw off, is already restored. The conquest we have achieved is a conquest over the rebellion, not a conquest over the States whose authority the rebellion had for a time subverted.

For these reasons I think the views submitted by the gentleman from Pennsylvania [Mr. Stevens] upon this point are unsound. Let me next cite some of the consequences which, it seems to me, must follow the acceptance of his position. If, as he asserts, we have been waging war with an independent power, with a separate nation, I cannot see how we can talk of treason in connection with our recent conflict or demand the execution of Davis or anybody else as a traitor. Certainly if we were at war with any other foreign power we should not talk of the treason of those who were opposed to us in the field. If we were engaged in a war with France and should take as prisoner the Emperor Napoleon, certainly we could not talk of him as a traitor or as liable to execution. I think that by adopting any such assumption as that of the honorable gentleman we surrender the whole idea of treason and the punishment of traitors. I think, moreover, that we accept, virtually and practically, the

doctrine of State sovereignty, the right of a State to withdraw from the Union, and to break up the Union at its own will and pleasure. I do not see how upon those premises we can escape that conclusion. If the States that engaged in the late rebellion constituted themselves, by their ordinances of secession or by any of the acts with which they followed those ordinances, a separate and independent power, I do not see how we can deny the principles on which they professed to act, or refuse assent to their practical results. I have heard no clearer, no stronger statement of the doctrine of State sovereignty as paramount to the sovereignty of the nation than would be involved in such a concession. Whether he intended it or not, the gentleman from Pennsylvania [Mr. Stevens] actually assents to the extreme doctrines of the advocates of secession.

William E. Niblack [Ind.].—I beg leave to inquire of the gentleman whether the theory of the gentleman from Pennsylvania, which he is combating, would not also, if carried to its legitimate consequences, make those who resisted the Confederacy in the insurrectionary States guilty of treason to the Confederacy or to those States?

Mr. Raymond.—I was just going to remark that another of the consequences of this doctrine, as it seems to me, would be our inability to talk of loyal men in the South. Loyal to what? Loyal to a foreign, independent power, as the United States would become under those circumstances? Certainly not. Simply disloyal to their own government, and deserters, or whatever you may choose to call them, from that to which they owe allegiance to a foreign and independent state.

Now, there is another consequence of the doctrine which I shall not dwell upon, but simply suggest. If that Confederacy was an independent power, a separate nation, it had the right to contract debts; and we, having overthrown and conquered that independent power, according to the theory of the gentleman from Pennsylvania, would become the successors, the inheritors, of its debts and assets, and we must pay them. Sir, that is not simply a theory or a claim thrown out in debate here; it is one advanced on behalf of the Government of Great Britain as against us in the case in which cotton belonging to the Southern Confederacy was claimed in Liverpool.

Our Government has denied from the beginning, and denies now, that the Confederacy was ever such a corporation, such an independent body of men as could contract debts, whether we are liable for them or not. The declaration of our Secretary of State in his recent correspondence on that subject shows

that we have always steadily denied that the Confederacy was such a corporation as could contract a valid debt, whether we would be made responsible for it or not. But one thing is very clear, that, if we recognize the doctrine that those lately in rebellion against our Government constituted an independent power, we must concede their ability to contract debts. Whether we as their successors are to pay them or not is another question, but the claim has been made, and denied only on the ground of the incapacity of the rebel Confederacy to contract debts or binding engagements of any sort.

John F. Farnsworth [Ill.].—I would like to ask the gentleman from New York whether he is entirely sure we have the right to try Jefferson Davis for treason inasmuch as our Government has given to them belligerent rights, has recognized and respected the commissions that he has issued?

Mr. Raymond.—I have no doubt of it. I do not think that the treason of Jefferson Davis has anything to do with the fact that we conceded humane treatment to our prisoners of war. Because we had granted to these States, as a power waging war, rights usually accorded to nations at war, we were not therefore concluded from proceeding against them as traitors.

The decision of the Supreme Court asserts that we have the right to proceed against them as traitors, or, rather, that we have the right to exercise against them both the powers of sovereignty and of belligerents; that the one did not exclude the other. It would be an extraordinary circumstance if, because we treated them humanely as prisoners of war, we have not the right to hold them responsible to the laws they have broken.

Now, if, according to the view I have presented, we are to deal with those States as States within the Union, the next question that recurs is *how* are we to deal with them? The gentleman from Ohio [Mr. Finck] who preceded me took the ground that they had only to resume their places and their powers in the National Government—that their Representatives have only to come into this Hall and take their seats without question and without conditions of any sort. I cannot concur, sir, in this view. I do not think these States have any such rights. On the contrary, I think we have a full and perfect right to require certain conditions, in the nature of guaranties for the future, and that right rests, primarily and technically, on the surrender we may and must require at their hands. The rebellion has been defeated. A defeat always implies a surrender, and in a political sense a surrender implies more than

the transfer of the arms used on the field of battle. It implies, in the case of civil war, a surrender of the principles and doctrines, of all the weapons and agencies, by which the war has been carried on. The military surrender was made on the field of battle, to our generals as the agents and representatives of the Commander-in-Chief of the armies of the United States. But this is not all. They have still to surrender——

Thomas A. Jenckes [R. I.].—Was not the surrender of the rebel arms made to the people of the United States?

Mr. Raymond.—It ought to be, and must be to them through their representatives. The rebels surrendered to the generals of our armies, who were commissioned by the President of the United States, himself the representative of the people.

Mr. Jenckes.—Not to the generals as the agents of the President, but as the representatives of the military authority of the people of the United States.

Mr. Raymond.—Why, certainly all authority belongs to the people. It is a mere distinction of words, and scarcely that.

Mr. Jenckes.—I beg pardon of the gentleman. It seems to me that it is an essential distinction.

Mr. Raymond.—Well, if it seems important to the gentleman from Rhode Island or to anybody else, I am quite willing to make the addition to my remark which he suggests. I will say, then, that in surrendering on the field of battle they surrendered to the generals who were in command of the armies, as agents of the President of the United States, who was and is the representative of the people of the United States. If that explanation is satisfactory to the gentleman I am very happy to make it; and perhaps I am obliged to him for having enabled me to state it a little more specifically and accurately than I did at first.

Now, there must be at the end of the war a similar surrender on the political field of controversy. That surrender is due as an act of justice from the defeated party to the victorious party. It is due also, and we have a right to exact it, as a guaranty for the future. Why do we demand the surrender of their arms by the vanquished in every battle? We do it that they may not renew the contest. Why do we seek in this and all similar cases a surrender of the principles for which they fought? It is that they may never again be made the basis of controversy and rebellion against the Government of the United States.

Now, what are those principles which should be thus surrendered? The principle of State sovereignty is one of them.

It was the cornerstone of the rebellion—at once its animating spirit and its fundamental basis. Deeply ingrained as it was in the Southern heart, it must be surrendered. The ordinances in which it was embodied must not only be repealed, the principle itself must be abandoned, and the ordinances, so far as this war is concerned, be declared null and void, and that declaration must be embodied in their fundamental constitutions. We have a right to insist upon this; and it must be apparent that, so far as that principle is concerned, this war was a permanent success.

JOHN A. BINGHAM [O.].—The gentleman will allow me to make the inquiry whether, if that were done to-day by South Carolina, and the people of that insurgent State restored to all their powers in this Union, they could not blot it out to-morrow by every construction that has ever been given to the operation of the Constitution of the United States upon any State maintaining its relations to this Government? What guaranty would that be?

MR. RAYMOND.—I might as well ask the gentleman whether if this Congress pass a certain law to-day they may not repeal it to-morrow. I do not know anything that any community can do that they cannot undo at some future time.

MR. BINGHAM.—When the gentleman talks of guaranties to the people of the United States I ask him whether there is not some other method that occurs to him by which these guaranties can be obtained than to submit simply to the will of the insurgent States? Is it not to be done by putting the guaranty in the Constitution of the whole people of the United States, and thus placing it beyond the power of South Carolina to repeal it?

MR. RAYMOND.—Well, Mr. Chairman, there have been a good many things put in the Constitution of the United States which South Carolina did not deem beyond her power, and they undertook to prove that fact, but they did not succeed. My own impression is that whatever is now a part of the Constitution and laws of this country is beyond the power of South Carolina to disturb. I might as well ask the gentleman whether, when the enemy surrendered its ordnance in the field, we ought not to refuse to accept it because they might possibly at some future day come and recapture it.

MR. BINGHAM.—The gentleman will excuse me. He talked of new guaranties. The people of the United States undoubtedly demand them. But I wish him to answer intelligibly what new guaranty is given by incorporating in the constitution of South Carolina the mere formula that she by her constitution

declares that she has not the right to secede, when she has the power the very next day to strike it out? Is that a new guaranty?

MR. RAYMOND.—Certainly it is. That has never been in the constitution of South Carolina before. If she puts it there now, it is a new guaranty is it not? Whether it is an adequate form of that guaranty or not is another question which I have not discussed. South Carolina has always hitherto asserted the right of secession, and under that assertion she attempted to secede. If she now repudiates or abandons that right, we have certainly that new assurance that she will not renew the attempt. We shall certainly have this tangible admission on her part that, if she does again rebel, it will be in direct repudiation and contempt of her own principles. I will not say that nothing more would be desired or accepted. I am quite willing, if it can be done, to put that acknowledgment into the Constitution of the United States. But I think it is there now, and that it always has been there, and that there is no more doubt about it now than if it were stated in express terms. When I read in the Constitution of the United States that "this Constitution shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. I deem that to be as plain as any declaration can be against the doctrine of State sovereignty, and I cannot believe that any form of words on our part would be more explicit or more emphatic. But if the gentleman can get any more explicit denial into the Constitution of the United States, he will find me voting for it every time.

Now there is another thing to be surrendered by the defeated rebellion, and that is the obligation to pay the rebel war debt.

ROBERT C. SCHENCK [O.].—Will the gentleman allow me to inquire whether that guaranty in the constitution of South Carolina amounts to anything more than the signature of an indorser on the back of a note, who may at any time thereafter take his name from the paper?

MR. RAYMOND.—Perhaps not; perhaps you can get better security. If you can, I certainly shall not object. But, such as it is, it is at all events something gained, and it is only in that light that I have referred to it. Neither of the distinguished gentlemen from Ohio [Messrs. Bingham and Schenck], able lawyers as they are, will deny that we had the right to demand that guaranty of South Carolina. And, if it was worth while to demand it, it is hardly worth while, having got it, to say that it is of no value at all. We expose ourselves by

so doing to the imputation of trifling in having demanded it at all.

MR. BINGHAM.—I have no doubt at all that the people of the United States, those who maintained the integrity of their Constitution, had the right to demand of South Carolina a perpetual guaranty in the future that she should not even claim the color of authority to secede and set up a government against the constitutional authority of the Government of the nation. And when they demand that I take it that the people of the United States are not to be told that South Carolina alone is to have the control and keeping of that guaranty. But the people of the United States are hereafter to be the guardians of their own honor, and the protectors of their own nationality, and they will take into their own keeping those great guaranties that are to secure peace and prosperity to every section of the Union in future, and to secure themselves against this work of secession under the pretence of State sovereignty.

MR. RAYMOND.—Will the gentleman from Ohio [Mr. Bingham] inform me who has ever pretended that the people of the nation are not to take into their own hands the guaranties of their own security and their own honor?

MR. BINGHAM.—Whoever pretends that future guaranties against the pretension of the right of a State to secede are to rest with the State alone, stands simply and solely on the resolutions of Virginia of 1798, out of the pernicious assumptions of which came all our trouble.

MR. RAYMOND.—The gentleman tries to fasten upon me a position that I have never taken. And it required all his ingenuity to reach the point at which he has at last arrived. I said that we have a right to require from the people of South Carolina the abandonment of their doctrine of secession. Now, whether we may not also require that the people of the United States shall reaffirm that and put it into the Constitution of the United States is a thing about which I have said nothing whatever, except that whenever presented in a proper form it will have my assent.

MR. BINGHAM.—I am glad to hear the gentleman say that. For if these guaranties are essential, and the gentleman seems to agree that they are, then it is highly important that the American people should determine them, without being interrupted in the settlement of that question by the intervention of South Carolina under the pretension that she is a State in this Union, with all the reserved rights of a State. What right, I would ask, has she to set up any such pretension?

MR. RAYMOND.—Well, Mr. Chairman, the gentleman must settle that matter with South Carolina.

MR. BINGHAM.—I propose, in coöperation with the loyal people and their Representatives in Congress, to settle it with South Carolina.

MR. RAYMOND.—I can only say on that subject that South Carolina found herself invited by the President of the United States, the representative of the people of the United States, as the gentleman from Rhode Island [Mr. Jenckes] very properly insists that I shall term him, to coöperate in the restoration of the Union—to resume her functions as a State of the Union, and, as a preliminary step, to repudiate this debt and give this guaranty of her loyalty and good faith.

MR. BINGHAM.—I beg the gentleman's pardon. I do not think he can find anywhere any authority for the statement that the President of the United States ever invited South Carolina to exercise any voice or vote on that question here in Congress.

MR. RAYMOND.—The President certainly has indicated to the Southern States that he expected them to declare, in their constitutions, that their ordinances of secession were null and void; and in his message he speaks of an invitation to them to renew their functions as States of the Union; and that covers the whole ground that I attempted to speak upon in connection with this point.

MR. BINGHAM.—I only wish to know the gentleman's position—to ascertain whether it is or is not that South Carolina and other seceding States now sustain such relations to this Union that they have the right to-day, under the Constitution, to have representation upon this floor according to the apportionment of 1862.

MR. RAYMOND.—Without any guaranties or conditions at all?

MR. BINGHAM.—I contend that all guaranties are worthless, unless embodied in the Constitution of the United States. Does the gentleman insist that South Carolina has now the right, under the Constitution, to representation in Congress as a State of the Union because her relations to the Government are, under the Constitution, those of a constitutional State in the Union?

MR. RAYMOND.—I have already said, sir, and said it as clearly and emphatically as I can, that we have a right to demand, and that we are in duty bound to demand, certain concessions from all the States lately in rebellion, as parts of their surrender, and as conditions of their resuming their functions in the Gov-

ernment of the nation. As to their representation in Congress, I should, before determining that question, wish to know something more of the character and position of the men they may send, and of what they have done.

MR. BINGHAM.—So do I; and I think that Congress ought to decide the question.

MR. RAYMOND.—I have not assumed to decide that point. I have not said anything about what the Southern States have done. I have simply said what we have a right to require them to do; and the renunciation of the doctrine of State sovereignty is one thing that we have a right to require at their hands. We have a right also to require them to do another thing—to repudiate their obligation for debts incurred in carrying on the war against the Government. Whether they have done this or not is another matter which may come up at another time.

There is another thing which we have the right to require; and that is the prohibition of slavery. We have the right to require them to do this, not only in their State constitutions, but in the Constitution of the United States. And we have required it, and it has been conceded. They have also conceded that Congress may make such laws as may be requisite to carry that prohibition into effect, which includes such legislation as may be required to secure for them protection of their civil and personal rights—their "right to life, liberty, and the pursuit of happiness." This I am sure the gentleman will concede to be a substantial guaranty—one placed beyond the power of any State to recall or repeal.

These things the President of the United States has deemed it his right, as Commander-in-Chief of the armies of the United States, to demand at the hands of the States which have been defeated in their attempt to separate themselves from the Union, as the condition of relaxing the bonds of military authority over them and restoring to them again the control of their local State affairs. He made these the conditions upon which they would be allowed, so far as his rightful authority extended, to resume the practical exercise of their functions as members of the Union, which had been suspended by their rebellion. He has done this in the exercise of his lawful authority as Commander-in-Chief of the Army of the United States, and was therefore responsible for the complete suppression of the rebellion and the restoration of peace, order, and loyalty in the regions where they have been for a time disturbed and overthrown. He has done it through agents, exercising a delegated

and just authority—acting on his behalf and in his name—just as his military generals prescribed the terms and conditions of the rebel surrender in the field; and the fact that these concessions have been granted affords at least a fair presumption that those who make them intend hereafter in good faith to abide by all the obligations and fulfill all the duties imposed by the Constitution and laws of the United States. It may possibly be wise for us to dismiss all these concessions and all these guaranties given by eight million people, and sanctioned by the most solemn forms of legislation, as utterly worthless and insincere. But that is a matter upon which each individual must exercise his own discretion upon his own responsibility.

Mr. Chairman, I am here to act with those who seek to complete the restoration of the Union, as I have acted with those through the last four years who have sought to maintain its integrity and prevent its destruction. For myself I shall endeavor to act upon this whole question in the broad and liberal temper which its importance demands. We are not conducting a controversy in a court of law. We are not seeking to enforce a remedy for private wrongs, nor to revenge or retaliate private griefs. We have great communities of men, permanent interests of great States, to deal with, and we are bound to deal with them in a large and liberal spirit. It may be for the welfare of this nation that we shall cherish toward the millions of our people lately in rebellion feelings of hatred and distrust; that we shall nurse the bitterness their infamous treason has naturally and justly engendered, and make that the basis of our future dealings with them. Possibly we may best teach them the lessons of liberty by visiting upon them the worst excesses of despotism. Possibly they may best learn to practice justice toward others, to admire and emulate our republican institutions, by suffering at our hands the absolute rule we denounce in others. It may be best for us and for them that we discard in all our dealings with them all the obligations and requirements of the Constitution, and assert as the only law for them the unrestrained will of conquerors and masters.

I confess I do not sympathize with the sentiments or the opinions which would dictate such a course. I would exact of them all needed and all just guaranties for their future loyalty to the Constitution and laws of the United States. I would exact from them, or impose upon them through the constitutional legislation of Congress and by enlarging and extending, if necessary, the scope and powers of the Freedmen's Bureau, proper care and protection for the helpless and friendless freedmen, so

lately their slaves. I would exercise a rigid scrutiny into the character and loyalty of the men whom they may send to Congress, before I allowed them to participate in the high prerogative of legislating for the nation. But I would seek to allay rather than stimulate the animosities and hatred, however just they may be, to which the war has given rise. But for our own sake as well as for theirs I would not visit upon them a policy of confiscation which has been discarded in the policy and practical conduct of every civilized nation on the face of the globe.

I believe it important for us as well as for them that we should cultivate friendly relations with them, that we should seek the promotion of their interests as part and parcel of our own. We have been their enemies in war, in peace let us show ourselves their friends. Now that slavery has been destroyed—that prolific source of all our alienations, all our hatreds, and all our disasters—there is nothing longer to make us foes. They have the same interests, the same hopes, the same aspirations that we have. They are one with us; we must share their sufferings and they will share our advancing prosperity. They have been punished as no community was ever punished before for the treason they have committed. I trust, sir, the day will come ere long when all traces of this great conflict will be effaced, except those which mark the blessings that follow in its train.

I hope and believe that we shall soon see the day when the people of the Southern States will show us, by evidences that we cannot mistake, that they have returned, in all sincerity and good faith, to their allegiance to the Union; that they intend to join henceforth with us in promoting its prosperity, in defending the banner of its glory, and in fighting the battles of democratic freedom, not only here, but wherever the issue may be forced upon our acceptance. I rejoice with heartfelt satisfaction that we have in these seats of power—in the executive department and in these halls of Congress—men who will coöperate for the attainment of these great and beneficent ends. I trust they will act with wisdom; I know they will act from no other motives than those of patriotism and love of their fellowmen.

MR. JENCKES.—When the gentleman from New York says, looking at the question of reconstruction, that there resides in the Executive power to impose conditions upon the resumption of the rights of the States which have been in rebellion, I ask him where he finds that power—in the Constitution of the

United States or in the public law, the law of war, the law of nations which overrides when it is once called into existence? Is it the power of carrying on foreign war or suppressing domestic insurrections?

The day's session came to a close with Mr. Jenckes' question unanswered.

On January 5 Rufus P. Spalding [O.], a representative of what was probably the most radical section in the Union, the "Western Reserve," stated what conditions of reconstruction of the States lately in rebellion would be satisfactory to his constituency. These were:

1. Qualified right of suffrage in the District of Columbia;
2. Amendment of the Constitution excluding negroes from being counted in making up the ratio of the representation in Congress except in States granting them the suffrage;
3. Constitutional amendment prohibiting nullification and secession;
4. Constitutional amendment prohibiting repudiation of the national debt and assumption of the rebel debt;
5. Constitutional amendment denying admission to Congress of former rebels.

On January 8 George R. Latham [W. Va.] gave a border State view of the subject.

Who questioned the right of the loyal people of these [border] States to reëstablish their governments in their respective capitals when they recovered the power to do so? And where is the difference in the principle involved in the condition of these States and of those yet unrepresented upon this floor? Those yet unrepresented were a while wholly instead of partially overrun, and were longer under rebel control; but are the rights of loyal citizens destroyed by "the law's delay," or by the inability of the Government to which they bear allegiance to extend to them, for a time, its protection and support? In what, then, consists the difference in principle, except it be in the single fact that in the one class ordinances of secession (so called) were adopted and in the other were not?

Sir, those who accord to those ordinances an importance so essential and vital as this are, in my humble opinion, not one whit less disunionists in theory and principle than those who

adopted them. But we are seriously told upon the floor of this House, by those claiming to be *par excellence* the friends of the Union, that these States are out of the Union! Look, sir, and count the stars and stripes upon that flag. Does this House indorse a flaunting lie in its presence every day, hour, and minute of its sitting? Why floats in the breeze that banner untorn from the top of this hall, attracting the gaze of admiring multitudes for miles around, if eleven of the States represented thereon have ceased to be States and are no longer members of this Union? Is it to deceive foreign nations through their representatives at your Government? Go, sir, and ask the honest tar in your navy yard, or upon the wide ocean, or in a foreign port, if the flag floating from his masthead flaunts a lie—is a deception and a cheat! Ask the returning veteran, scarred and maimed, who risked his life and shed his blood to save and perpetuate the Union, if "the war has been a failure," and if the flag he bears so proudly homeward is all that is saved from the wreck of his dismembered country! Sir, I leave the reply to your imagination; and I would not envy the gentleman who champions this doctrine the pleasure of a tour over this country, charged with the duty of cutting the representatives of eleven States from that flag which has become a household god in every loyal family throughout the land.

To restore these State governments, then, is, in my opinion, to reinstate them as they existed when overthrown by the rebellion, subject only to such changes as are necessary to conform them to the present status of the National Government. During the suspension of the proper practical relations between the people of these States and the National Government the institution of African slavery has been abolished, and upon resuming these relations they are now required to conform their organic law to this very important change, not because their State constitutions are not republican in form without this change, but because the Constitution and laws of the United States are supreme, and those of the several States must conform to them.

Mr. Latham was in favor of admitting representatives to Congress from the States to be reconstructed on two guaranties alone:

1. Taking the oath of allegiance; and
2. Ability of the constituency of these representatives to maintain a loyal civil government without military aid.

Samuel Shellabarger [O.] specifically answered the speech of Mr. Raymond. Says Mr. Blaine, he spoke with care and preparation, as was his habit. He wasted no words, but in clear, crisp sentences subjected the whole question to the rigid test of logic.

I shall inquire whether the Constitution deals with States. I shall discuss the question whether an organized rebellion against a government is an organized State in that government; whether that which cannot become a State until all its officers have sworn to support the Constitution remains a State after they have all sworn to overthrow that Constitution. If I find it does continue to be a State after that, then I shall strive to ascertain whether it will so continue to be a government—a State—after, by means of universal treason, it has ceased to have any constitution, laws, legislatures, courts, or citizens in it.

If, in debating this question, I debate axioms, my apology is that there are no other questions to debate in reconstruction. If, in the discussion, I make self-evident things obscure or incomprehensible, my defence shall be that I am conforming to the usages of Congress. I will not inquire whether any subject of this Government, by reason of the revolt, passed from under its sovereignty or ceased to owe it allegiance; nor shall I inquire whether any territory passed from under that jurisdiction, because I know of no one who thinks that any of these things did occur. I shall not consider whether, by the rebellion, any State lost its territorial character or its defined boundaries or subdivisions, for I know of no one who would obliterate these geographical qualities of the States. These questions, however much discussed, are in no practical sense before Congress.

What is before Congress? I at once define and affirm it in a single sentence. It is, under our Constitution, possible to, and the late rebellion did in fact, so overthrow and usurp, in the insurrectionary States, the loyal State governments as that, during such usurpation, such States and their people ceased to have any of the rights or powers of government as States of this Union, and this loss of the rights and powers of government was such that the United States may, and ought to, assume and exercise local powers of the lost State governments, and may control the readmission of such States to their powers of government in this Union, subject to and in accordance with the obligation to guarantee to each State a republican form of government.

Upon the broad proposition thus laid down Mr. Shellabarger proceeded to submit an argument, which, for closeness, compactness, consistency and strength, says Mr. Blaine, has rarely, if ever, been surpassed in the Congress of the United States. Other speeches have gained greater celebrity, but it may well be doubted whether any speech in the House of Representatives ever made a more enduring impression or exerted greater convincing power upon the minds of those to whom it was addressed. It was a far more valuable exposition of the reconstruction question than that given by Mr. Stevens. It was absolutely without acrimony, it contained no harsh word, it made no personal reflection; but the whole duty of the United States, and the whole power of the United States to do its duty, were set forth with absolute precision of logic. The reconstruction debate continued for a long time and many able speeches were contributed to it. While much of value was added to that which Mr. Shellabarger had stated, no position taken by him was ever shaken.

Mr. Shellabarger first discussed

WHAT, BY THE LAW OF NATIONS, IS A STATE?

Upon this point he said:

At the very foundation of this discussion lies the question, what make up the necessary elements of every State in this Union? What properties are they which, if any one be lost by a State, it ceases to be entitled to exercise the powers and demand the rights of a political and governing member of that Union?

The argument I now derive from "public law" is really identical with the one I shall next adduce, and shall base upon the express terms of the Constitution. In this argument—assuming, as I do, two axioms of our law; first, that the law of nations is part of your Constitution (Const., art. 1, sec. 8, clause 10), and, second, that such Constitution is to *its* States, at least, as much "supreme law" as the international code is law to the civilized states which are under its sway—I here only show that these law-defying communities in rebellion cannot be "States," unless our Union has lowered and debased the world's "legal idea" of a "state."

What, then, is required to constitute a state by the law of nations?

We answer:

1. "A fixed abode and definite territory belonging to the people who occupy it." (Wheaton, 33.)
2. "A society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength." (*Ib.*, 32.)
3. "The legal idea of a State necessarily implies that of habitual obedience of its members to those in whom the superiority is vested." (*Ib.*, 33.)

This third necessary element of a state is the only important one in this discussion. Hence, I add the following high authorities:

Grotius (Book 3, chapter 3, section 2) says:

"The law, especially that of nations, is in the state as the soul is in that of the human body, *for that being taken away it ceases to be a state.*"

Burlamaqui (Volume 2, page 25), in defining a state, says:

"It is a multitude of people united together by a common interest and common laws, *to which they submit with one accord.*"

I might add to these all the writers on public law for centuries, in confirmation of what is self-evident without proof, that there can be no state where the people do not habitually obey the laws. For four hundred years the unanimous conscience and common sense of the civilized world have refused to recognize the existence of a people who were habitually disobedient to their own laws or the law of nations. Such a people is blotted out.

Can it be that for four centuries the united conscience and judgment of the civilized world shall prohibit the existence upon the earth of such a monster as a state whose people are habitually lawless, and then shall it be left for our "more perfect Union" to establish "States" which, although they cannot *commence* their existence until every officer and minister of that State shall swear to support the Constitution of the United States, as the supreme law of the land, yet shall *continue* to be States after every officer of such State had discarded such oath, and every inhabitant had, for years, defied and discarded these "supreme laws"?

In the lights of the public law of the world let this Congress answer the startling question whether an organized rebellion has come to be an organized "State"; whether "habitual" treason has come to be "habitual obedience to law"; and whether the legal "idea of a state" has come to be a synonym for chaos, in which are commingled, in unalleviated political ruin, the absolute overthrow of all its "supreme laws," the wreck of all loyal constitutions, laws, and forms of government, and the death or exile of every inhabitant who admitted the existence of such loyal State!

Surely, Mr. Chairman, it is not too much to say that even under the settled precepts of public law those eleven districts, called "Confederate States," ceased to be States. In them, during so many dark years, there was no obedience to law except the law which compelled the defiance of all "supreme laws"; there was no government except that one which consisted in enforcing disloyalty to government; there was no observance of the "law of nations," unless that is to be found in indiscriminate and remorseless assassination or murder of every loyal man whom their treason could reach either by means of the dagger, the torpedo, the poisoned food, the bandit, the violations of truce, or the systematized destruction of prisoners of war. Their body-politic was one gigantic treason, made up of eleven organized rebellions, combined into one by the force of a relentless military despotism.

But, sir, the unexampled magnitude of these interests involved impels me on to what are, if possible, more conclusive arguments. I go from the public law to the Constitution.

WHAT IS A STATE OF THIS UNION?

That which is required to be added to the properties which belong to every state, in the sense of the international law, in order to constitute a State of our Union, is—

1. Its citizens must owe, acknowledge, and render supreme and habitual allegiance and obedience to the Constitution, laws, and treaties of the United States in all Federal matters, these being the supreme laws to the States and their citizens. (Constitution, article 6.)

2. All "the members of the State legislatures and its executive and judicial officers shall be bound by oath or affirmation to support the Constitution" of the United States. (Article 6.)

3. That the United States shall have so "admitted it into this Union" (article 5, section 3) as to have assumed "to guarantee to it a republican form of government, and to protect it against invasion, and," on application, "against domestic violence."

4. And by such recognition and "admission into this Union" to have secured to it, as a body-politic, or "State," certain rights of participation in the control of the Federal Government; which rights I shall name hereafter. (See also 1 Bishop on "Criminal Law," sections 128 to 137, inclusive.)

No one who can read the Constitution will deny that each State in this Union must have every one of these properties before it can *commence* to exist in the Union; because the Constitution so declares. Now, the question I consider is whether it shall *continue* to be a State, in the sense that it holds the powers and rights of a State, after it has lost every property which it must have before it could *commence* to exist in the Union.

DOES THE CONSTITUTION DEAL WITH STATES?

The gentleman from New York [Mr. Raymond] says:

> "The Constitution does not deal with States except in one or two instances, as the election of members of Congress and the election of electors of President and Vice-President."

This statement involves an error both of fact and law which, considering its highly intelligent and patriotic source, is amazing. Now, sir, reading English will correct this error. Turn to the Constitution. It deals with States, in the way of imposing restraints and obligations upon them as States, in the following matters: regulating commerce among the States; requiring Representatives, also United States Senators, to reside in their respective States; prohibiting States from entering into any treaty, alliance, or confederation, coining money, emitting bills of credit, making anything but gold and silver coin a tender for debt; passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; from taxing imports or exports without consent of Congress; from laying tonnage duty; from keeping troops or ships of war in time of peace; from entering into any compact with another State or foreign power; from engaging in war unless invaded or in imminent danger thereof; from refusing to give full faith to records, etc., of other States; from refusing to surrender fugitives from justice or labor; in requiring States to be tried in the courts of the United States; requiring all their officers to take an oath to support the Constitution; requiring them to

pay State's proportion of direct taxes; in prohibiting "either" State from conferring any other emolument upon the President than his salary; in requiring them to furnish, at command of the President, their militia; and in subordinating their "judges," "constitutions," and "laws" to the Constitution, laws, and treaties of the United States as "the supreme law of the land."

It secures rights and confers powers upon the States as States in each of the following respects. It secures to each the right to elect at least one Representative, to elect two Senators, to cast one vote in ratifying constitutional amendments, and in calling a convention to make such amendments; to cast one vote in electing a President in the House, to appoint in such manner as the legislature thereof may direct electors to elect a President and Vice-President, to fill by appointment vacancies in Congress, to demand that "in the regulation of commerce no preference shall be given to the ports of one State over those of another," in securing equal immunities to their respective citizens, in having guaranteed to them republican governments, in being protected against insurrection and domestic violence, in securing them from being divided, etc., and in enabling them to define the qualification of electors for United States officers by fixing that of the most numerous branch of the State legislatures.

My object, Mr. Chairman, in reciting these fifty or more supremely important provisions of the Constitution, in every one of which it is evident, both by the nature and express terms of the provisions themselves, and by the innumerable adjudications of the courts, that the Constitution "deals with" the States, as such, was not the frivolous one of showing that there were more than "one or two" of these. My purpose was the higher one of showing how baseless that argument was which was based upon the assertion that the Constitution did not deal with States, but individuals only, and that, therefore, not the States but only individuals could lose their rights under such Constitution. I wanted not only to show the argument baseless, but that its precise opposite is the exact truth. I wanted to show that the very body, soul, life, and essence of the Constitution are penetrated, pervaded, and characterized by and with this recognition of the States, and of their high powers as such. I wanted to bring into view the momentous and controlling fact which disposes of this high constitutional question, that the States are not only "dealt with" by the Constitution, but that their powers as States in our Government are abso-

lutely vital. And I *separated* the obligations and restraints imposed upon the States and their officers from the conferments of rights and powers upon them, that it might appear to all men and to the very children who can read their Constitution that, in this marvelous great scheme of government, as in every other wise human government, as well as in God's, the enforcements of obligation are coupled with and inseparable from the enjoyment of rights; that prescribed qualifications for the attainment of power must be possessed and proceed, and are inseparable, from the exercise of power. I wanted to show that there could be, under the Constitution, none of the rights or powers of a State where there were recognized none of the obligations or duties of a State.

Sir, how long may this nation survive with a Senate elected by rebel legislatures; or with treaties made by Senators chosen by rebel States; or with a President selected by electors chosen by the legislature of South Carolina; or with a President elected in a House of Representatives where each rebel State casts one vote; or with a House of Representatives elected by electors whom a rebel legislature would authorize to vote; or with officers over United States forces appointed by rebel governors; or with such constitutional amendments as would be ratified by rebel legislatures; or with a traitor for President whom you could remove only by the impeachment of a Senate elected by rebel legislatures; or with such foreign ministers and other officers of the United States as such a Senate would confirm; or with a prohibition upon your closing the ports of the eleven rebel States to a commerce supplying them with all the supplies of war, unless you also closed all the ports of the other States?

Sir, if the recital of these powers which the States, as such, hold in governing this Union does not prove that a State in rebellion, and whose government and people are in actual hostility to the United States, is not a component part of this Union, during the continuance of such rebellion, for the purpose of exercising *any* power, then such recital does prove other things. It proves that "Independence Hall" was a madhouse from the 14th of May to the 17th of September, 1787; and that the madmen there succeeded in devising a framework of government embodying in it a larger number of separate and fatal instruments of self-slaughter than was ever combined in a government before, or than was ever dreamed of by men who make Utopias, or by them who form governments in Bedlam.

CONGRESS HAS ASSUMED THAT REBEL STATES HAD NO RIGHTS AS STATES

I admit that the action of this Government was not, at all times during the war, harmonious nor consistent upon the matter of according rights to rebel districts. It would have been strange, indeed, if all such action, done, as it was, in the midst of the awful events of such wars, revolutions, and breakings up of the systems of governments, had been consistent upon any subject. Besides, as mere measures of war, there was constant temptation to err, if at all, in the direction of according to loyalty in the insurrectionary districts every possible protection and power, to the end that it might be developed into support of a Government staggering to its fall under the blows of treason.

But still the most solemn and deliberate action of your Government in all its departments, and recently all its actions, proceed upon the assumption that these rebel States had lost all the rights of States.

Among these acts may be mentioned those of July 13, 1861, and 30th of same month. These have been held to be acts "regulating commerce" (11 American Law Register, 419), and they close the ports of the rebel States to all commerce and capture their ships upon the seas. And yet, if these Southern ports were ports of States having the rights of States, you could not only not close them "in regulating commerce," but you could give no port any preference over them. Again, in every revenue and tariff act which you passed in regulating commerce and the revenue since the war began, you have not only "given preferences" against the Southern ports, but you have provided for their being totally shut to all commerce. Could you provide in a tariff bill that the ports of New York shall be open and those of Massachusetts closed?

These are only examples.

POSITION OF THE PRESIDENT

The President has assumed that the rebel States ceased to be States in the sense I am considering when the military power of the rebellion was extinct, and actual war was ended, and the necessity for resort to mere war powers and expedients ceased. It was then, he holds, that the laws and constitutions and powers of State governments of these States sprang into life and force if they were only put into abeyance by the war

and could all come back into life and force when the war was gone.

On the 29th of May, 1865, these old State constitutions had either come to be in force or they had not. If they were in force at all, then all their provisions were in force and binding, just as much as New York's constitution was; and could only be changed in the mode prescribed by themselves. Is it competent for the United States to order New York to call a convention and change her constitution? Is it competent for the United States to order it changed in a way in total disregard to the modes of amendment which it prescribes as the only ones by which it can be amended?

Now what has happened in these rebel States? Take one example as a specimen of all. On the 29th of May, 1865, President Johnson issued a proclamation appointing Holden provisional governor of North Carolina, and ordered him, under prescribed rules, to call a convention for "altering or amending the constitution of North Carolina," etc. But then that constitution of North Carolina prescribes how alone it can be altered. The convention ordered by the President is wholly unknown to and in violation of the old constitution; and if it was in force at all on the 29th of May, it could no more be altered in that way than the constitution of England could.

Precisely the same thing, in principle, has occurred in every rebel State except, perhaps, three. By presidential proclamations new governments have been professedly called into existence since the war was ended, and since the old constitutions and laws were revived out of abeyance, if they did revive. In every one the new constitutions and governments have been formed in almost total disregard of the provisions of the constitutions which they profess to amend. Now, it is exactly impossible to comprehend the action of the Executive except upon the assumption that these State constitutions and their governments had not revived *so as to control the methods of their own amendment.*

No, no, Mr. Chairman, the President himself tells the country, in the notable words of his proclamation, where it is that *he* deems that he gets this power to order States into existence. His words are, "Whereas the fourth section of the fourth article of the Constitution of the United States declares that the United States shall guarantee to every State in the Union a republican form of government, I, Andrew Johnson, President and Commander-in-chief," etc. Sir, here is an unmistakable avowal of the source of his power and of the cause that called that power

forth. If the old government and constitution of North Carolina had in fact come back to her out of the suspended animation which the rebellion had caused, then she on this 29th day of May already *had* a republican constitution—there was no occasion to alter the constitution to make it republican, nor need to guarantee such a form of government to her.

Sir, let me not be misunderstood. I am not pointing to these acts of the President as wrong, but to show that the President has dealt with this great question precisely in the view I maintain, to wit, that these old State governments were so effectually overthrown that they do not come into force at the end of the war so as to furnish the basis of republican governments to these States; and that it has become the business of the United States to guarantee such governments to hold them. *They* attack the President who hold that in these acts of the Executive, in creating new constitutions, he did so in violence and disregard of living constitutions and republican governments already there. I do not attack him. If, indeed, these old State constitutions had, on the 29th of May, 1865, resumed their sway over these States, as the new champions of the President in this House allege, then indeed has the man they champion, in disregarding and superseding these constitutions, become usurper. Well may the patriotic executive head of this nation repeat once more the chronic prayer which, in all ages, weak adulation has extorted from men in power, "Deliver me from my friends."

SUPREME COURT'S POSITION

But I go on. I now show that the third or judicial branch of the Government is, by solemn and unanimous judgments, twice repeated, committed, in principle, to the same exact conclusions.

But in presenting these high arguments—the judgments of the Supreme Court—let me make them at once serve the double end of making utterly conclusive and complete the position that a State may cease to have the governing rights of States by reason of rebellion, and of also answering what is urged so much as to the logical and practical consequences of that position.

An able statement of these objections has been laid on our table. Their effect is—

1. That it admits that a State may secede.

2. That, as a consequence of this, Jefferson Davis cannot be punished for treason any more than the Governor of Canada could be.

3. That if we admit the rebels "were to be regarded as

belligerents," then when we take them back we become liable for their debts.

4. That individuals and not the States forfeit their rights by treason.

In enforcing these objections my friend from New York [Mr. Raymond] says:

> "If they were out of the Union, when did they become so? They were once states in the Union. If they went out of the Union it was at some specific time and by some specific act."

Before the Supreme Court shall be made to answer, as it will, each one of these objections, permit me, Mr. Chairman, to allude to them; and first to this question about the "specific act," which the gentleman from New York [Mr. Raymond] asks. In respectfully answering his questions let me ask and answer some others of similar legal aspect.

I ask when and by what specific act does "tumult" become "war" in law? I answer, in the language of Chief Justice Marshall, when it, in fact, assumes "warlike array and strength." What in a civil war is the specific act and time which changes, in law, an "insurrectionary party" into a "belligerent"? I answer, in the language of the Supreme Court, when in fact "the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts of justice cannot be kept open." When, in law, does a revolt become civil war? I answer, in the language of Wheaton, when "the insurrection becomes, in fact, so strong as no longer to obey the sovereign, and to be able by war to make head against him." When, in law, and by what specific act, did the entire population of Virginia, including the loyal men, cease to be "friends," and become "enemies of the United States"? I answer, when, in fact, they became "belligerents."

The destruction and supersedure of all loyal government and law in South Carolina was a *fact*, not a law. It was this fearful "fact" which made her cease to be a State governing this Union, and not any ordinance of secession.

The distinguished gentleman to whom I have alluded states the fourth objection which I have named in these words:

> "The people of a State may, by treason, forfeit their rights, but in a legal point of view they have no power to affect the condition of a State in the Union."

That is, turned out of metaphysics into English, every inhabitant of a State may, by treason, come to have *no* political

rights or powers whatever as individuals except the right to be hung; but the same individuals, put into a bundle and called a body-politic or State, have *all* political rights and powers, and can govern this Union! Now, a plain man would have difficulty in being able to see a living, acting, ruling State where there was no constitution, court, or law, and where there were no inhabitants, all these having been hung for treason. Such a man would be dull enough to conclude that if you hung for treason all the people required to make up the body-politic called a State the State would at least be in affliction.

But, Mr. Chairman, it was unfortunate for this distinction between the political State and its people that it has repeatedly encountered the ordeal of the Supreme Court and has been utterly discarded by it.

In 3 Dallas, 93, that court says:

"A distinction is taken at bar between a State and the people of a State. It is a distinction I am not capable of comprehending. By a State forming a republic (speaking of it as a moral person) I do not mean the legislature of the State, the executive of the State, or the judiciary, but all the citizens which compose the State, and are, if I may so express myself, integral parts of it, all together forming a body-politic."

Two years before the objections I have quoted were so ably uttered, they had been pressed, with learning, zeal, and ability equal to his, upon the consideration of the Supreme Court in the "Prize Cases," (2 Black, 635), and had been discarded unanimously by that court, nine judges sitting, including Taney. All the court agree that after the passage of the act of Congress of 13th July, 1861, recognizing the existence of the war, every inhabitant of the rebel States became "enemies" of the United States and "belligerents."

I affirm that the reasoning and judgment of this case settle and establish each one of the following propositions:

1. From the seventh paragraph of the Syllabus (page 636) I quote and affirm that the late "civil war between the United States and the so-called Confederate States," had "such character and magnitude as to give the United States the same rights and powers which they might exercise in the case of a foreign war."

2. From the ninth paragraph of the same Syllabus I quote and affirm that "*all* persons residing within the territory occupied by the hostile (rebel) party in this contest were liable to be *treated as enemies though not foreigners.*"

3. I affirm again, quoting from the opinion of the court

(page 673), that "it is a proposition never doubted that the belligerent party who claims to be sovereign *may exercise both belligerent and sovereign rights.*"

4. I affirm that precisely the same objections were urged in this case as those I have quoted; and were stated by the court in these words, "that insurrection is the act of individuals and not of the government or sovereignty," and "that the individuals engaged are the subjects of law," and "that secession ordinances are nullities and ineffectual to release any citizen from his allegiance."

To these objections the Supreme Court replies:

"This argument rests on the assumption of two propositions, each of which is without foundation upon the established law of nations. It assumes that where a civil war exists the party belligerent claiming to be sovereign cannot, for some unknown reason, exercise the rights of belligerents, though the revolutionary party may."

Again the court replies to those objections in the following words, the court italicising the words:

"In organizing this rebellion they have *acted as States* claiming to be sovereign over all persons and property."

In December, 1865, the ten judges (2 Wallace, 404) unanimously decided the same thing; that all the inhabitants, guilty and innocent, became belligerents and "enemies" of these United States.

The results of these two decisions are that these rebel States:

1. Acted *as States*, in organizing the rebellion.

2. That *all* their citizens, innocent and guilty, were thereby made "*enemies* of the United States."

3. That though they became "enemies" *that* did not make them "foreign" States so as that when we take them back we must pay their debts.

4. That, as the court decides that the United States may exercise over these people *both* "belligerent" and "sovereign" rights, therefore we may, as sovereign, try Davis for treason, although we did treat and hold these States as an "enemy's" country.

5. As these States became "enemies'" territory, and all persons residing within it became "enemies of the United States," they cannot at the same time have been a people having any political rights to govern in this Union, unless indeed this Union can be governed by a body of people, every one of whom

are held by its law to be the "public enemies of the United States."

HENRY C. DEMING [Ct.].—I would respectfully ask my friend from Ohio if he has any authorities, outside of those quoted in the prize cases, for the purpose of vindicating the position that the sovereign in a civil war may exercise both sovereign and belligerent rights?

MR. SHELLABARGER.—I have looked through the authorities on this subject, and in the modern and respectable authorities of the world I find no dissenting voice. The doctrine will be found not only in the text and notes of Wheaton, but in Vattel, in Ward, in Halleck, and Bello.

MR. DEMING.—I would ask my friend if he has looked over the notes in Lawrence's Wheaton for the purpose of seeing the conflicting authorities which Lawrence there quotes on this specific point; that is to say, in a civil war it is incompetent for the sovereign to exercise both civil and belligerent rights.

MR. SHELLABARGER.—I answer the gentleman that I have looked through those notes carefully and thoroughly, and that while, if my memory is not now at fault, I find some unimportant conflict of authority, I do not find any conflict that at all impairs the force of settled law as established in the prize cases.

Sir, it is a weak and inadequate statement of the truth to say that he mocks the law, offends the loyal sense of the people, and insults their common sense who affirms that that people or those States had any rights of government in this Union, every man, woman, and child of whom have been pronounced by two unanimous judgments of the Supreme Court of the Republic to be, in contemplation of the supreme law of the Republic and of the law of nations, the public enemies of the United States.

Does the gentleman [Mr. Raymond] yet ask for "the specific act" that deprived these States of all the rights of States, and made them "enemies"? I once more answer him in the words of the Supreme Court that the specific acts were, they causelessly waged against their own Government a "war which all the world acknowledge to have been the greatest civil war known in the history of the human race." That war was waged by these people "as States," and it went through long, dreary years. In it they threw off and defied the authority of your Constitution, laws, and Government; they obliterated from their State constitutions and laws every vestige of recognition of your Government; they discarded all official oaths, and took in their places oaths to support your enemy's government. They seized, in their States, all the nation's property; their Senators and

Representatives in your Congress insulted, bantered, defied, and then left you; they expelled from their land or assassinated every inhabitant of known loyalty; they betrayed and surrendered your armies; they passed sequestration and other acts in flagitious violation of the law of nations, making every citizen of the United States an alien enemy, and placing in the treasury of their rebellion all money and property due such citizens. They framed iniquity and universal murder into law. They besieged, for years, your capital, and sent your bleeding armies, in rout, back here upon the very sanctuaries of your national power. Their pirates burned your unarmed commerce upon every sea. They carved the bones of your unburied heroes into ornaments, and drank from goblets made out of their skulls. They poisoned your fountains, put mines under your soldiers' prisons; organized bands whose leaders were concealed in your homes, and whose commissions ordered the torch and yellow fever to be carried to your cities, and to your women and children. They planned one universal bonfire of the North from Lake Ontario to the Missouri. They murdered by systems of starvation and exposure sixty thousand of your sons, as brave and heroic as ever martyrs were. They destroyed in the five years of horrid war another army so large that it would reach almost around the globe in marching columns; and then to give to the infernal drama a fitting close, and to concentrate into one crime all that is criminal in crime, and all that is detestable in barbarism, they killed the President of the United States.

Mr. Chairman, I allude to these horrid events of the recent past not to revive frightful memories, or to bring back the impulses toward the perpetual severance of this people which they provoke. I allude to them to remind us how utter were the overthrow and obliteration of all government, divine and human; how total was the wreck of all constitutions and laws, political, civil, and international. I allude to them to condense their monstrous enormities of guilt into one crime, and to point the gentleman from New York [Mr. Raymond] to it, and to tell him that was "the specific act."

Now, Mr. Chairman, if the combined forces of the Constitution and the public law, the obvious dictates of reason, justice, and common sense, and these enforced by the approval of repeated and unanimous judgments of the Supreme Court can settle for our own Government any principle of its law, then it is established that organized rebellions are not "States," and that these eleven distinct political treasons, which they organized into one, and called it "the Confederate States," had *no*

powers or rights as States of this Union, nor had the people thereof.

RESTORATION OF THE STATES

If these States lost their powers and rights as States, by what authority and means are they restored? Is it accomplished by mere cessation of war and the determination of the rebel inhabitants to resume the powers of States; or is this Government entitled to take jurisdiction over the time and manner of their return?

I hold that the latter is the obvious truth.

Let it be admitted that these rebel districts may, without the assent of the United States, and without regard to the state of their loyalty, resume, at pleasure, all the powers of States—this Government having no jurisdiction to determine upon the question of their loyalty or the republican character of the new State governments—then we have this result.

There were, during the first years of the war, twenty-three rebel Senators, including Breckinridge and another. That was more than one-third of the Senate. These twenty-three in the Senate are enough to deprive the United States of all power ever to make a treaty, or to expel a member from the Senate, or to remove from office by impeachment a rebel Secretary of War like Floyd, or a rebel Secretary of the Treasury like Cobb, or a rebel United States judge like Humphreys, or an imbecile President who thought secession unconstitutional, and its prevention equally unconstitutional, like Buchanan. How long, sir, could your Government survive with such a Senate, one-third rebel? How long can you live deprived of these powers vital to every government? Not a week, sir.

But, Mr. Chairman, this is precisely what might have occurred at any day during this rebellion if cessation of war entitles the revolted States to resume the powers of States in defiance of the will of this Government; and it is precisely what may occur to-day if these States be indeed disloyal yet at heart. If, after exhausting "all the resources of war" for the overthrow of the Government, and failing, it is, indeed, competent for them to abandon these resources, and resort to "the resources of statesmanship," and resume at once the high powers of States in the Union, without the assent of such Government, then there has not been an hour since the rebellion began, and the hour is not now, in which this Government has not literally been in the power and at the mercy of the rebellion.

Is it replied to what has been said in regard to the power for

mischief of disloyal Senators in the case which I have stated, expel them? the reply is vain, because the same twenty-three who can prevent any impeachment or the formation of any treaty are also enough to prevent any expulsion under the Constitution.

Is it again replied, exclude these rebels from the Senate under the clause making each House the judge of the elections and qualifications of its members? the reply is obviously frivolous.

1. If under this clause you may exclude a Senator duly elected and qualified in every other respect and sense than that he comes from and is elected by disloyal States, then you yield the whole argument, and accord to this Government all the powers of self-preservation which I am insisting upon. The difference is that you find the power of self-protection under a clause by which each House is compelled to judge separately of the election and qualification of its members; and hence you occupy a position where you may have twenty-four States in the Union, in the Senate; thirty-four in the Union, in the House; and Heaven knows how many in the Union for electing a President.

2. If you reply, I will reject these twenty-three rebel Senators, not because their States can elect none, but because they are "rebels," in the case you put; the reply is vain. When Mason, Slidell, Davis, and Breckinridge last took their seats in your Senate, who knew, or could have proved, that they came there to embarrass and destroy your Government? Could either have been excluded from any known or ascertainable personal disqualification?

No, Mr. Chairman, there is no escape. If the United States has no power to decide, as a great and sovereign people acting through their Government, what shall be a "State" in her high Union, and cannot determine when, out of the wreck and ruin of old States, have been formed new republican States, based upon the only foundations upon which a republican State of this Union can be built, that of the general consent and loyalty of its people, then indeed is your Government not so much as "a rope of sand." It is a monster compelled by the organic law of its life to terminate that life by self-slaughter.

But, sir, such is not the law of its life. I have already shown that the President has discarded such conclusions. I now invoke the authority of the highest court of the Republic, and by that I show that it has decided this question also.

I state the effect of this decision in the language of a distinguished law author (see 1 Bishop, Crim. Law; sec. 133). He says:

"It has been settled by adjudication (7 Howard, 42 and 43) that it is for the President and the two Houses of Congress to decide whether a particular government within a State is republican or not; and to recognize it if it is, and to refuse to recognize it if it is not, and the adjudication of the matter by them is conclusive and binds the courts and the nation. It is not therefore for any class of persons in a State which has ceased to have a government to set up a government of their own."

If it is asked me now, granting your position that these States in revolt ceased to have any powers of government in the Union, still have not new ones been reorganized safe and fit to resume these high powers? I answer, sir, the question, "is it safe, and are they fit," are the stupendous *facts* now on trial by the American Congress. It was the whole end of the feeble argument which I have concluded to vindicate my Government's power to take jurisdiction of this inquest and to hold this trial.

But if I am demanded by what standard of fitness, and what guaranties for safety, Congress shall decide these great facts now on trial, it will serve all the purposes of this argument and this hour to reply that in the true and high sense and spirit of the memorable words of the President of the United States I find a fitting answer. He says:

"No State can be regarded as thoroughly organized, which has not adopted *irreversible guaranties* for the rights of the freedmen."

Mr. Chairman, let this noble utterance—*"irreversible guaranties for the rights" of American citizens of every race and condition*—be written with pen of iron and point of diamond in your Constitution. Let it thus be made "irreversible" indeed, by the action of the State, in the only way it can be made irreversible; and then, to establish this and every other guaranty of the Constitution upon the only sure foundation of a free republic—the equality of the people and of the States—make, by the same organic law, every elector in the Union absolutely equal in his right of representation in that renovated Union, and I am content.

Let the revolted States base their republican State governments upon a general and sincere loyalty of the people and come to us under the guaranties of this renewed Union, and we hail their coming and the hour that brings them.

If you ask again, "Suppose such general loyalty should never reappear, shall they be dependencies forever?"

Sir, convince me that the case is supposable, then with deepest sorrow I answer—*forever!*

On January 9 Daniel E. Voorhees [Ind.], an extreme State Rights Democrat, added to the embarrassment of the Administration in its campaign for Republican support by offering resolutions which praised the President's message as an "able, judicious and patriotic State paper" containing "the safest and most practicable" policy which "can be applied to our disordered domestic affairs," and which are also sound constitutionally, being based on the principle that "no State nor number of States confederated together can in any manner sunder their connection with the Federal Union."

The speaker repudiated the charge that the Democrats were supporting the President in order to secure the spoils of office which were at his disposal.

Our action will be independent, with no desire, like the adroit animal in the fable, to take advantage of the quarrel which now rages among the voters to snatch away the feast over which they are contending. For my part, as in the past, so in the future, I shall pursue what I conceive to be the right, indifferent alike to the allurements of reward or the terrors of reproach.

Mr. Voorhees charged that there was an organized conspiracy in the Republican party to play the part of Joab toward the President, saluting him with a kiss and the kindly salutation, "How is it with thee, my brother?" when their poniard's point was seeking a vital spot under the fifth rib.

He further stated that Thaddeus Stevens [Pa.] was the master spirit of this conspiracy, as shown by his instigation of the Special Committee of Fifteen, at whose head had been placed a man (Senator William P. Fessenden) "who asserts that the Union was destroyed by the war and that it remains so to this day."

By this movement, he said, we were asked to ravel to pieces all that the President had done to restore the Union.

The healing principles of the Constitution are, in my judgment, rapidly doing the needed work of restoration, and yet we are at this stage of the process asked to break again the once fractured limbs, to tear agape the half-closed wounds, and to

cause the whole land to bleed afresh. Sir, I shall stand by the physician who is working the cure, as against that blind and fatal empiricism which first pronounces the patient dead and then commences giving medicine.

Mr. Voorhees then attacked the Stevens theory that the States lately in rebellion were "dead States." He charged that the theory had the sinister and ulterior purpose of vengeance and revolutionary destruction.

Certain beasts of prey, we are told, prefer to find their quarry ready slain, in order to feast upon it in comfort and repose. And so the radical party of the country would find it easier far to make its unnatural banquet on the rights, privileges, laws, liberties, and property of the South by declaring at once that there is no living political community in all that wide region to exclaim against the enormity. Its reasoning on this point is that it is safer and less troublesome to rob a corpse than it is to pick the pockets of the living. This is the highwayman's doctrine of convenience, introduced here now as a party platform. It is more and worse. It is an assertion that the American Union itself is dead. While it claims that the Southern States have destroyed themselves, yet it admits that, like blind Samson of old, in their dying agonies they seized hold of the pillars and tore the temple in ruins to its very foundations, and that they in their desolation to-day are only a portion of the general wreck. It is notice to the world that the war to restore the Union was an utter failure—that the war is over and yet the Union is rent in twain.

In what attitude before the civilized nations does this pernicious heresy place the Federal Government? If we were waging war on an independent power, a separate existing nation, how was it that we refused all negotiations for peace except upon the basis of its utter annihilation? Wars between different civilized powers are made to repair injuries, to resent insults, or to reclaim rights which have been denied; but there is no law of nations which justifies one government, because of its superior strength, in inflicting obliteration and murder upon its inferior neighbor. This doctrine is one of barbarism, in which the law of force is the law of right. Much pathetic eloquence and many bitter tears have attested the world's sympathy with Poland, with Hungary, and with poor, poor Ireland, and maledictions attend upon their destroyers; but with what curses of indignation would an enlightened posterity and an impartial history

assail us for blotting out by sheer force of arms a nation of our own kindred, who simply desired to possess their own in peace and leave us to do the same!

Sir, in every aspect the theory which now controls the majority of this House is fraught with death and disgrace to the Republic. I turn from its contemplation to a more cheerful theme. I will contrast against it the conduct and principles of the Executive, for which, I think, he deserves well at the hands of his countrymen.

What was the wish, the hope, the prayer of every heart not fatally bent on mischief, not an enemy to the human race, when the last of the Southern forces laid down their arms? Was it that this bitter period of strife should be prolonged and the fires of hate and malice kept alive forever? Was it that at the close of such a hurricane, with the billows yet swelling in angry commotion around us, we were to start afresh upon the long voyage of political discovery and legislative piracy which the bold mariner from Pennsylvania [Mr. Stevens] and his radical followers now, like Viking robbers of the ancient seas, point out to us? Was it not rather that the vessel should be brought back and quietly and firmly anchored as nearly as possible at her old moorings? Was it not rather that the corner-stones, boundary lines, and landmarks of the fathers of the Republic should be traced out and restored? I here assert that when the President closed the temple of Janus, refused to go in search of new principles by which to administer the Government, and extended the hand of friendship and assistance to the crippled and bleeding, though living, yes, living States of the South, he met the demands of the popular will, and laid claims to the gratitude of the present and the future.

Mr. Voorhees denied that the President's appointment of the provisional State governors was an usurpation.

By his oath he must enforce the laws. He found States without legal officers and unable to move forward in the channel of their duties. A State of this Union when the Federal laws are no longer obstructed cannot be in passive abeyance. It is an integral part of the Federal body, and if the body be sound there can be no paralysis among its members—they must have vitality; and in the performance of his duty the President used the best means in his power to revive and restore their lawful functions.

The gentleman from Pennsylvania [Mr. Stevens] saw fit to announce that the position of the President in regard to the Southern States was "not an argument, but a mockery." I partly dissent. I think it is both. It is an unanswerable argument in behalf of the early and true principles of the Government, and it is also an overwhelming and consuming mockery of the bloody designs, avaricious hopes, and greedy expectations of all those who desired when the war was over to rule the people of the South without the restraint of law; to humiliate them with an iron rod; to confiscate their lands and buy them in at nominal prices; to change the proprietorship of the soil and drive into exile and destitution its present owners until a new population should take control and, by the aid of the enfranchised negro, plant a Puritan ascendency all over the South; who here now unfurl the banner of "territorial condition," because all these consequences follow its triumph. Sir, this class has been mocked, and God and angels and all good men rejoice in their confusion. Their ascendency in this land would create a pandemonium of discord and a carnival of all the dark and cruel spirits of hate and revenge for generations to come.

But, Mr. Speaker, allow me to inquire whether this opposition to the Executive is not a new discovery, an afterthought, manufactured for a special purpose on the part of those who adhered to and upheld the late administration of Mr. Lincoln in regard to the continued existence and vitality of the Southern States during the late rebellion. Are they not estopped from this assault? In more than a hundred ways and forms, by military orders, in his annual messages, instructions to our foreign ministers, in letters and speeches to his own countrymen, and especially by his numerous proclamations, the late Executive always and at all times recognized the enduring existence of all the States over which the American flag had ever floated.

The late chief of the great party of the North dealt with American States, the people whereof were in rebellion, and not with a foreign power subject to conquest; and if his memory is sacred to his followers, they should not insult it by pronouncing his policy a delusion and a mockery ere his untimely tomb is fairly closed.

Sir, I am aware that many on the opposite side of the chamber do not indorse the destructive theory of the gentleman from Pennsylvania, but who are nevertheless assisting to carry its results into practice. They deny his premises that the States are dead, but concur in his conclusion that they shall not be represented on this floor. To my mind their position is the worst of

all. They embrace a consequence without a cause. They have reached an end which has no beginning. They are standing on a structure which has no foundation. While the premises of the gentleman from Pennsylvania are unsound, yet his logic is true. But those who refuse to follow him and yet deny representation have neither premises nor logic. If the States are out of the Union of course their Representatives are strangers to us, but if they are in the Union what power can close these doors against them except the power of lawless, revolutionary force?

What madness is this which proposes to govern the people of eleven American States, States "included within this Union," without representation? Where on this side of the ocean has been found such a monstrous principle of government? Its adoption would carry us back to the days of King George, and as fatally subvert liberty as if Cornwallis had triumphed on the plains of Yorktown.

But the advocates of this doctrine say that this phase of absolute despotism is only to last for a season; that these States are to go unrepresented only for a few years until guaranties for the future are obtained. Guaranties for the future! This vague term is another political convenience like that of "dead States." Under it each innovator, dreamer, and revolutionist throughout the land can demand and require the fulfillment of all his fantastic desires against the South before he is willing to admit her Representatives. It is the cloak for every higher-law purpose now abroad in the public mind. It is a well-filled arsenal from which to shower confiscation, negro suffrage, reapportionment, proscription of persons, and every other missile of torture that was ever leveled at an unfortunate people.

Sir, I deny that to a State can be refused her representation for a single moment on such grounds. Peace and obedience to law are the only guaranties for the future which any government can justly require of its citizens. Where is the power in the Constitution whereby anything more can be demanded? It may be said that the President himself has required guaranties in his policy of restoration. Even if he did so, I do not understand that he proposed to make their refusal a pretext for violating the Constitution himself. But I have not regarded his advice to the South in the nature of this movement in Congress. On the great question of slavery I hold that the action of the Southern States in adopting the constitutional amendment has been wise and beneficent. The system was destroyed already by the force of arms and the operations of war, but it is better for the future dignity and history of the nation that a fact accom-

plished of the utmost magnitude should have the sanction of fundamental law. It was a vast step, too, toward a speedy restoration, and that alone is a powerful appeal in favor of the counsel of the Executive and the action of the South.

One other subject has been much canvassed under this new-coined phrase of guaranties for the future. The war debt incurred by the Southern States in their attempt to establish a confederacy has been shaken in the face of the Northern people to incite them to a policy of distrust and severity. Everybody well knows, of course, that it will never be paid. All history tells us that the debt of a defeated revolution is always lost. The government that contracted it is no more, and the ruined and exhausted people gladly turn their backs on the dead and melancholy past and look forward to the future with new hopes, new ties, and a new destiny. As to the victor in arms ever assuming such a debt, no instance is known in the annals of mankind, and such an idea is not respectable outside of an asylum for the insane. I regard, therefore, the war debt of the South as fit only for one use—the declamation of demagogues and the malign purposes of political agitators.

But again, as to the right of representation, immediate and without any other guaranty than obedience to the Constitution. In the reconstruction proclamation of the late Chief Magistrate, he clearly and explicitly asserts the right of any State, whose people were then in hostility to the general Government, to be represented in the Federal Congress, and announces that he will consider such fact as an evidence that neither the State nor its people are any longer in rebellion. Where then was the guaranty doctrine? It had not yet been born. We were then wooing and courting representation because it suited our purposes to do so. We are now repelling it for the same reason.

But it may be said that it is not within the province of the executive department of the Government to determine the question of representation in the legislative department. But has not Congress itself made a record on this subject which it cannot ignore and which the majority dare not face? Has it not officially, over and over again, in both branches, assumed the very position which it now seeks with such flagrant assurance to repudiate? The cry is now that we must look to Congress for our policy of restoration. This place has suddenly become a citadel of wisdom, power, and dominion. It is a city of refuge, where all the disappointed spoliators, insane anarchists, bloody Jacobins, promoters of vengeance, disturbers of the peace, self-constituted saints who imagine themselves in partnership with

the Almighty to assist Him in punishing the sins of the world, where law-breakers and revolutionists of every shade and color now flee to escape from the wise, successful, and constitutional policy of the President. "To your tents, O Israel!" was the ancient and legitimate cry of alarm. "Look to Congress, look to Congress!" now rings out on the air as a call to battle in behalf of chaos, disorder, and interminable woes. The populace of France, tossed in a tumultuous delirium of hate, drunken with blood, dethroning Deity and reverencing a harlot, shouted, "Look to the Assembly, look to the Assembly!" where the Mountain murdered the Girondists, and where Robespierre, Marat, and Saint Just planned, in the name of public virtue, the destruction of human life and of human society. But, sir, if we must "look to Congress," let me show the wistful gazers a picture of congressional action which will fill their hearts with dismay, and which Congress itself cannot to-day behold without feelings of humiliation and shame over its present position.

Was Tennessee destroyed or were her people entitled to no voice here because of her ordinance of secession? Sir, her name was called here during more than half the period of the war, and the representatives of her people answered to their names in both ends of the Capitol. The gentleman who in vain sought even a recognition of his own existence in this body when the present Congress was organized [Horace Maynard] was then here with the full sanction of the same political majority which now spurns him from the door of its caucus room, and drives him from the protection which the escutcheon of his glorious State, under the administration of law, affords its Representatives in Congress. Shall we now assert that at that time Tennessee was a portion of a foreign government? Shall we then as the next step of supreme absurdity declare the President of the United States himself an unnaturalized foreigner, a captive to our lance and spear, entitled doubtless to kind treatment, but in no sense a citizen of the United States, inasmuch as he never expatriated himself from the alien and hostile province of Tennessee, and never acknowledged himself subdued to the embraces of the Federal flag as the symbol of a separate nationality? I am prepared to hear even this miserable libel on American institutions asserted. Nothing is allowed to stand in the way of fanaticism. Its purposes are inexorable, and its devotees often deem themselves in truth and honesty the philosophers of their age; but Frederick the Great made a wise observation when he said, "If I wanted to ruin one of my provinces I would make over its government to the philosophers." Their theories

are always in advance of their times; and in practical sense and actual utility they meet neither the requirements of the past, present, or future. The philosophers of Congress at least contradict themselves at very short stages of progress, and give no evidence of either ability or consistency.

HENRY C. DEMING [Ct.].—Will my distinguished friend from Indiana [Mr. Voorhees] inform this House when he thinks the right to representation here from these States commenced? Did it commence at Antietam, at Gettysburg, or when did it commence?

MR. VOORHEES.—My answer is, "Peace and obedience to law are the only guaranties for the future which any government can require of its people." And when peace and obedience to law reign among any portion of the American people, I hold that they are entitled to representation here.

MR. DEMING.—Then I suppose it will be necessary for the gentleman to show that obedience to law exists at this time in the reclaimed territories?

MR. VOORHEES.—Undoubtedly. I think the President and General Grant have shown that fact.

But one step further in this congressional record. As if to settle forever the construction which should be placed upon the condition of the Southern States, and their right to representation, Congress enacted and the President approved a law on the 4th of March, 1862, which fixed the number of the House of Representatives from and after that date.

In order to obtain the number of two hundred and forty-one Representatives as contemplated by this law, every Southern State whose citizens were in revolt must have been represented according to her population. What more can I do than to make this statement? What argument could add to its binding force? If men will repudiate to-day what they did yesterday, if they refuse to be bound by their own principles declared in the solemn form of a law, if the highest precedents of their own official action fall without force upon their ears, then, indeed, they are beyond the power of reason and callous to the reproach and derision of the world.

John A. Bingham [O.] replied to Mr. Voorhees. He said that the theory of Mr. Voorhees was the one upon which the secessionists had proceeded in their unsuccessful attempt to destroy the Union, and the one which the "Peace Democrats" of the North had maintained dur-

ing the war, thereby aiding the secessionists. He denied the assertion of Mr. Voorhees that Andrew Johnson, then as Vice-President or now as President, upheld this theory.

In the very passage which the gentleman has read from the message the President has said that "the functions of the rebel States were suspended." Of course if the functions of a State are suspended the powers of the State cannot be exercised. That is the President's position; the very converse of it is the position of the gentleman who comes here to introduce general resolutions of commendation of the President's message!

Will the gentleman undertake by his mere platitudes to assert here that if by chance five thousand men in South Carolina, lately in insurrection, choose to be represented in convention, and in all things manifest a willingness to return to their allegiance to the Constitution and Government of the United States in good faith, it follows of necessity that the residue of unrepentant insurgents in that State, whose hands are red with the blood of their countrymen, have a right to representation on this floor, and that, too, as provided by the act of 1862, to which the gentleman referred, giving them six Representatives and two Senators? I want an answer. Who undertakes to assert any such thing, and who is to judge in this matter—the Congress or the President?

MR. VOORHEES.—Mr. Speaker, the easiest, and at the same time most absurd, mode of argument is to suppose absurd things. I just step back on the fact that General Grant has been down there, and did not find any such state of things. That is sufficient for my argument at this time. Now, when you find a case of only five thousand in the community willing to discharge their duties, we will consider that.

MR. BINGHAM.—Well, the gentleman has given us about the stoutest reason for his argument, I suppose, that he could find. He stands behind the shadow of a mighty name. General Grant, I believe, was one day in the State of South Carolina, if at all, on that journey; I am not certain if he touched the borders of the State at all. The gentleman thereupon concludes that it is all right in South Carolina; General Grant did not undertake to say so. But the gentleman by his explanation concedes—and that is enough for my purpose—that the representatives of the people of the United States have some right to inquire.

The gentleman admits that he voted for the proposed amendment to the Constitution making it hereafter unconstitutional

to assume any part of the debt contracted in aid of the late rebellion, or of any debt which may hereafter be contracted in aid of any rebellion against the United States.

Well, sir, if the people of the United States are justified in taking that one security for the future, are they not also justified in taking such additional security for the future as will bring in all the hereafter peace and prosperity to the South as well as to the North, to the East as well as to the West?

Oh, sir, it ought to have occurred to the gentleman, when he was meditating his carefully prepared speech in commendation of the President, that there appeared in that same message of his an utterance which ought to attract the attention of this House, and the attention of the whole country, and that was when he reproduced the words which express the true intent and meaning of the Constitution of the United States. "Equal and exact justice to all men." That is the utterance of the President in his message, an utterance which the gentleman found it convenient to be quite oblivious of when he came to make up his words of commendation. According to the political creed of that party which proposes to take the President into its most holy and jealous keeping, there is only to be equal and exact justice secured to white men. [Laughter.] Yes, his party were for equal and exact justice to white men, uttering the horrid blasphemy all the while that this is a Government of white men.

I propose, with the help of this Congress and of the American people, that hereafter there shall not be any disregard of that essential guaranty of your Constitution in any State of the Union. And how? By simply adding an amendment to the Constitution to operate on all the States of this Union alike, giving to Congress the power to pass all laws necessary and proper to secure to all persons—which includes every citizen of every State—their equal personal rights; and if the tribunals of South Carolina will not respect the rights of the citizens of Massachusetts under the Constitution of their common country, I desire to see the Federal judiciary clothed with the power to take cognizance of the question, and assert those rights by solemn judgment, inflicting upon the offenders such penalties as will compel a decent respect for this guaranty to all the citizens of every State.

I undertake to say that the President of the United States will be found coöperating with the representatives of the people in their endeavor to introduce into the Constitution not that which will mar it, but that which will perfect it and enable the people hereafter to secure and reap for themselves and for their

posterity forever the great ends for which that Constitution was ordained.

I repel every insinuation or intimation, come from what quarter it may, that the representatives of the people have manifested thus far the slightest disposition to interfere with the prerogatives, if gentlemen please so to term the powers, of the Executive. I deny that the representatives of the people have taken any step indicating any such purpose, or any purpose to raise an issue or create a conflict between the President and Congress. But I may say, further, that if the day ever comes when the President of the United States finds in this House no other supporters than those who combined together at Chicago in 1864 to bury him where they hoped that even the hand of resurrection itself could never again find him, then God help the President and save him from his friends. [Applause.]

There are two parties to the reorganization of these rebel States. The President cannot constitute a State; Congress alone cannot constitute a State; nobody upon earth can constitute an organized, constitutional State of the Union but the people of the United States, and the people of the proposed State cooperating. If the people of South Carolina do their part rightly and well, to which end no enabling act is needed, as it is but the exercise of the right of petition, which is guaranteed by the Constitution, and which you can neither confer nor take away by law, it will only then remain for Congress, upon her presenting a complete organization, to admit her to her equal position as a State within the Union, with full power to exercise her restored functions and with full right to her equal representation in the Senate and House. The speedy restoration of every State to its equal position, as soon as it can be done safely for the Republic, is, I am sure, the purpose of this House and of the President.

Mr. Stevens.—I want to know whether at the time the so-called Confederate Government was a government in fact, was organized and performed all the functions of government, the laws then passed and the decrees then made are not binding upon the people of the rebellious States?

Mr. Bingham.—They may be if not in conflict with the laws of the United States, and that people choose to submit to them now that peace is restored. They are void under the Constitution of the United States, as against the rights of any citizen who did not assent to them. I doubt whether there can be found upon this floor a single man who will deliberately say, if the insurgent State of North Carolina, through her corrupt and

treasonable judiciary, had decreed for the use of the Southern Confederacy the confiscation of the property of that venerable man, Pettigrew, who clung to the Constitution and cherished the hope of restoration as he cherished the hope of a better life, that the United States had not the power to reverse that decree and restore that property.

If South Carolina all this while was a State, with all the powers of a State, within the Union, how can we reach any such case? My learned colleague [Gen. Rutherford B. Hayes] knows that the State of Ohio, when she legislates touching the transfer of real estate within her limits and among her citizens, and without impairing the obligation of contracts, is beyond the power of the Federal judiciary, and cannot be restrained therein by the Federal Government.

With the explanation I have given his words I see no occasion to take issue with the President upon the status of the States in rebellion, but admit that these States remained States through the conflict for Federal purposes; that means that the State lines remained, that the judicial districts remained intact, so that when the war ceased in those States the Government of the United States could administer justice in every one of those States, and try therein all persons for crimes against the United States therein committed. I do not feel disposed to admit, if a citizen of South Carolina were to-day to commit treason against the United States at Charleston, that he could not be there tried for his crime; nor if he committed his crime there last year that he could escape trial when arraigned, on the plea that the district of South Carolina, previously prescribed by the law of the United States, had ceased, either by his treason or by the treason of others, to be a judicial district within a State.

I never was of that class of persons who believed or assented to the position for a moment, and I do not know if there is anyone here who does, that all the people within the limits of that confederacy were alien enemies. According to the Constitution and laws of the United States Government, every man is responsible for his own crime, and not for the crimes of others. So that when the sovereignty of the country comes to be restored —in Virginia and the Carolinas—the judiciary of the United States are bound by their oaths to discriminate between those who contributed by the compulsion of the bayonet to the support of the rebellion and those who originated it and are the guilty perpetrators of the great wrong. There is a wide difference between Jefferson Davis, the leader of the revolt against the Union, who, to enter upon it, voluntarily broke his oath to

support the Constitution of his country, and that poor, poverty-stricken conscript who served the confederacy of traitors only because of compulsion, or to secure thereby his daily bread.

I have said enough, I think, on this subject to satisfy gentlemen that the President stands by the great body of this House touching the status of the States. They need reconstruction. Their functions are suspended. Something must be done to give them an equal place in the Union. That is what the President says and what the House says. Who shall judge whether that which it was essential to do has been done at all, and, if done, whether it has been done rightly? Who is to decide it? I say it, without waiting to quote authorities, that the loyal people of the loyal States, who saved the Union, and are represented on this floor, are the final judges upon that question, and from their decision there lies no appeal.

I propose to bring this whole question to an issue before the House by offering the following as a substitute for the resolution of the gentlemen from Indiana:

Resolved, That this House has an abiding confidence in the President, and that in the future, as in the past, he will coöperate with Congress in restoring to equal position and rights with the other States in the Union all the States lately in insurrection.

And on that I demand the previous question.

Mr. Stevens.—I ask the gentleman from Ohio [Mr. Bingham] to consent that this whole subject be referred to the Joint Committee on Reconstruction.

Mr. Bingham.—Very well, I will withdraw the call for the previous question, and will move that the resolution with my substitute be referred to the Joint Committee on Reconstruction. And upon that motion I demand the previous question.

The question was taken; and it was decided in the affirmative—yeas 107, nays 32.

Henry J. Raymond [N. Y.] and William A. Darling [N. Y.] were the only Republicans who voted with the Democrats in the negative. This vote was extremely significant. The Republican party as represented in the popular Chamber of Congress had refused almost unanimously to express their confidence in the President, who but little more than a year before had received their votes as Vice-President. The Administration, in its plan to receive Republican indorsement of its policy of re-

construction, had been utterly defeated. Henceforth the Republican party was to be the Opposition.

Mr. Raymond in particular was bitterly disappointed. Says Mr. Blaine:

Few members had ever entered the House with greater personal *prestige* or with stronger assurance of success. He had come with a high ambition—an ambition justified by his talent and training. He had come with the expectation of a congressional career as successful as that already achieved in his editorial life. But he met a defeat which hardly fell short of a disaster. He had made a good reply to Mr. Stevens, had indeed gained much credit by it, and when he returned home for the holidays he had reason to believe that he had made a brilliant beginning in the parliamentary field. But the speech of Mr. Shellabarger had destroyed his argument, and had given a rallying point for the Republicans, so incontestably strong as to hold the entire party in allegiance to principle rather than in allegiance to the Administration. If anything had been needed to complete Mr. Raymond's discomfiture after the speech of Mr. Shellabarger, it was supplied in the speech of Mr. Voorhees. He had been ranked among the most virulent opponents of Mr. Lincoln's Administration, had been bitterly denunciatory of the war policy of the Government, and was regarded as a leader of that section of the Democratic party to which the most odious epithets of disloyalty had been popularly applied. Mr. Raymond, in speaking of the defeat, always said that the Democrats had destroyed Johnson by their support, and that he could have effected a serious division in the ranks of Republican members if he could have had the benefit of the hostility of Mr. Voorhees and other anti-war Democrats.

Three weeks after Mr. Shellabarger's reply Mr. Raymond made a rejoinder. He struggled hard to recover the ground which he had obviously lost, but he did not succeed in changing his *status* in the House, or in securing recruits for the Administration from the ranks of his fellow Republicans. To fail in that was to fail in

every thing. That he made a clever speech was not denied, for every intellectual effort of Mr. Raymond exhibited cleverness. That he made the most of a weak cause, and to some extent influenced public opinion, must also be freely conceded. But his most partial friends were compelled to admit that he had absolutely failed to influence Republican action in Congress and had only succeeded in making himself an apparent ally of the Democratic party—a position in every way unwelcome and distasteful to Mr. Raymond. His closing speech was marked by many pointed interruptions from Mr. Shellabarger and was answered at some length by Mr. Stevens. But nothing beyond a few keen thrusts and parries and some sharp wit at Mr. Raymond's expense was added to the debate.

CHAPTER XI

The First Civil Rights Bill

Lyman Trumbull [Ill.] Introduces in the Senate Bill to Protect All Persons in the United States in Their Civil Rights—Debate in the Senate: Varying Views, by Sen. Trumbull, Peter G. Van Winkle [W. Va.], Willard Saulsbury [Del.], James Guthrie [Ky.], Edgar Cowan [Pa.], James H. Lane [Kan.], Jacob M. Howard [Mich.], Reverdy Johnson [Md.], Charles Sumner [Mass.], Thomas A. Hendricks [Ind.], Garrett Davis [Ky.], Daniel Clark [N. H.], William M. Stewart [Nev.], Lot M. Morrill [Me.], John B. Henderson [Mo.], James R. Doolittle [Wis.), Henry S. Lane [Ind.]; Bill Is Passed—Debate in the House: Varying Views by James F. Wilson [Ia.], Andrew J. Rogers [N. J.], M. Russell Thayer [Pa.], Charles A. Eldridge [Wis.], John A. Bingham [O.], Henry J. Raymond [N. Y.]; Bill Is Passed—The President's Veto—Debate in the Senate: Sen. Trumbull; Congress Passes Bill Over Veto.

ON the same day (January 5, 1866) that he introduced in the Senate the bill for the extension of the Freedmen's Bureau [see page 183] Lyman Trumbull [Ill.] introduced a bill "to protect all persons in the United States in their civil rights and furnish the means of their vindication."

As summarized by James G. Blaine in his "Twenty Years of Congress" the provisions of the bill were as follows:

It declared that "there shall be no discrimination in civil rights or immunities among the inhabitants of any State or Territory of the United States, on account of race, color, or previous condition of servitude; but the inhabitants of every race and color shall have the same right to make and enforce contracts, to sue, be parties, give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefits of all laws and provisions for the security of personal property; and shall be subject to like punishment, fines and penalties, and none other—any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

Any person who under any law, statute, or regulation of any kind should attempt to violate the provisions of the act would be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year. Very stringent provisions were made, and a whole framework of administration devised, by which the rights conferred under this enactment could be enforced through "the judicial power of the United States." The district attorneys, marshals, deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who was sufficiently empowered by the President of the United States were, by the act, specially authorized and required, at the expense of the United States, to institute proceedings against every person who should violate its provisions, and "cause him or them to be arrested and imprisoned for trial at such court of the United States or territorial court as, by the act, has cognizance of the case."

Civil Rights Bill

Senate, January 12-February 2, 1866

Senator Trumbull brought forward his bill on January 12, giving a clear exposition of its provisions.

It did not come up again until January 29, when Senator Trumbull proposed (lest the term "inhabitant" should be judicially construed to mean "citizen" in the narrow political sense and thus nullify the purpose of the bill) that the bill be amended so as to declare persons native to the United States, excluding Indians not taxed, "citizens." He said that the bill was next in importance to the Thirteenth Amendment abolishing slavery, of which measure, indeed, it was an essential complement, securing the freedom there declared.

There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits. Of what avail was the immortal declaration "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness," and "that to secure these rights gov-

ernments are instituted among men," to the millions of the African race in this country who were ground down and degraded and subjected to a slavery more intolerable and cruel than the world ever before knew? Of what avail was it to the citizen of Massachusetts [Samuel Hoar], who, a few years ago, went to South Carolina to enforce a constitutional right in court, that the Constitution of the United States declared that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States? And of what avail will it now be that the Constitution of the United States has declared that slavery shall not exist, if in the late slave-holding States laws are to be enacted and enforced depriving persons of African descent of privileges which are essential to freemen?

It is the intention of this bill to secure those rights. The laws in the ex-slave States have made a distinction against persons of African descent on account of their color, whether free or slave.

Here the speaker discussed the "black codes" of several Southern States [see page 190 ss].

The purpose of the bill under consideration is to destroy all these discriminations, and to carry into effect the constitutional amendment.

Has Congress authority to give practical effect to the great declaration that slavery shall not exist in the United States? If it has not, then nothing has been accomplished by the adoption of the constitutional amendment. In my judgment, Congress has this authority. It is difficult, perhaps, to define accurately what slavery is and what liberty is. Liberty and slavery are opposite terms; one is opposed to the other. We know that in a civil government, in organized society, no such thing can exist as natural or absolute liberty.

Civil liberty, or the liberty which a person enjoys in society, is thus defined by Blackstone:

"Civil liberty is no other than natural liberty, so far restrained by human laws, and no further, as is necessary and expedient for the general advantage of the public."

That is the liberty to which every citizen is entitled; that is the liberty which was intended to be secured by the Declaration of Independence and the Constitution of the United States originally, and more especially by the amendment which has recently been adopted; and in a note to Blackstone's Commentaries it is stated that—

"In this definition of civil liberty it ought to be understood, or rather expressed, that the restraints introduced by the law should be equal to all or as much so as the nature of things will admit."

Then, sir, I take it that any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is an unjust encroachment upon his liberty; and is, in fact, a badge of servitude which, by the Constitution, is prohibited. We may, perhaps, arrive at a more correct definition of the term "citizen of the United States" by referring to that clause of the Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." What rights are secured to the citizens of each State under that provision? Such fundamental rights as belong to every free person.

Here the speaker referred, in support of his contention, to Joseph Story's "Commentaries on the Constitution" and the decisions of the General Court of Maryland in the case of Campbell *vs.* Morris (3 Harris and McHenry, 535), of the Supreme Court of Massachusetts (Abbott *vs.* Bayley, 6 Pickering 92), and of the case of Corfield *vs.* Coryell (4 Washington's Circuit Court Reports, page 380).

The judge in the latter case, he said, went so far as to declare that a person who is a citizen in one State, if he goes to another, is entitled there to the elective franchise.

In my judgment, persons of African descent, born in the United States, are as much citizens as white persons who are born in the country, but it is competent for Congress to declare who are citizens.

Peter G. Van Winkle [W. Va.].—Where is the authority by law of Congress to make them citizens?

Senator Trumbull.—The Constitution of the United States confers upon Congress the right to provide uniform rules of naturalization.

Senator Van Winkle.—For the admission of foreigners.

Senator Trumbull.—Nothing is said about foreigners. More than once that Congress by general act has naturalized a whole people. There was an act of that kind in reference to the Stockbridge Indians, an act of that character making citizens of the United States of the people of Texas and the people of Florida.

Willard Saulsbury [Del.] considered the bill as one of the most dangerous ever introduced in Congress. If slavery could not be abolished without a constitutional amendment, how could anything less than another such amendment affect civil rights, over which the States had just as exclusive control as they had over slavery until the passage of the Thirteenth Amendment? The bill did not fall under the provisions of that amendment, since it referred to persons (free negroes) who were not affected by it. The bill, therefore, was wholly unconstitutional. The Republicans seemed to assume that any legislation was constitutional which would help the former slave.

I think the time for shedding tears over the poor slave has well-nigh passed in this country. The tears which the honest white people of this country have been made to shed from the oppressive acts of this Government in its various departments during the last four years call more loudly for my sympathies than those tears which have been shedding and dropping and dropping for the last twenty years in reference to the poor, oppressed slave—dropping from the eyes of strong-minded women and weak-minded men, until, becoming a mighty flood, they have swept away, in their resistless force, every trace of constitutional liberty in this country.

Senator Saulsbury denied the assertion of Senator Trumbull that the bill would have no political effect.

What are civil rights? What are the rights which you, I, or any citizen of this country enjoys? What is the basis, the foundation of them all? They are divisible into but two classes; one, those rights which we derive from nature, and the other those rights which we derive from government.

Here you use a generic term which in its most comprehensive signification includes every species of right that man can enjoy other than those the foundation of which rests exclusively in nature and in the law of nature.

The right to vote is not a natural right; I do not possess it by nature, I only possess it by virtue of law. It pertains to me as a citizen of my State; and pertaining to me as a citizen of my State, it is a civil right, and is a right of no other class or character.

But the bill also provides that the persons affected shall have "full and equal benefit of all laws and procedings for the security of person and property."

What is property? It has been judicially decided that the elective franchise is property. Leaving out the question of voting, however, as a question of property, is it not true that under our republican form and system of government the ballot is one of the modes of securing property, one of the means by which property is secured? Your bill gives to these persons every security for the protection of person and property which a white man has. One of the authorities which the Senator read decides that the second section of the fourth article of the Constitution, which says that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," entitles a citizen of one State removing into another to a right to vote after acquiring a legal residence in such State. Was it for this reason and to secure this right to negroes that the Senator amended his bill this morning by declaring that all persons of African descent born in the United States shall be citizens of the United States?

Mr. President, this bill not only proposes to assume control over the laws which shall govern title to estates, but also to determine the persons who shall be entitled to enjoy estates and property within the States, and if you can do this as to a portion of that property, any particular species of it, you can do so as to the whole; if you can regulate and govern in one particular, you can govern in reference to all the property and all the interests of the States. If you can determine who shall hold property in a State then you can enact laws for the protection of the owner in its possession. Then also you can determine who shall not hold property within a State. If you can say who shall sue or give evidence in the courts of a State, then you can determine who shall not sue or give evidence in such courts. Such an assumption of power on the part of Congress ought to arouse the people of the whole country to a sense of impending danger. Let them take warning in time. But, sir, this bill positively deprives the State of its police power of government. In my State for many years, and I presume there are similar laws in most of the Southern States, there has existed a law of the State based upon and founded in its police power, which declares that free negroes shall not have the possession of firearms or ammunition. This bill proposes to take away from the States this police power, so that if in any State of this Union at any time hereafter there shall be such a numerous body of

dangerous persons belonging to any distinct race as to endanger the peace of the State, and to cause the lives of its citizens to be subject to their violence, the State shall not have the power to disarm them without disarming the whole population. Is this within your constitutional power and authority? Where did you get it? Are the utterances which come to us from the highest judicial tribunal, which sits but a few feet off, of no account here? Are the declarations of those who assisted in framing this Constitution to be of no avail here? I suppose not, for I suppose it is a foregone conclusion that this measure, as one of a series of measures, is to be passed through this Congress regardless of all consequences. But the day that the President of the United States places his approval and signature to that Freedmen's Bureau bill and to this bill, he will have signed two acts more dangerous to the liberty of his countrymen, more disastrous to the citizens of this country, than all acts which have been passed from the foundation of the Government to this present hour; and, if we upon this side of the chamber manifest anxiety and interest in reference to these bills and the questions involved in them, it is because having known this population all our lives, knowing them in one hour of our infancy better than you gentlemen have known them all your lives, we feel compelled by a sense of duty, earnestly and importunately it may be, to appeal to the judgment of the American Senate, and to reach, if possible, the judgment of the great mass of the American people, and invoke their attention to the awful consequences involved in measures of this character. Sir, stop, stop; the mangled, bleeding body of the Constitution of your country lies in your path; you are treading upon its bleeding body when you pass these laws.

But, sir, let me call your attention for a moment to what are the powers of the States under the Federal Constitution, and what it is they do not and never did intend to surrender to the Federal Government.

"The Federalist" speaking on this subject says:

> "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

I cite that to show that in the judgment of the men who made the Constitution all these powers embraced in your bill are reserved to the States and to the States exclusively, because certainly they concern the lives, liberties, and properties of the

people. In the case of Gibbons *vs.* Ogden, 9 Wheaton, 203, the court say, speaking of the police powers of a State:

> "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general Government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State."

The speaker also declared the judicial powers conferred on the Federal Government by the bill to exceed those granted in the Constitution, which extended only

> "to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

Suppose that an action of ejectment is instituted in any State where free negroes are denied the right to testify, and suppose that action of ejectment is against a free negro. He wishes to prove that he has not been guilty of the trespass in ejectment, and he proposes to prove it by a negro, and the court say, "No; under the law of this State that negro is not a competent witness." In such a case as that, this bill authorizes the circuit or district court of the United States to take cognizance of that action of ejectment, and the State courts are excluded from its consideration. I ask, did that cause of action, the right of A, a citizen of the State of Maryland, to sue another person in an action of ejectment, arise under the Constitution of the United States? Did it arise under any law of Congress? Did it arise under any treaty? Certainly not. Yet you propose to take a case arising under one of these from the control of the State courts and give it to the district court of the United States. On what ground? Simply because the judge, in saying what evidence should go before the jury, says that the negro cannot testify.

Sir, there cannot be a case of chicken stealing in any State of this Union where freed negroes are not allowed to testify that can, if this bill is to be operative and in force, be determined in the State courts. All such cases will be subject to be removed into the Federal courts.

If such consequences as these are to result from such enactments as this—and I honestly believe they are, if it is to be operative—what becomes of the States of this Union? What becomes of the powers of the States? What becomes of the

rights of the States? Sir, they have not even the privilege of administering their criminal laws; they have not the privilege of saying who shall give evidence and who shall not in their own courts; they have not the privilege of saying who shall hold property and who shall not; they have not the power to protect their own citizens against murder, rape, arson, any crime that can be committed against them.

A Federal court hearing and determining a case of ejectment between persons of the same State, brought to recover possession of land in the State in which both parties reside and awarding a writ of possession! A Federal court hearing and determining a case of larceny, the larceny being committed by a free negro, and administering the criminal law of the State! Surely

> "Judgment has fled to brutish beasts
> And men have lost their reason."

How you gentlemen will like the infliction of this punishment when you come to my State, and one of these pet lambs with a black skin shall be indicted for larceny, and you deprive the State of the jurisdiction of trying it, and it is removed to the circuit court of the United States or the district court of the United States; how your Federal judge, if he be of the same opinions with you, will like to carry that law into execution! Do you know what our law does with them? It provides for whipping his bare back. We have a whipping post in our State, and I think it is the most efficient means I ever knew for the prevention of thieving. How the humane feelings of all New England would be shocked!

The sixth section provides very heavy penalties against any marshal or officer who shall disobey or refuse to perform any of the duties imposed by this act; and what is the power that it gives to these marshals? They may call in the *posse comitatus* or the bystanders, and they are all to be punished if they refuse to aid in making arrests. What did the honorable Senator say, and what did other honorable Senators say, when the Fugitive Slave Law gave the power to the marshals to summon persons to make an arrest? They were horrified. What was their language? "Is thy servant a dog that he should do this thing?" Verily, not only the negro is as good in law as the white man in your opinion of him, but he is much more favored and better protected.

The bill gives the power to commissioners of deputizing in writing whomsoever they please to make these arrests. And

what does it do besides? It gives that fellow so deputized five dollars for doing his dirty work. What will be the consequence? Arrests of innocent parties to pocket the fee. And when they come to sue for assault and false imprisonment you will not let the State hear the cause, but you remove it far from our residences and our homes into the district or circuit court of the United States!

But this is not all. The chairman of the Judiciary Committee is still fearful that his free American fellow citizens of African descent may suffer some deprivation of right or infliction of wrong that may not be summarily and adequately redressed. He is fearfully apprehensive that there is some white man that ought to be arrested who may escape, and hence he provides in his bill that the President shall be authorized to employ the land and naval forces the more efficiently to execute its provisions. Poor fugitive white man. If you shall escape the pursuing and avenging army commanded by the lieutenant-general of the armies of the United States and attempt to cross the briny deep, the navy, the entire navy, shall chase you from the sea. Sir, your whole army and navy will be inadequate to execute this unconstitutional law, if law this bill shall become.

Senator Van Winkle thought that the scope of the bill was wider than its framers realized.

It involves not only the negro race, but other inferior races that are now settling on our Pacific coast, and perhaps involves a future immigration to this country of which we have no conception, for a bill has been introduced at the other end of the Capitol to strike out the word "white" from the naturalization laws, so that we may expect to have an influx here of all sorts of people from all countries. I need not pause to say that this would be detrimental to the best interests of our country. I am willing to receive among us, and always have been, those from other countries who are calculated to make good citizens. I am not and never have been willing to receive, if the discrimination could be made, those whose mixture with our race, whether they are white or black, could only tend to the deterioration of the mass; and I avow myself now as opposed to the amendment which is now before the Senate.

I believe there are certain fundamental and eternal principles that lie at the foundation of society; and, if you make these people citizens of the United States, I should feel that they

were entitled to the right of suffrage, and to granting them this I am opposed.

I entertain what perhaps may be deemed peculiar ideas in reference to the condition of society. I do not believe one word of what the chairman of the Judiciary Committee read from Blackstone yesterday. I think it is mere twaddle. I cannot conceive of a state of nature such as is spoken of there. I know not of people entering into society. It is never done and never has been done. What I do think is this: I believe the constitution of society was given to man by the Creator at the time it was instituted, and that whatever conditions were imposed at that time are those to which men should endeavor to live up.

We hear a great deal about the sentence from the Declaration of Independence that "all men are created equal." I am willing to admit that all men are created equal, but how are they equal? Can a citizen of France, for instance, by coming into this country acquire all the rights of an American, unless he is naturalized? I believe that the division of men into separate communities and their living in society and association with their fellows, as they do, are both divine institutions, and that, consequently, the authors of the Declaration of Independence could have meant nothing more than that the rights of citizens of any community are equal to the rights of all other citizens of that community. Whenever all communities are conducted in accordance with these principles, these very conditions of their prosperous existence, then all mankind will be equal, each enjoying his equality in his own community, and not till then. Therefore, I assert that there is no right that could be exercised by any community of society more perfect than that of excluding from citizenship or membership those who were objectionable. I do not believe that a superior race is bound to receive among it those of an inferior race if the mingling of them can only tend to the detriment of the mass.

The mode in which it is proposed to effect the object of the bill is neither constitutional nor legal. I was mistaken yesterday in saying that the *language* of the Constitution expressly applied to the naturalization of foreigners; but I was not wrong in the conclusion that that clause was *intended* to apply to foreigners only. I would remind the chairman of the committee that the case he cited of the Stockbridge Indians was also the naturalization of foreigners; for we hold the Indian tribes to be *quasi*-foreign nations; we, at least, make treaties with them, which are confirmed by this body. The laws of naturalization as they stand require a notice to be given and a renunciation

of the allegiance to all foreign powers, and require that notice to be given two years before the application is made; but there is no provision of that sort in this proposition. Yet the Constitution requires that the laws of naturalization be *uniform*.

I should be very willing to have the question submitted in some form to the people of the United States, whether they desire to admit to citizenship this class of persons; and I do not confine it to the African race alone, but I include the races on the Pacific coast that I have already mentioned, and others to whom it is proposed to open the doors. I would like to see it tested by a fair vote of the people of the United States whether they are willing that these piebald races from every quarter shall come in and be citizens with them in this country, and enjoy the privileges which they are now enjoying as such citizens.

I refused to join the American party at the time of its first formation because I thought it discriminated between naturalized citizens and native citizens. However much I might disapprove of the naturalization law previously to that time, I felt that, while these people were admitted under the law, they were entitled to all the rights and privileges and the same treatment as other citizens; and if these dusky people shall also be admitted to the rights of citizenship in such a way as I believe contains a fair expression of the people, and is according to the Constitution, I pledge myself to treat them in the same way that I was disposed to treat our naturalized citizens.

THE PRESIDING OFFICER.—The question is on the amendment proposed by the Senator from Illinois.

SENATOR TRUMBULL.—No action having been taken upon that amendment, I desire to withdraw it and to offer another in lieu of it to the same purport, changing the phraseology. I move to insert these words:

All persons born in the United States and not subject to any foreign power are hereby declared to be citizens of the United States, without distinction of color.

SENATOR JAMES GUTHRIE [Ky.].—I will ask the Senator if he intends by that amendment to naturalize all the Indians of the United States?

SENATOR TRUMBULL.—Our dealings with the Indians not taxed are with them as foreigners, as separate nations. I think that it would be desirable that the bill should apply to the Indians who are domesticated and pay taxes and live in civilized society.

EDGAR COWAN [Pa.].—I will ask whether it will not have the

effect of naturalizing the children of Chinese and gypsies born in this country?

SENATOR TRUMBULL.—Undoubtedly.

SENATOR COWAN.—Then I think it would be proper to hear the Senators from California on that question, because that population is now becoming very heavy upon the Pacific coast; and when we consider that it is in proximity to an empire containing four hundred million people, very much given to emigrating, very rapacious in their character, and very astute in their dealings, if they are to be made citizens and to enjoy political power in California, then, sir, the day may not be very far distant when California, instead of belonging to the Indo-European race, may belong to the Mongolian, may belong to the Chinese; because it certainly would not be difficult for that empire, with her resources, and with the means she has, to throw a population upon California and the mining districts of that country that would overwhelm our race and wrest from them the dominion of that country.

SENATOR TRUMBULL.—I should like to inquire of my friend from Pennsylvania if the children of Chinese now born in this country are not citizens?

SENATOR COWAN.—I think not.

SENATOR TRUMBULL.—I understand that under the naturalization laws the children who are born here of parents who have not been naturalized are citizens. Is not the child born in this country of German parents a citizen?

SENATOR COWAN.—The honorable Senator assumes that which is not the fact. The children of German parents are citizens; but Germans are not Chinese.

SENATOR TRUMBULL.—The law makes no such distinction; and the child of an Asiatic is just as much a citizen as the child of a European.

JAMES H. LANE [Kan.].—Most of the Indians of our State have taken an allotment of lands, and our Supreme Court have decided that, by the act of accepting the allotments, they have separated themselves from their tribal relations; yet we do not extend to them the right of citizenship.

SENATOR COWAN.—Mr. President, I am asked, with quite an air of certainty on the part of the chairman of the Judiciary Committee, whether the children of persons of barbarian races, born in this country, are not from that very fact citizens of this country. I am not prepared upon the moment to furnish authorities upon this point; but I am certainly very clear that in Pennsylvania that is not the law, and never has been the

law; and to assert that it is the law, in my judgment, is to betray an utter want of comprehension, an utter inappreciation of the fundamental principles which underlie the whole of our system. Who was it that established this Government? They were people who brought here the charter of their liberties with them; they were the freemen who emigrated to this country and established these governments, and they established them under charters legally granted them by the Crown of Great Britain originally. By the terms of the charters they were the actual possessors of the political power of the colonies, and they alone had the right to say whom they would admit to a coënjoyment of that power with them. It is true that the colonists of this country, when they came here and established their governments, did open the door of these privileges wide to men of their own race from Europe. They opened it to the Irishman, they opened it to the German, they opened it to the Scandinavian races of the North. But where did they open it to the barbarian races of Asia or of Africa? Nowhere. There may be no positive prohibition; but the courts always administered the law upon the basis that it was only the freemen who established this Government and those whom the freemen admitted with them to an enjoyment of political power that were entitled to it.

The identical question came up in my State—the question whether the negro was a citizen, and whether he possessed political power in that State—and it was there decided that he was not one of the original corporators, that he was not one of the freemen who originally possessed political power, and that they had never, by any enactment or by any act of theirs, admitted him into a participation of that power, except so far as to tax him for the support of Government. And, Mr. President, I think it a most important question, and particularly a most important question for the Pacific coast, and those States which lie upon it, as to whether this door shall now be thrown open to the Asiatic population. If it be, there is an end to republican government there, because it is very well ascertained that those people have no appreciation of that form of government; it seems to be obnoxious to their very nature; they seem to be incapable either of understanding it or of carrying it out; and I cannot consent to say that California, or Oregon, or Colorado, or Nevada, or any of those States shall be given over to an irruption of Chinese. I, for my part, protest against it.

SENATOR TRUMBULL.—Does the Senator deny that the Federal Government has authority to naturalize any person; that it

may provide by uniform laws of naturalization to naturalize any foreigner?

SENATOR COWAN.—Yes. But I would ask the honorable Senator whether there is not every distinction in the world between the right of a man after naturalization and before. These statutes do not provide that a naturalized citizen shall not have all the rights of every other citizen, but provide what his rights shall be before naturalization, so that the power which the United States originally had has nothing to do with the question.

SENATOR TRUMBULL.—I was looking at it as a question of power. Whether it would be politic to do it is another question.

SENATOR COWAN.—Mr. President, that is neither here nor there; this is not an amendment to the Constitution of the United States; this is an attempt to do without any power that which it might be very questionable whether we ought to do even if we had the power.

I may state that I have another objection to this bill at the present time; and that is that the people of several States in the Union are not represented here, and yet this law is mainly to operate upon those people. I think it would be at least decent, respectful, if we desire to maintain and support this Government on the broad foundation upon which it was laid, namely, the consent of the governed, that we should wait, at any rate, until the people upon whom it is to operate have a voice in these halls.

I know it is said that those people are not in condition to be allowed representation here. Mr. President, he who says the people are not in condition asserts that this Government is a failure. It rests entirely upon the people, and if the people cannot be intrusted anywhere and everywhere throughout it, then it is not the Government we supposed it was, and not the Government it was intended to be. I admit that the American people, like other peoples, are subject to periodical disturbances. They may be led away by the arts of the demagogues, they may be forced away by the power of *de facto* governments asserted over them; but if they are the punishment they receive is war. When the question is put, it is put to the arbitrament of the sword. That enters judgment and issues execution at the same stroke; and when the war is over the people are purged. When the war is over it is too late to say that the people are guilty. They have suffered the penalty of their folly, or their crime, or what you may be pleased to call it, and it is time then to talk about individuals, not people.

During the rebellion, it was questioned whether after the

war was over and after we had suppressed the rebellion the people would come back again to their allegiance and be part and parcel of the Union as before. Have they not done it? The result is a thing of which every American who loves his country and who prides himself in this great Republic should be proud of. If the Southern people, after their armies were beaten, after they had lost everything in this game of war, had refused to organize republican governments in unison with the Constitution and the laws, if they had still stubbornly refused to submit, if they had refused to send Representatives to Congress and Senators here, then you might have said that the people were in default and that the people had failed; but in my judgment those people have not failed; they have done, so far as I can observe, everything that the most hopeful or sanguine man could have expected them to do. I am afraid that we confound with the people of the South another and entirely different class. Unquestionably there are individual traitors there, and I would a great deal rather see them indicted and punished than hear so much about the "people."

Who are rebels and traitors? Who are guilty men according to the theory of our law? The presumption is that all men are innocent until they are shown to be guilty. Every line of our law is blazing with the light of that humane sentiment. The words "traitor" and "rebel" are exceedingly glib upon the tongues of certain gentlemen. A few minutes ago, it was alleged here that every man who cannot take the present test oath must necessarily be a rebel or a traitor. Mr. President, if that delusion is persisted in, if that belief is to govern in the councils of this Government, there is an end of the Republic. It is not true in fact, and it is not true in law.

Do gentlemen pretend that single men, without an organization, without any governmental means, without any of the insignia of power, can stand up and resist the government of a State with all these means in its hands of enforcing its power? Surely not; and there was no other power in this Government except the United States to which the loyal men in the South could look, and the United States went out of possession and left those people to the mercy of secession.

Mr. President, for two hundred years at least the doctrine has been established, and established beyond question, that protection and allegiance are reciprocal. I owe allegiance to this Government, and it owes to me protection. If it refuses to protect me, I am not to be punished because I do not yield it allegiance. Let me suppose a delegation of Georgians, of Ala-

bamians, or Mississippians, if you please, Union men, coming here to this capital in the winter of 1860-61, and calling upon Congress, and saying, "South Carolina has actually seceded; other States are about doing the same thing; you should appropriate money and provide means, you should authorize the President to put down that attempted rebellion." What did Congress say? Read the record. They would not trust the President. Then the delegation go to President Buchanan, and what does he say? "I cannot coerce a State; I might suppress an insurrection, but I have no means; I have no authority to call out the militia."

What were these people to do? Just exactly what they did do. They went back and told their people. "There is no help from the United States; they are out of possession; the President is recalcitrant, and Congress is wrangling and refusing to trust him; we cannot have help; we must submit."

I refer to a chapter in Mr. Greeley's book, "The American Conflict," as proof that there were more than one-half of the men of the South who were opposed to secession. What I object to is that half should now be branded as criminals when the only thing criminal they did was to get into difficulty and into war, desolation, and destruction, because we, the Government of the United States, did not do our duty in their behalf.

Now, I come to the law: if the general Government allows itself to be put out of possession, so that it cannot protect a citizen, and a *de facto* government is over him, whatever he does in obedience to that *de facto* government, and under its authority, is not treason.

A word as to the proper mode of treating these people. I asked a Southern gentleman the other day, "Suppose we get into difficulty with England or France, which side would they take?" "Why," said he, "nine out of every ten of them will stand by the flag." Now, Mr. President, that is either true or it is not true. If it is true that nine men out of every ten will stand by the flag, then I say to assail them as rebels and traitors, and to treat them as criminals, and to try to deprive them of the rights they ought to have as inhabitants of free States, as we are, is a gross outrage and one which will recoil upon our heads. If they are not; if they are in the condition which some gentlemen like to represent them as occupying, then, sir, I want to know whether you will bring them to reason, whether you will bring them back to that affection which they ought to have for this Government and its flag by such bills as this, which invade rights that they of all other people have been taught

to consider as peculiarly belonging to the States and not within the province of the Government to invade. Can you bring them back by making laws which operate upon them when they are not here? Can you bring them back by giving them the same cause to rebel against you which Great Britain gave to your ancestors? Can you bring them back here by legislating for them and yet refusing them the right of representation? Can you bring them back by amending the Constitution time and again over their heads when you refuse to listen to their arguments here in the common councils of the country?

Mr. President, I know apprehensions are expressed. Apprehensions of what? What can the people of those States do if we treat them fairly and give them all their rights under the laws? What is the worst they can do? Can they rebel again? If they are going to rebel again, you are putting them now exactly in such a condition that they will before the world have good cause. You are putting them precisely in that situation when they can appeal to your enemies for assistance, and when they will get it. When they ask England to protect them the next time, and then when they seek an alliance with France the next time, they will succeed. England will not pay fifty millions more to keep her Lancashire poor from starving when she can control the cotton fields of the Southern portion of these United States. France will not much longer be bullied about the Monroe Doctrine, when she, by joining with the South, may help to tear this Republic in two and shear it of its greatness.

Then, I say, if the people would stand by the flag, give them their rights; and, I say, if they will not stand by it, let us give them their rights and let them do their worst, because they will do it anyway. It is far safer to treat them according to the laws that exist and do now exist without new ones to operate upon them, made while they are not here, far safer than the course we are pursuing. Are there no courts, are there no juries, is there no machinery in the land by which individuals can be punished, and only machinery by which the innocent, the people, can be tortured and worried, and perhaps driven into another rebellion?

Mr. President, I hope we shall take better counsel. I think it cannot be disguised that just at this moment there is a growing apprehension in the country that something is not right. The soldier is beginning to ask why the country is not restored. He says, "I fought the battles of the country long days and dreary nights through a terrible war for the Union for the purpose of saving the Republic one and indivisible. Why is it

not restored?'' Is there any resistance to this Government, any refusal on the part of the people to put all the machinery in motion? I tell you, Mr. President, when he asks this Congress why it is that all the bands are not tied, and all the means of cementing it are not made use of, there will be a terrible answer from him if he finds that we by our factious course prevent this restoration.

What is it that binds now, I ask, the eleven States lately in rebellion to this Union but the President? He is the only piece of property they have in common with us. He stands like a Colossus across this chasm which it is our business to fill up and close forever. The bondholder, the man who loaned us the money to carry on this war, the man who came up with Fortunatus' purse, almost without stint, to furnish the sinews of it, will begin to ask, why is the Union not restored; where is the obstacle, and what is the obstacle? Will it do to tell him that the hearts of that people are not right? He will tell you that you had better leave that to the means of Christian grace; it will be enough for him if they obey the laws, if they are willing to submit themselves to the laws as other good citizens do. It will not do to assert to him that they are not to be trusted as the people, because he will tell you it was as the people and upon the faith that they as the people would restore the Government that he gave his money. It will not do either to tell him and the soldier, too, that we are going to hold these people as conquered provinces. The soldier will tell you that that will do him no good; he did not fight for conquered provinces; he did not fight to make his fellowmen vassals and serfs; he fought to bring them back to brotherhood and freedom. He wanted to make them to strengthen him and to aid him rather than to be his enemies hereafter.

Jacob M. Howard [Mich.] insisted that the Civil Rights bill was a necessary and constitutional corollary of the Thirteenth Amendment. Without it the freedman would possess nothing but his ''naked person,'' and even the liberty of this might be coerced by hunger on the one hand and legislative limitation, both as to kind of employment and wages, on the other.

There is no invasion of the legitimate rights of the States. The bill contemplates nothing of the kind; but it simply gives to persons who are of different races or colors the same civil

rights. I sincerely trust that this nation, having by an expenditure of blood and treasure unexampled in the history of the human race, set the slaves in the United States forever free, having employed this class of persons to the number of nearly two hundred thousand in the prosecution of our just and righteous war, will not now be found so recreant to duty, so wanting in simple justice, as to turn our backs upon the race and say to them, ''We set you free, but beyond this we give you no protection; we allow you again to be reduced to slavery by your old masters, because it is the right of the State which has enslaved you for two hundred years thus to do.'' Sir, let me tell you and the Senators who have advocated the opposite side of this question that, if we fail in this high duty, if we fail to redeem this solemn pledge which we have given to the slave, to the world, and in the presence of Almighty God, the time is not far distant when we shall reap the fruits of our treachery and imbecility in woes which we have not yet witnessed, in terrors of which even the Civil War that has just passed has furnished no example.

Reverdy Johnson [Md.] thought that the purpose of the bill could be attained legally only by a constitutional amendment, since the Supreme Court in the Dred Scott case had held that negroes were not citizens under the Constitution, although it did not so discriminate against any other race. The bill, therefore, was in derogation of State powers which were perfectly constitutional, such as the discrimination in civic rights between aliens and citizens, the police power, marriage laws, etc.

He asserted that Indians were citizens of the United States; therefore, he said, they would come under the provisions of the act.

The Indian tribes upon that portion of the American continent that belonged to Great Britain were always subject to the dominion of England. England could have done what she thought proper to do with them, but all she did in the execution of that, her sovereign right, was to prohibit them from entering into any contracts in relation to their lands with any other nation than England or the dependencies of England. When we obtained our independence the whole authority that England had over the tribes became vested in the United States; and since then the uniform view that has been taken of the relation

in which these Indians stand to the United States is that they are but the wards of the United States. They have no sovereign power whatever; they are not a nation in the general acceptation of that term; they cannot sell their lands without the authority of the United States; they are not at liberty to sell their lands to anybody but to citizens of the United States, and under such regulations as the United States may impose.

If the honorable member will refresh his memory by consulting the case of Worcester *vs.* The State of Georgia, reported in 6 Peters, I think he will find that Mr. Chief Justice Marshall, who gave the opinion of the court, deciding that the legislation of Georgia or the acts of Georgia were unconstitutional, admits that the Government of the United States could do with the Indians, as far as the question of power was concerned, just what it thought proper; that the absolute dominion was in the United States; the possessory title, with a *quasi*-dominion, was with the Indians, but that *quasi*-dominion was only that they could sell their lands and were not subject to be taxed by the United States, but only because the United States themselves had agreed that they should have those rights; but it was not pretended in that case that they were not citizens of the United States. The result, therefore, would be that an Indian child, born within the territorial limits of these tribes, would be a citizen of the United States because the territory is part of the United States. Nobody ever doubted that the whole of the Indians who are subject to our control are now located upon territory belonging to the United States, and the result would necessarily follow, so far as citizenship depends upon birth, that, if you make it depend upon birth, the child who is born within the territorial limits of the United States, whether that portion be or be not within the temporary or partial control of the Indians, would be a citizen of the United States.

CHARLES SUMNER [Mass.].—Allow me to ask the Senator whether we do not always deal with the Indians through the treaty-making power?

SENATOR JOHNSON.—We have done so, but not necessarily.

SENATOR SUMNER.—Is it not the habit?

SENATOR JOHNSON.—Certainly it is; but I am dealing with it now as a question of power. We have dealt with them as a treaty-making power, but it is not because there ever was a doubt that Congress could deal with them by legislation; and, in point of fact, although we have dealt with them as a treaty-making power, we have done so by making them make the

treaty. It is no treaty-making power in the ordinary acceptation of the term; that is to say, the parties are not equal.

SENATOR SUMNER.—With the Senator's permission, I will remind him that we act upon our treaties with the Indians in this Chamber with precisely the same forms than we do upon our treaties with the European powers, and they must be ratified by a vote of two-thirds of this body.

SENATOR JOHNSON.—I understand that; but what I mean to say is, and I do not think the honorable member will contradict me, that there is nothing in the Constitution of the United States defining the treaty-making power, or in any other branch of it, which says that Congress cannot legislate in regard to them.

On June 31 Thomas A. Hendricks [Ind.] opposed the bill. He said that the inclusion of Indians who were taxed, and the exclusion of those who were not, was an invidious distinction. He did not want to see property introduced into the law as a requisite for citizenship.

Senator Trumbull replied that the Constitution had already drawn the line in its provision for apportioning *representation in Congress* and direct taxes.

Garrett Davis [Ky.] opposed the bill. It and the Freedmen's Bureau bill were, like the Siamese twins, connected with the same umbilical cord, the recognition of negroes as citizens, which, if severed, would cause their dissolution. This cord he proposed to cut. Repeating many previous arguments against this vital principle he introduced a new one. If emancipation gave citizenship, then the slaves emancipated by the Northern States after the Revolution were citizens. Were they or their posterity so recognized? No. Would the Southern States have agreed to the Constitution if they thought that under it negroes would be recognized as citizens? No. If negroes are now citizens, why pass a law declaring them such?

Senator Trumbull denied the facts as stated by Senator Davis and quoted to the contrary the fourth article of the Confederation and its ratification by all the Southern States but two. Indeed, North Carolina at one time permitted free negroes who were taxpayers to vote.

The Senator from Kentucky says, if they are already citi-

zens by the Constitution, why do you declare it in a law? We often pass laws to remove doubts, and I should like to remove the doubt even from the mind of the Senator from Kentucky, if that were possible.

Senator Davis replied:

The mere right to vote does not amount to citizenship. Citizenship, under the Constitution, is something different from what it was before the Constitution was formed. Before the Constitution was formed every State made its own citizens; every State coined its own money. Since the formation of the Constitution there is but one power to coin money, there is but one power to make citizens, and that is the Government of the United States. The State of Illinois admitted unnaturalized foreigners who had been resident in that State six months to vote. Did the fact that Illinois permitted an unnaturalized foreigner who had been resident there six months to take part in her government make him a citizen of the United States? Not at all.

My position is that this is a white man's Government. It was made so at the beginning. The charters that were granted by the different sovereigns of England to the various colonies were granted to white men and included nobody but white men. They did not include Indians. They did not include negroes. When the troubles with the mother country commenced in 1764, and culminated in revolution and a declaration of independence in 1776, all of that protracted and important transaction was by white men, and by white men alone. The negro had nothing to do with it, no more than the Indian; he was no party to it. It was not for his grievances that that struggle was made; it was not to reform his wrongs that that bloody war was waged; it was not to establish a government in which he was to be a party or a power that the Declaration of Independence was enunciated to the world and the old Articles of Confederation formed; it was not to make him a party to our present Government that the Constitution was formed. He was no party in the convention; he was not represented in the convention which framed the present Constitution. It is a white man's government. I say that the negro is not a citizen. He may be made a citizen by power, but it will be in disregard of principle.

Daniel Clark [N. H.] took issue with Senator Davis.

Before the Constitution was adopted the free black man in my State was just as much a citizen as the white man; and when delegates were chosen to the convention which adopted the Constitution he had a right to vote, and undoubtedly did vote, as well as the white man.[1] They formed that Constitution. In that Constitution there is nothing declaring that a negro shall be a citizen of the United States, and there is nothing declaring that a white man shall be. They stand on the same foundation. There is nothing declaring that the black man shall not be a citizen, nothing declaring any distinction between him and a white man.

And I may say, by the way, that slavery was never recognized by law in New Hampshire.

Senator Davis.—Have slaves not been bought and sold there?

Senator Clark.—Yes; in one instance, at least, that I know of; but I have looked and can find no law that ever recognized a slave, nor any that set one free.

Senator Davis.—There is no law in Kentucky declaring horses property, yet they are so recognized. How did you people sell negroes?

Senator Clark.—Very much as a man steals a horse.

Senator Davis.—Your people stole a negro and sold him?

Senator Clark.—I believe my people are like other people, and, if they did steal and sell a negro, they did a great wrong to the negro. No matter where slavery exists, be it in New Hampshire or Kentucky, it is a violence and a wrong. [Applause in the galleries.] I want to find why a negro is not a citizen, if the gentleman will tell me. If he will lay down his definition, I want to see whether the negro did not comply with it and conform to it so as to be a citizen.

Senator Davis.—Government is a political partnership. No persons but the partners who formed the partnership are parties to the government. Here is a government formed by the white man alone. The negro was excluded from the formation of our political co-partnership; he had nothing to do with it; he had nothing to do in its formation.

William M. Stewart [Nev.].—Allow me to ask a question. Is it a close corporation, so that new partners cannot be added?

Senator Davis.—Yes, sir; it is a close white corporation. You may bring all of Europe, but none of Asia and none of Africa, into our partnership.

Senator Clark.—Let us see, Mr. President, how that may

[1] As a matter of fact they did so vote not only in New Hampshire but in other States.

be. Take the gentleman's own ground that government is a partnership, and those who did not enter into it and take an active part in it cannot be citizens. Is a woman a citizen under our Constitution?

Senator Davis.—Not to vote.

Senator Clark.—I did not ask about voting. The gentleman said a while ago that voting did not constitute citizenship. I want to know if she is a citizen. Can she not sue and be sued, contract and exercise the rights of a citizen?

Senator Davis.—So can a free negro.

Senator Clark.—Then if a free negro can do all that, why is he not a citizen except that the Dred Scott decision says that——

Senator Davis.—Because he is no part of the governing power.

Senator Clark.—I deny that, because in some of the States he is a part of the governing power. The Senator only begs the question; it only comes back to this, that a nigger is a nigger. [Laughter.]

Senator Davis.—That is the whole of it. [Laughter.]

Senator Clark.—That is the whole of the gentleman's logic. [Laughter.]

Senator Johnson.—Mr. President, but for the decision in the Dred Scott case, to which allusion has been made, perhaps the question would be free from all difficulty; but, as the Senate are already informed, the decision in that case was that, because of the particular condition of the African, neither he nor any of his descendants were citizens. The Senate will find, by referring to that decision, that the court put it entirely upon the ground that the Africans were imported into the United States as slaves, and bought and sold as property, and, according to the view that the court took, all their descendants partook of that condition; that is to say, they inherited the disqualification of the ancestor. The sins of the ancestor, if they could be called sins, were visited upon the children. They applied that principle by saying that the disqualification of the ancestor because of his condition was to be visited upon the children. It is very obvious, upon the reading of that opinion, that the court would have come to a different conclusion, provided the Africans had immigrated to the United States as immigrants, instead of coming here as property. If they had come as men and had not been brought in as chattels, then they would have been citizens of the United States. It is also evident that, if the Supreme Court had taken the view taken by

the honorable member who has just addressed the Senate [Mr. Clark], that there were in the States Africans or descendants of Africans at the time of the adoption of the Constitution who were citizens of the States in which they might be, they would have been citizens of the United States. That is obvious, as I think, from a paragraph in the opinion to which I invite the attention of the Senate, which will be found in 19 Howard, page 406.

The court say

"It is true that every person——"

Without reference to color, black or white——

"It is true that every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States became also citizens of this new political body, but none other; it was formed by them, and for them and their posterity, but for no one else."

The error, therefore, that the court have committed, if they have committed an error at all, a question that I do not propose now to discuss, is not in the principle maintained by the honorable member from New Hampshire, but in the historical fact—were or were not negroes in the States of the United States citizens of such States, all or any one, at the time the Constitution was adopted?

But the Supreme Court have decided that negroes are not citizens, and the decision stands before us. Whether it will be recognized hereafter when the question arises in that tribunal at any subsequent time is a matter that I do not propose now to inquire into: there it is, and we have a right to suppose that it may control subsequent decisions; and, if it does control subsequent decisions, the result will be that this law will not be operative.

But does it follow that these negroes cannot be made citizens? That would be an extraordinary condition for the country to be in. Here are four million negroes. They are not foreigners, because they were born in the United States. They have no foreign allegiance to renounce, because they owed no foreign allegiance. Their allegiance, whatever it was, was an allegiance to the Government of the United States alone. They cannot come, therefore, under the naturalizing clause; they cannot come, of course, under the statutes passed in pursuance of the power conferred upon Congress by that clause; but does it

follow from that that you cannot make them citizens; that the Congress of the United States, vested with the whole legislative power belonging to the Government, having within the limits of the United States four million people anxious to become citizens, and when you are anxious to make them citizens, have no power to make them citizens? It seems to me that to state the question is to answer it.

SENATOR DAVIS.—Has the Government of the United States any power that is not conferred upon it by the Constitution?

SENATOR JOHNSON.—Certainly not.

SENATOR DAVIS.—Where is the power in the Constitution, or the provision in the Constitution, that gives the right to the Government of the United States to make a citizen of a native-born negro?

SENATOR JOHNSON.—I do not know that there is any particular clause that says the child of a native-born negro is to be a citizen, but it would be an extraordinary thing if under the judiciary clause it were not in the power of Congress to authorize a native-born negro, to use the language of my friend from Kentucky, to sue.

SENATOR DAVIS.—I reckon the language is good.

SENATOR JOHNSON.—I am not saying it is not good. I used it because I was sure it was good, as you used it. I would not have used it except upon your authority. [Laughter.]

SENATOR DAVIS.—You are getting modest.

SENATOR JOHNSON.—Now, Mr. President, if we can, by legislation, authorize the negro to sue, we are authorized to go one step at least toward making him a citizen. If we can authorize him to contract we take another step. If we authorize him to testify we take another step; and so to go on by assuming that we authorize him to do every other act that a white man can do, short of the right of voting, what is there in the Constitution which denies us the power to stop when we come to the exercise of that right? I can find nothing in the Constitution which leads to that result. It is a necessary, incidental function of a government that it should have authority to provide that the rights of everybody within its limits shall be protected, and protected alike. It would have been a disgrace to the members of the convention, in my judgment, if they had looked to the condition of things which now exists; or, without looking to that condition of things, if they had looked to the contingency sure to happen, and which was rapidly occurring at the time when the question became a matter of political agitation, that slavery would sooner or later be abolished by State legis-

lation or State action, and had denied to the Congress of the United States the authority to pass laws for the protection of all the rights incident to the condition of a free man.

SENATOR DAVIS.—I differ *toto cælo* from the honorable Senator from Maryland upon this proposition. My opinion is that the Constitution of the United States never intended to place free negroes or slave negroes under the jurisdiction of the general Government at all; that the whole subject of free negroes and of slave negroes is left by the Federal Constitution, and was intended to be left by the Constitution, under the jurisdiction and exclusive control of the several States.

SENATOR STEWART.—Have we not a provision which is now a part of the Constitution which expressly provides that we may legislate on this subject?

SENATOR DAVIS.—That provision is revolutionary. Have Congress and the legislatures of the States the right to change our form of Government? Have they a right to establish a monarchy? Have they a right to establish a presidency for life? Have they a right to establish a Senate for lifetime, or a Senate that would transmit its honors and its offices to their posterity? Sir, the power to change the Constitution is a power simply to amend; it is not a power to revolutionize; it is not a power to subvert; it is not a power to change our form of government.

On Friday Lot M. Morrill [Me.] replied to the charge that the declaration of citizenship was revolutionary legislation.

If there is anything with which the American people are troubled, and if there is anything with which the American statesman is perplexed and vexed, it is what to do with the negro, how to define him, what he is in American law, and to what rights he is entitled. Hitherto we have said that he was a nondescript in our statutes; he had no *status;* he was ubiquitous; he was both man and thing; he was three-fifths of a person for representation and he was a thing for commerce and for use. In the highest sense, then, in which any definition can ever be held, this bill is important as a definition. It defines him to be a man and only a man in American politics and in American law; it puts him on the plane of manhood; it brings him within the pale of the Constitution. That is all it does as a definition, and there it leaves him.

It is not an enactment in the sense of the law. Everywhere where the principles of law have been recognized at all, birth

by its inherent energy and force gives citizenship. Therefore the founders of this Government made no provision—of course they made none—for the naturalization of natural-born citizens. Therefore, sir, this amendment, although it is a grand enunciation, although it is a lofty and sublime declaration, has no force or efficiency as an enactment. I hail it and accept it simply as a declaration.

But, sir, this amendment is important in another aspect. It marks an epoch in the history of this country, and from this time forward the legislation takes a fresh and a new departure. Sir, to-day is the only hour since this Government began when it was possible to have enacted it. Such has been the situation of politics in this country—nay, sir, such have been the provisions of the fundamental law of this country—that such legislation hitherto has never been possible. Although I have said that by the fundamental principles of American law all persons were entitled to be citizens by birth, we all know that there was an exceptional condition in the government of the country which provided for an exception to this general rule. So long as that provision in the Constitution which recognized this exceptional condition remained the fundamental law of the country, such a declaration as this would not have been legal, could not have been enacted by Congress. But the Thirteenth Amendment has destroyed slavery, this exceptional condition, and therefore the present declaration of the result of that destruction is in order.

The Senator from Kentucky denounces as a usurpation this measure, and particularly this amendment, this declaration. He says it is not within the principles of the Constitution. That it is extraordinary, I admit. There is no parallel, I have already said, for it in the history of this country; there is no parallel for it in the history of any country. The ancient republics were all exceptional in their liberty; they all had excepted classes, subjected classes, which were not the subject of government; and therefore they could not so legislate. But that it is extraordinary and without a parallel in the history of this Government or of any other does not affect the character of the declaration itself.

The Senator from Kentucky tells us that the proposition is revolutionary, and he thinks that is an objection. I admit that this species of legislation is absolutely revolutionary. But are we not in the midst of a civil and political revolution which has changed the fundamental principles of our Government in some respects? Sir, is it no revolution that you have changed

the entire system of servitude in this country? Is it no revolution that now you can no longer talk of two systems of civilization in this country? Four short years back I remember to have listened to eloquent speeches in this Chamber, in which we were told that there was a grand antagonism in our institutions; that there were two civilizations; that there was a civilization based on servitude, and that it was antagonistic to the free institutions of the country. Where is that? Gone forever. That result is a revolution grander and sublimer in its consequences than the world has witnessed hitherto.

But, sir, the Constitution even provides for revolutionizing itself. Nay, more, it contemplates it; contemplates that in the changing phases of life, civil and political, changes in the fundamental law will become necessary, and is it needful for me to advert to the events of the last four or five years to justify the declaration that revolution here is not only radical and thorough, but the result of the events of the last four years? Of course I mean to contend in all I say that the revolution of which I speak should be peaceful, as on the part of the Government here it has been peaceful. It grows out, to be sure, of an assault upon our institutions by those whose purpose it was to overthrow the Government; but on the part of the Government it has been peaceful, it has been within the forms of the Constitution; but it is a revolution nevertheless.

But the honorable Senator from Kentucky insists that it is a usurpation. Not so, sir. Although it is a revolution, radical, as I contend, it was not a usurpation, because it took place within the provisions contemplated in the Constitution. More than that, it was a change precisely in harmony with the general principles of the Government. The change which has been made has destroyed that which was exceptional in our institutions; and the action of the Government in regard to it was provoked by the enemies of the Government.

But, Mr. President, it is said that this amendment raises the general question of the antagonism of the races, which we are told is a well-established fact. It is said that no rational man, no intelligent legislator or statesman, should ever act without reference to that grand historical fact; and the Senator from Pennsylvania [Mr. Cowan] on a former occasion asserted that this Government, that American society, had been established here upon the principle of the exclusion, as he termed it, of the inferior and the barbarian races. Mr. President, I deny that proposition as a historical fact. There is nothing more inaccurate. No proposition could possibly be made here or any-

where else more inaccurate than to say that American society, either civil or political, was formed in the interest of any race or class. Sir, the history of the country does not bear out the statement of the honorable Senator from Pennsylvania. Was not America said to be the land of refuge? Has it not been since the earliest period held up as an asylum for the oppressed of all nations? Hither, allow me to ask, have not all the people of the nations of the earth come for an asylum and for refuge? All the nations of the earth and all the varieties of the races of the nations of the earth have gathered her. In the early settlements of the country the Irish, the French, the Swede, the Turk, the Italian, the Moor and so I might enumerate all the races and all the variety of races, came here, and it is a fundamental mistake to suppose that settlement was begun here in the interests of any class or condition or race or interest. This Western continent was looked to as an asylum for the oppressed of all nations and of all races. Hither all nations and all races have come. Here, sir, upon the grand plane of republican democratic liberty, they have undertaken to work out the great problem of man's capacity for self-government without stint or limit.

Then the honorable Senator advances one step further, and contends that not only was society formed in the interests of a race—the superior race, as he is pleased to call it—but that government here was organized in the interests of a race. I deny it utterly. I deny that government was organized in the interest of any race or color, and there is neither "race" nor "color" in our history politically or civilly—not a bit of it. Is there any "color" or "race" in the Declaration of Independence, allow me to ask? "All men are created equal" excludes the idea of race or color or caste. There never was in the history of this country any other distinction than that of condition, and it was all founded on condition.

We have been told, Mr. President, that this question of race was clearly recognized and settled in a case that was before the Supreme Court some years ago—the Dred Scott case, so called. But, as has already been pointed out by Senator Johnson, that decision expressly recognized that exclusion from citizenship was based on a former condition, namely servitude, and not on race.

JOHN B. HENDERSON [Mo.].—An individual of the Caucasian race, whether he pays a tax in a State or not, is undoubtedly regarded as a citizen of the United States. Why make it obligatory upon the Indian, owing no allegiance to any tribal author-

ity, to pay a tax before he can be regarded as a citizen of the United States? As the Senator from Indiana [Mr. Hendricks] very properly remarked, the United States citizenship in that case is dependent upon nothing except the possession of property upon which a tax is actually paid. I suppose that, according to the rule adopted in the amendment, a State ought to be permitted to exclude any white man from taxation, and by so doing to deny him the rights of citizenship. Why not?

My point is that the Indian, if he is connected with no tribe, whether he is taxed or not, ought to be a citizen of the United States. What harm can there be in declaring that fact? What injury can it do? The State need not admit him to the franchise. He may be a citizen of the United States, and yet not have all the privileges and all the immunities of a citizen of the State in which he may be. The State may deny him any of them that it chooses to deny. But why not declare him a citizen of the United States? What harm can there be in that? It will enable him to sue in the courts of the United States to enforce his rights there, and I cannot see for my part what else it will do. As the Constitution now stands, of course the State cannot be injured in any of its reserved powers.

It can certainly do none of the States any harm to declare that the Indian himself, owing no allegiance to any tribe, and thereby not falling within the exception of the amendment as owing allegiance *quasi* to a foreign power (regarding the Indian tribes as foreign powers), shall be regarded as a citizen of the United States. Now that we are fixing the law on the subject, why not declare every man born in the United States to be a citizen of the United States, irrespective of race or previous condition?

Ought Georgia, or Florida, or Virginia, or any other State have the power to say, "We will not tax the negroes, and thereby nullify the declaration of the United States Congress that they are citizens of the United States"? If the mere fact of paying a tax in the respective States shall confer citizenship, why not make that applicable to the negro as well as the Indian? Why discriminate when laying down a great and broad principle?

JAMES R. DOOLITTLE [Wis.].—If you make the Indians citizens, they will not only have the privileges of citizens, but they will be subjected to the duties of citizens. They will not only have the right to sue, but they will be liable to be sued. They will not only have the right to make contracts, but they will be bound by their contracts; and that is a policy which the Gov-

ernment has resisted from the beginning in its dealings with the Indians, except with those Indians who have become citizens and liable to be taxed. Then they are regarded as citizens of the United States. Without going into the argument at length, I am decidedly of the opinion that, if by declaring the Indians to be citizens you are going to bind them by their contracts and permit them to be sued as other citizens are in the courts of the United States, the Indians are not yet prepared for citizenship.

So far as relates to the Indian population, they can be provided for specially by other acts of Congress when the question shall arise.

SENATOR TRUMBULL.—What does that phrase "excluding Indians not taxed" mean? The Senator from Missouri understands it to be a property qualification to become a citizen. Not at all. It is a constitutional term used by the men who made the Constitution itself to designate, what? To designate a class of persons who were not a part of our population. That is what it means. They are not counted in the census. They are not regarded as a part of our people. The term "Indians not taxed" means Indians not counted in our enumeration of the people of the United States.

SENATOR JOHNSON.—Considered virtually as foreigners.

SENATOR TRUMBULL.—Considered virtually as foreigners, as a description of persons connected with those tribes with whom we make treaties. That is what the phrase means. Whenever they are separated from those tribes, and come within the jurisdiction of the United States so as to be counted, they are citizens of the United States. The Senator wants to know why, if an Indian cannot be a citizen without being taxed, should a white man or a negro be a citizen without being taxed? If the negro or white man belonged to a foreign government he would not be a citizen; we do not propose that he should be; and that is all that the words "Indians not taxed," in that connection, mean.

Senator Trumbull's amendment to the bill, declaring natives of the United States, excluding Indians not taxed, to be citizens, was passed by a vote of 31 to 10.

On Friday, the 2nd, Senator Davis returned to his fundamental proposition: that the negro, *per se*, without regard to his present or previous condition of servitude, was excluded by the Constitution from citizenship and

therefore that a declaration that a free negro was a citizen was void and if made a part of the Constitution would be revolutionary. He asked Senator Johnson to point out the constitutional rule that made a distinction between a free negro and a slave negro in this respect. Senator Johnson again referred him to the statement concerning the matter in the Dred Scott discussion. Senator Davis replied that this was an *obiter dictum*, an expression of an opinion which was not a part of the decision.

The honorable Senator is the ablest living lawyer in the land. I have seen gentlemen sometimes so much the lawyer that they had to abate some of the statesman. [Laughter.] My honorable friend knows that, when an opinion is rendered by a court, the opinion is authority only upon the question before the court. It has often been assumed that Lord Mansfield, in the celebrated case of Sommersett, decided that slavery did not and could not exist in England. He decided no such principle. Indeed, if his *obiter dicta* had the force of a decision, which they had not, he decided diametrically the reverse. He said expressly that slavery existed in every English colony in America, that property in slaves was then recognized in England, and that the sale of slaves was a good and sufficient consideration to uphold a contract and a suit and a recovery upon that contract in Westminster Hall. But his sole valid decision was that there were laws in England passed by Parliament that were incompatible with the owner of Sommersett taking him forcibly from England back to a slave colony in the West Indies; that these laws required him to issue a writ of *habeas corpus* discharging Sommersett. He said, furthermore, that, but for those laws, he would not have granted the writ of *habeas corpus*, and it would have been impossible to do so.

But I go on; I beg pardon for this digression. I maintain that a negro cannot be made a citizen by Congress; he cannot be made a citizen by any naturalization laws because the naturalization laws apply to foreigners alone. No man can shake the legal truth of that position. They apply to foreigners alone; and a negro, an Indian, or any other person born within the United States, not being a foreigner, cannot be naturalized; therefore they cannot be made citizens by the uniform rule established by Congress under the Constitution, and there is no other rule. They could not be made citizens by treaty. If

they are made so at all, it is by their birth, and the locality of their birth, and the general operation and effect of our Constitution. If they are so made citizens, that question is a judicial question, not a legislative question. Congress has no power to enlarge or extend any of the provisions of the Constitution which bear upon the birth or citizenship of negroes or Indians born in the United States. All the provisions, all the principles, all the rights which the Constitution established in relation to those matters are fixed, immutable as the Constitution itself, and Congress by no ancillary legislation can enlarge the effect or the operation of any of those provisions or principles of the Constitution, or of any rights that could be claimed under them. Then, if a negro is a citizen of the United States at all, he is a citizen by birth and by operation of the Constitution, and his rights are not to be increased or fortified, nor can they be weakened or restricted or diminished by congressional legislation. He holds them by a higher warrant than any law of Congress. He holds them by the Constitution of the United States. That Constitution cannot be interpreted, even, much less can it be expanded or restricted by a law of Congress.

But, admitting that Congress could declare negroes citizens against State laws and regulations to the contrary, the Senator said that thereby the bill became unconstitutional on another point, namely, that it discriminated in favor of one class of citizens (negroes), against another (whites) in that special provisions were made to enforce the rights of the former class, and that, too, by military instead of civil power.

When, sir, was such partiality ever shown for the white man, the sovereign, citizen, and lord of this land—him who made the Government, who won its independence, who established, as he thought, the deep and firm foundations of a free Government in a written Constitution, and whose mission it is to uphold and to defend that Government for himself and for his latest posterity? When was such partial, unjust, and iniquitous legislation devised for the white man who achieved all this good for his country and for the world? Never, never. But the negro and his insane friends bring up now for the first time such monstrous legislation.

If these are to be the results of the war, better that not a single man had been marshaled in the field nor a single star

worn by one of our officers. These military gentlemen think they have a right to command and control everywhere. They do it. They think they have a right to do it here, and we are sheep in the hands of our shearers. We are dumb.

Mr. President, I do not know how soon, for my action on the present occasion, I shall be compelled to silence by the military power of my country, by the men who ought to be subordinate to the civil power. When the Father of his Country surrendered his military commission, his proudest and most glorious boast was that he had always kept the military subordinate to the civil power. Times have changed. The military power is now rampant and triumphant, and all we have to do is to bow our heads. But I live in the hope that a better day is coming, when the proudest military man in the land, with all his bloody laurels, will find that he is but an instrument in the hands of the law, and that he has to yield the same submission to the law that the humblest citizen of the land does.

SENATOR TRUMBULL.—If the Senator from Kentucky has satisfied the Senate that he is dumb, I presume he has satisfied the Senate of all the other positions he has taken; and the others are just about as absurd as that declaration. He denounces this bill as "outrageous," "most monstrous," "abominable," "oppressive," "iniquitious," "unconstitutional," "void."

Now, what is this bill that is obnoxious to such terrible epithets? It is a bill providing that all people shall have equal rights. Is not that abominable? Is not that iniquitous? Is not that most monstrous? Is not that terrible on white men? [Laughter.]

Sir, this bill applies to white men as well as black men. It declares that all persons in the United States shall be entitled to the same civil rights, the right to the fruit of their own labor, the right to make contracts, the right to buy and sell, and enjoy liberty and happiness; and that is abominable and iniquitous and unconstitutional! With what consistency and with what face can a Senator in his place here say to the Senate and the country that this is a bill for the benefit of black men exclusively when there is no such distinction in it, and when the very object of the bill is to break down all discrimination between black men and white men?

Now, sir, what becomes of all the Senator's denunciation? The bill is applicable exclusively to civil rights. It does not propose to regulate the political rights of individuals; it has nothing to do with the right of suffrage, or any other political

right; but is simply intended to carry out a constitutional provision and guarantee to every person of every color the same civil rights.

But, says the Senator, it breaks down the local legislation of all the States; it consolidates the power of the States in the Federal Government. Why, sir, if the State of Kentucky makes no discrimination in civil rights between its citizens, this bill has no operation whatever in the State of Kentucky. Are all the rights of the people of Kentucky gone because they cannot discriminate and punish one man for doing a thing that they do not punish another for doing? The bill draws to the Federal Government no power whatever if the States will perform their constitutional obligations.

The Senator goes on to say that there is no authority in the Congress of the United States to declare a person a citizen except it be by way of naturalizing a foreigner, and this in face of precedents I had shown him to the contrary.

SENATOR DAVIS.—I did not say there was no precedent for it. In my opinion, the precedents were inadvertently passed, and, at any rate, they were outside of the power of Congress.

SENATOR TRUMBULL.—The Senator chooses to regard everything to be outside of the power of Congress by denouncing it as such. As I said, his speech is made up of these denunciations. He is troubled about amalgamation, and becomes excited and vehement in talking about it. I should have supposed that at his time of life he would feel protected against it without any law to put him in the penitentiary if he should commit it. [Laughter.] Sir, we need no law of the kind where there is no disposition for this amalgamation. I apprehend that if the States prefer to pass laws on that subject——

SENATOR DAVIS.—Why did your own State pass such a law?

SENATOR TRUMBULL.—Does not the Senator from Kentucky know that we have a great many Kentuckians in Illinois? [Laughter.] A great many of his people settled nearly the whole of the lower part of my State, and, as they came over from under such a law and had to be restrained at home, we were afraid to risk them when they got into Illinois. [Laughter.] But, sir, now that Egypt[1] is redeemed, I do not think there will be any necessity for continuing that act in my State. [Laughter.]

SENATOR GUTHRIE.—If this bill passes, all the Southern States must remodel their laws upon the subject of offences. I would advise that there should be but one code for all persons,

[1] The lower part of Illinois.

black as well as white; that there shall be one general rule for the punishment of crime in the different States. But, sir, the States must have time to act on the subject; and yet we are here preparing laws and penalties, and proposing to carry them into execution by military authority, before the States have had time to legislate, and even before some of their legislatures have had time to convene. I think the States of this Union are entitled to some little consideration before you inflict military government upon them.

I tell you, gentlemen, it is my firm conviction that the bill can lead to nothing but strife and ill feeling, which will grow and continue to grow. Where it will end God only knows. The time will not always be that the citizens will be content that the State governments should be interfered with, and that there should be in each State two sets of police officers, one to punish those who commit what they presume to be offences against the Africans, and another to punish the African for his crimes under the State laws, and that punishment should be made the pretence of prosecuting the white man in your courts. The thing will not work; it ought not to work; and it never should have been introduced here. It is not necessary to secure the freedom of the African. Slavery does not exist. The ordinary process and proceeding of law is ample for his protection. But when you overturn the State governments, interfere by your legislation with their laws, supersede their courts, keep up a constant contention between the individuals and the tribunals, you are destroying the unity of this Government and the purposes for which the States were formed.

The gentleman from Illinois says that this is simply a bill providing that all persons shall have their rights. I might return the compliment by saying that it is simply a bill declaring that we have established a military despotism and the laws are to be enforced at the point of the bayonet.

Senator Hendricks dwelt upon the coercive features of the bill, which he said were those of the Fugitive Slave law that the Republican defenders of the present bill had in times past so vehemently opposed and finally repealed.

Now you reënact these provisions, and you claim them as a merit and as an ornament to the legislation of the country; and you add an army of officers and clothe them with the power to call upon anybody and everybody to pursue the running white man. That is not enough, but you must have the mili-

tary to be called in, at the pleasure of whom? Such a person as the President may authorize to call out the military forces. Where it shall be, and to whom this power shall be given, we do not know.

Henry S. Lane [Ind.] replied:

My distinguished colleague, if I understand him aright, places his objection to this bill, first, upon the ground that we have pressed into the service the machinery of the Fugitive Slave law; and, secondly, that we authorize this bill to be enforced by the military authority of the United States. It is true that many of the provisions of this bill, changed in their purpose and object, are almost identical with the provisions of the Fugitive Slave law, and they are denounced by my colleague in their present application; but I have not heard any denunciation from my colleague, or from any of those associated with him, of the provisions of that Fugitive Slave law which was enacted in the interest of slavery, and for purposes of oppression, and which was an unworthy, cowardly, disgraceful concession to Southern opinion by Northern politicians. I have suffered no suitable opportunity to escape me to denounce the monstrous character of that Fugitive Slave act of 1850. All these provisions were odious and disgraceful, in my opinion, when applied in the interest of slavery, when the object was to strike down the rights of man. But here the purpose is changed. These provisions are in the interest of free men and of freedom, and what was odious in the one case becomes highly meritorious in the other. It is an instance of poetic justice and of apt retribution that God has caused the wrath of man to praise Him. I stand by every provision of this bill, drawn, as it is, from that most iniquitous fountain, the Fugitive Slave law of 1850.

Then, if the military had been called upon to execute an infamous law like the Fugitive Slave act, where the sheriff and the *posse comitatus* were ineffectual to do so, owing to local opposition, why should they not be used now, under similar conditions, to execute a good law?

Senator Cowan said that the supreme objection to the bill was that in case of a conflict between the State courts and the military power the latter could decide and there could be no appeal to the Supreme Court. The Fugitive Slave law was unconstitutional in this respect,

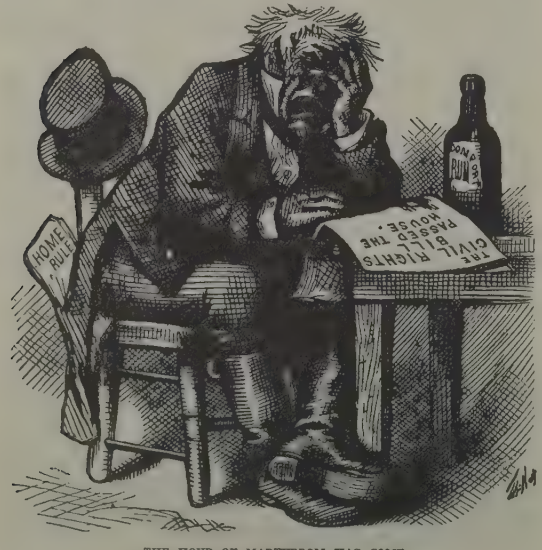
he held, and he could not see how this feature could be justified merely because it was applied for a good purpose rather than a bad. Even the Confederate States in their Constitution had enacted that State courts should be supreme in the restoration of fugitive slaves. Certainly in time of peace no military power should intervene between State courts and the Supreme Court.

I ask you where is this to end? If this is to be a consolidated Government, if all power is to be concentrated at Washington, if all the powers heretofore reserved to the States are to be given to this Government, let us know it. I am not very certain that, personally, I should have any very great objection to it. One great government for this great empire might be perhaps cheaper, might perhaps induce a greater homogeneousness among the people than the several State governments which exist now; but that is not the question for determination. We sit here by virtue of authority derived from the American people, hedged, limited, circumscribed, and bounded by the terms of the great organic law, the Constitution, and it is not for us to transcend that until the will of our principals in that behalf is known and signified according to the forms in that Constitution laid down for the purpose of making amendments to it. Then, I say, if we are to preserve this form, if this is to be a Union of States, and a Union of States which shall have all the rights reserved that have not been delegated to the general Government, and if that is the theory on which we are to proceed, if the people of the several States, in their domestic and civil and political relations, are to be regulated by the States, then, certainly, upon no known principle of the law can this bill be justified, and particularly by no known principle of any constitutional law or of any sound reason can the principle of substituting military power for a writ of error be sustained or maintained.

Senator Trumbull replied that the military were to be called in merely to aid the courts in executing the law —an office specifically provided for in the Constitution.

Senator Hendricks said the bill also conferred upon the military the authority to prevent a violation of the law before there was such violation, and therefore before a case could come before a court. Is that in aid of a court?

Senator Trumbull replied that this provision was based on the general constitutional authority for Congress to call out the militia "to execute laws of the Union." It did not take the place of a writ of error, for the courts still exist. He cited acts similar to the pres-



THE HOUR OF MARTYRDOM HAS COME

"Now I *must* marry my daughter to a Nigger!"

Cartoon by Thomas Nast

ent one which had been passed under this authority, notably that passed in 1838, during Van Buren's administration, to enforce the collection of revenue.

The bill was passed by a vote of 33 to 12. Senator Cowan voted in the negative; Senator Doolittle was present but did not vote; Senator Johnson was absent; he would have voted against the bill.

The action of the House on the bill is thus summarized by Mr. Blaine in his "Twenty Years of Congress":

DEBATE IN THE HOUSE

The bill immediately went to the House, and on the 1st of March that body proceeded to consider it without its reference to the Judiciary Committee. James F. Wilson, of Iowa, chairman of that committee, said they had considered it informally, and in order to save time it was brought up for action at once. The first amendment offered was to strike out "inhabitants" and insert "citizens of the United States," and thus avoid the embarrassments that might result from giving it so broad an extension. The amendment was promptly agreed to. Mr. Wilson, by another amendment, removed the difficulties suggested in the Senate by Reverdy Johnson, touching the question of marriage between the races. He supported the bill in a speech of great strength and legal research. He admitted at the outset that:

"Some of the questions presented by the measure are not entirely free from defects. Precedents, both judicial and legislative, are found in sharp conflict concerning them. The line which divides these precedents is generally found to be the same which separates the early from the later days of the Republic. The farther the Republic drifted from the old moorings of the equality of human rights, the more numerous became the judicial and legislative utterances in conflict with some of the leading features sought to be reëstablished by this bill."

The debate was continued by Andrew J. Rogers [N. J.], in the opposition, by M. Russell Thayer [Pa.], who made an uncommonly able speech in its favor, and by Charles A. Eldridge [Wis.], who tersely presented the objections entertained by the Democratic party to such legislation. There were some apprehensions in the minds of members on both sides of the House that the broad character of the bill might include the right of suffrage, but to prevent that result Mr. Wilson moved to add a new section declaring that "nothing in this act shall be so construed as to affect the laws of any State

concerning the right of suffrage." Mr. Wilson said that the amendment he proposed did not change his own construction of the bill; he did not believe the term "civil rights" included the right of suffrage; he offered it simply from excessive caution, because certain gentlemen feared trouble might arise from the language of the bill. The amendment was unanimously agreed to. John A. Bingham [O.], Henry J. Raymond [N. Y.], and other prominent members of the House, to the number of forty in all, debated the bill exhaustively. It was passed by 111 yeas to 38 nays.

The President's Veto

The bill reached the President on the 18th of March (1866), and on the 27th he sent to the Senate a message

THE VETO GAL[L]OP

Cover design of a musical composition by "Make Peace"

From the collection of the New York Historical Society

regretting that it contained provisions which he could not approve. "I am therefore constrained," he said, "to return it to the Senate, in which it originated, with my objections to its becoming a law." The President stated that by the first section the Chinese of the Pacific States, Indians subject to taxation, the people called gypsies, as well as the entire race designated as black—people of color, negroes, mulattoes, and persons of African blood—"are made citizens of the United States." The President did not believe that this class possessed "the requisite qualifications to entitle them to all the privileges and immunities of citizens of the United States." He sought to raise prejudice against the bill, says Mr. Blaine, because it proposed "to discriminate against large numbers of intelligent, worthy, and patriotic foreigners, in favor of the negro, to whom, after long years of bondage, the avenues to freedom and intelligence have now been suddenly opened."

"It is proposed by a single legislative enactment to confer the rights of citizens upon all persons of African descent born within the extended limits of the United States, while persons of foreign birth who make our land their home must undergo a probation of five years, and can then only become citizens of the United States upon the proof that they are of good moral character, attached to the principles of the Constitution of the United States, and well disposed toward the good order and happiness of the same."

The President sought to impress upon Congress, in strong language, the injustice of advancing four millions of colored persons to citizenship "while the States in which most of them reside are debarred from any participancy in the legislation." He found many provisions of the bill in conflict with the Constitution of the United States as it had been hitherto construed, and argued elaborately against its expediency or necessity in any form.

"The white race and the black race have hitherto lived in the South in the relation of master and slave—capital owning labor. Now suddenly the relation is changed, and, as to the

ownership, capital and labor are divorced. In this new relation, one being necessary to the other, there will be a new adjustment, which both are deeply interested in making harmonious. . . . This bill frustrates this adjustment. It intervenes between capital and labor and attempts to settle questions of political economy through the agency of numerous officials, whose interest it will be to foment discord between the two races, for as the breach widens their employment will continue and when the breach is closed their occupation will terminate.

"The details of this bill establish for the security of the colored race safeguards which go indefinitely beyond any that the general Government has ever provided for the white race; in fact, the distinction between white and colored is by the provisions of this bill made to operate in favor of the colored and against the white race. The provisions of the bill are an absorption and assumption of power by the general Government, which, being acquiesced in, must eventually destroy our federative system of limited power and break down the barriers which preserve the rights of States. It is another step, or rather stride, toward centralization and the concentration of all legislative power in the general Government. The tendency of the bill must be to resuscitate rebellion and to arrest the progress of those influences which are more closely thrown around the States—the bond of union and peace."

The debate upon the President's veto, says Mr. Blaine, was not very prolonged but was marked by excitement approaching to anger. Senator Trumbull, who had charge of the bill, analyzed the President's argument with consummate ability and readily answered him on every point of constitutional law which he had adduced. He did more than this. He pointed out with unflinching severity what he considered the demagogical features of the message.

"The best answer to the President's objection that the bill proposes to make citizens of Chinese and gypsies and his reference to the discrimination against foreigners is to be found in a speech delivered in this body by the President himself, on the occasion of a message being sent to the Senate by Mr. Buchanan, then President of the United States, returning with his objections what was known as the Homestead bill. On that occasion Senator Johnson, of Tennessee, said, 'This idea

about poor foreigners somehow or other bewilders and haunts the imagination of a great many. I am constrained to say that I look upon this objection to the bill as a mere quibble on the part of the President, as being hard pressed for some excuse in withholding his approval of the measure. His allusion to foreigners in this connection looks to me more like the *ad captandum*[1] of the mere politician or demagogue than a grave and sound reason to be offered by the President of the United States in a veto message on so important a measure as the Homestead bill.' "[2]

Senator Trumbull argued with great force that the citizen has a counter-claim upon the Government for the comprehensive claim which the Government has upon the citizen.

"It cannot be that we have constituted a government which is all-powerful to command the obedience of the citizen but has no power to afford him protection. Tell it not, sir, to the father whose son was starved at Andersonville, or the widow whose husband was slain at Mission Ridge, or the little boy who leads his sightless father through the streets of your city, or the thousand other mangled heroes to be seen on every side of us to-day, that this Government, in defence of which the son and the husband fell, the father lost his sight, and the others were maimed and crippled, had the right to call these persons to its defence but now has no power to protect the survivors or their friends in any rights whatever in the States. Such, sir, is not the meaning of our Constitution: such is not the meaning of American citizenship. Allegiance and protection are reciprocal rights."

On April 6 the vote was taken upon passing the bill over the President's veto; the ayes were 33 and the nays 15. Every Senator was present except Mr. Dixon of Connecticut, still detained from the Senate by illness. Among the nays were Senators Cowan and Doolittle.

The bill went to the House and after a very brief debate came to a vote on the 9th of April—yeas 122, nays 41. Speaker Schuyler Colfax [Ind.] directed that his name should be called in order that he might have the honor of recording himself for the bill. He then an-

[1] "Buncombe."

[2] See Volume X, chapter I.

nounced that, having received the vote of two-thirds of each House, the Civil Rights bill had become a law, the President's objections to the contrary notwithstanding. The announcement was received with an outburst of applause in which the members of the House as well as the throng of spectators heartily joined.

CHAPTER XII

The Fourteenth Amendment

[EQUALITY OF CIVIL RIGHTS]

James G. Blaine [Me.] and Roscoe Conkling [N. Y.] Propose Constitutional Amendments Excluding from the Basis of Representation in the House Persons to Whom Civil Rights Are Denied by States—Thaddeus Stevens [Pa.] Introduces Amendment to Constitution to Establish Equality of Individual Rights Throughout the States, Fix Their Representation in Congress, Defer Extension of National Suffrage to ex-Rebels, and Repudiate Rebel Debts and Compensation of All Owners of Liberated Slaves—Supplementary Bills Providing for Ratification of the Amendment by the States and for Exclusion of Classes of ex-Rebels from Federal Office—Debate in the House on the Amendment: Varying Views by Mr. Stevens, James G. Blaine [Me.], William E. Finck [O.], James A. Garfield [O.], Benjamin M. Boyer [Pa.], William D. Kelley [Pa.], Andrew J. Rogers [N. J.], Gen. Robert C. Schenck [O.], Green Clay Smith [Ky.], John M. Broomall [Pa.], George S. Shanklin [Ky.], Henry J. Raymond [N. Y.], George S. Boutwell [Mass.], Samuel J. Randall [Pa.], Myer Strouse [Pa.], Nathaniel P. Banks [Mass.], Henry L. Dawes [Mass.], John A. Bingham [O.], M. Russell Thayer [Pa.]; Bill Is Passed—Debate in the Senate: Varying Views by Thomas A. Hendricks [Ind.], Jacob M. Howard [Mich.]; Bill Is Passed, and Becomes Law—Remarks of President Johnson on the Readmission of Tennessee into the Union.

ON January 8, 1866, James G. Blaine [Me.] proposed in the House of Representatives an amendment to the Constitution declaring that:

"Representatives and direct taxes shall be apportioned among the several States which shall be included within this Union according to their respective numbers, which shall be determined by taking the whole number of persons, *except those whose political rights or privileges are denied or abridged by the constitution of any State on account of race or color.*"

On the 15th of January Roscoe Conkling [N. Y.]

submitted a constitutional amendment on the subject, in two forms, making the proviso in one case that, "whenever in any one State the political rights or privileges of any man shall be denied or abridged on account of race or color, all persons of such race or color shall be excluded from the basis of representation," and in the other case that "when the elective franchise in any State shall be denied or abridged on account of race or color, all persons of such race or color so denied shall be excluded from the basis of representation."

On the 22nd of January the Reconstruction Committee, both in the Senate and House, reported their proposed amendment to the Constitution on this subject. It was in these words:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State—excluding Indians not taxed; provided that, whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation."

The amendment was substantially the second form of that proposed by Mr. Conkling.

Mr. Blaine has reported the debate upon this measure in his "Twenty Years of Congress" [Vol. II, pages 194-204], and for it the reader is referred to his admirable digest.

The resolution was carried in the House—yeas 120, nays 46; but defeated (since it required a two-thirds vote) in the Senate—yeas 25, nays 22.

The report of the Reconstruction Committee was made in the House of Representatives by Thaddeus Stevens [Pa.] on April 30, 1866. It consisted of a joint resolution proposing an Amendment (the Fourteenth) to the Constitution with the following provisions:

1. No State shall "abridge privileges or immunities" of citizens of the United States; nor "deprive any person of life, liberty, or property without due process of law"; nor deny him equal legal protection.

2. Representation in Congress shall be appointed according to population, excluding Indians not taxed; and, in States where suffrage is denied, male citizens over twenty-one years of age not debarred therefrom for "participation in rebellion or other crime," excluding these persons.

3. Former rebels shall also be excluded until July 4, 1870, from voting for Representatives in Congress and presidential electors.

4. Rebel debts and claims for compensation for emancipation of slaves shall not be recognized by the United States nor any State.

5. Congress shall have power to enforce this article by appropriate legislation.

Supplementary bills were also reported from the committee, admitting the lately revolted States to the Union upon ratification of the amendment, and declaring certain classes of ex-rebels ineligible to office in the Federal Government, these classes being in the main those excluded from acceptance of the amnesty offered by President Johnson.

Discussion of the proposed amendment began on May 8, 1866. Speeches were limited to one-half hour each, causing the debate to be condensed and direct.

Reconstruction by Constitutional Amendment

House of Representatives, May 8–10, 1866

Mr. Stevens opened the debate. He said that the proposition was not all that the committee wished, but all that public opinion would at present sustain.

Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this. I say nineteen, for I utterly repudiate and scorn the idea that any State not acting in the Union is to be counted on the question of ratification.

Mr. Stevens denounced the Senate for defeating the former amendment proposed by the Committee on Representation of States in Congress. It would, he said, have "secured the enfranchisement of every citizen at no distant period." He also denounced the Senate for defeating the amendment repudiating the rebel debt. It would, he said, "have gone far to curb the rebellious spirit of secession and to have given the oppressed race their rights."

After having received the careful examination and approbation of the committee, and having received the united Republican vote of one hundred and twenty Representatives of the people, it was denounced as "utterly reprehensible," and "unpardonable"; "to be encountered as a public enemy"; "positively endangering the peace of the country, and covering its name with dishonor." "A wickedness on a larger scale than the crime against Kansas or the Fugitive Slave law; gross, foul, outrageous; an incredible injustice against the whole African race"; with every other vulgar epithet which polished cultivation could command. It was slaughtered by a puerile and pedantic criticism, by a perversion of philological definition which, if when I taught school a lad who had studied Lindley Murray had assumed, I would have expelled him from the institution as unfit to waste education upon. But it is dead, and unless this (less efficient, I admit) shall pass, its death has postponed the protection of the colored race perhaps for ages. But men in pursuit of justice must never despair. Let us again try and see whether we cannot devise some way to overcome the united forces of self-righteous Republicans and unrighteous copperheads. It will not do for those who for thirty years have fought the beasts at Ephesus to be frightened by the fangs of modern catamounts.

Let us now refer to the provisions of the proposed amendment.

Here Mr. Stevens read the first section.

I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted, in some form or other, in our Declaration or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the

unjust legislation of the States, so far that the law which operates upon one man shall operate *equally* upon all. Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree. Whatever law protects the white man shall afford "equal" protection to the black man. These are great advantages over their present codes. Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin. Now color disqualifies a man from testifying in courts, or being tried in the same way as white men. Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination, and crush to death the hated freedmen. Some answer: "Your Civil Rights bill secures the same things." That is partly true, but a law is repealable by a majority. And I need hardly say that the first time that the South with their copperhead allies obtain the command of Congress it will be repealed. The veto of the President and their votes on the bill are conclusive evidence of that. This amendment once adopted cannot be annulled without two-thirds of Congress. That the enemies of the amendment will hardly get. And yet certain of our distinguished friends propose to admit State after State before this becomes a part of the Constitution. What madness! Is their judgment misled by their kindness; or are they unconsciously drifting into the haven of power at the other end of the avenue? I do not suspect it, but others will.

The second section I consider the most important in the article. The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive. If they do not enfranchise the freedmen, it would give to the rebel States but thirty-seven Representatives. Thus shorn of their power, they would soon become restive. Southern pride would not long brook a hopeless minority. True, it will take two, three, possibly five years before they conquer their prejudices sufficiently to allow their late slaves to become their equals at the polls. That short delay would not be injurious. In the meantime the freedmen would become more enlightened, and more fit to discharge the high duties of their new condition. In that time, too, the loyal Congress could mature their laws and so amend the Constitution as to secure the rights of every human being, and render disunion impossible. Heaven forbid that the Southern States, or *any of them*, should be represented on this floor until such muniments of freedom are built high

and firm. Against our will they have been absent for four bloody years; against our will they must not come back until we are ready to receive them. Do not tell me that there are loyal Representatives waiting for admission—until their States are loyal they can have no standing here. They would merely *mis*represent their constituents.

I admit that this article is not as good as the one we sent to death in the Senate. In my judgment we shall not approach the measure of justice until we have given every adult freedman a homestead on the land where he was born and toiled and suffered. Forty acres of land and a hut would be more valuable to him than the immediate right to vote. Unless we give them this we shall receive the censure of mankind and the curse of Heaven. That article referred to provided that if *one* of the injured race was excluded the State should forfeit the right to have any of them represented. That would have hastened their full enfranchisement. This section allows the States to discriminate among the same class, and receive proportionate credit in representation. This I dislike. But it is a short step forward. The large stride which we in vain proposed is dead; the murderers must answer to the suffering race. I would not have been the perpetrator. A load of misery must sit heavy on their souls.

The third section may encounter more difference of opinion here. Among the people I believe it will be the most popular of all the provisions; it prohibits rebels from voting for members of Congress and electors of President until 1870. My only objection to it is that it is too lenient. I know that there is a morbid sensibility, sometimes called mercy, which affects a few of all classes, from the priest to the clown, which has more sympathy for the murderer on the gallows than for his victim. I hope I have a heart as capable of feeling for human woe as others. I have long since wished that capital punishment were abolished. But I never dreamed that all punishment could be dispensed with in human society. Anarchy, *treason*, and violence would reign triumphant. Here is the mildest of all punishments ever inflicted on traitors. I might not consent to the extreme severity denounced upon them by a provisional governor of Tennessee—I mean the late lamented Andrew Johnson of blessed memory—but I would have increased the severity of this section. I would be glad to see it extended to 1876, and to include all State and municipal as well as national elections. In my judgment we do not sufficiently protect the loyal men of the Rebel States from the vindictive persecutions of their victorious

Rebel neighbors. Still I will move no amendment, nor vote for any, lest the whole fabric should tumble to pieces.

I need say nothing of the fourth section, for none dare object to it who is not himself a rebel. To the friend of justice, the friend of the Union, of the perpetuity of liberty, and the final triumph of the rights of man and their extension to every human being, let me say, sacrifice as we have done your peculiar views, and, instead of vainly insisting upon the instantaneous operation of all that is right, accept what is possible, and "all these things shall be added unto you."

James G. Blaine [Me.] called Mr. Stevens' attention to the amnesty acts of 1862 and 1865, and asked:

Do we not, by the proposed action in the third section of the bill, place ourselves in the attitude of taking back by Constitutional amendment that which has been given by Act of Congress, and by Presidential proclamation issued in pursuance of the law? and will not this be justly subjected to the charge of bad faith on the part of the Federal Government?"

Mr. Stevens replied that a pardon, whether by the President having the power or specially by act of Parliament or Congress, extinguishes the crime.

"After that there is no such crime in the individual. A man steals and he is pardoned. He is not then a thief and you cannot call him a thief, or if you do you are liable to an action for slander. None of those who have been fully pardoned are affected by this provision."

Mr. Blaine replied that the constitutional amendment would be held to override the President's proclamation, being organic in its nature and therefore supreme.

"That is my understanding, and that, it seems to me, would be the legal construction; but, if the gentleman from Pennsylvania is correct, then I maintain that it is the bounden duty of this House to make the language so plain that he who runs may read—that there may be no doubt about its construction."

William E. Finck [Dem.], of Ohio, attacked the

amendment. Its very proposition was confession of the unconstitutionality of previous measures, such as the Civil Rights bill, enacted by Congress.

The third section in particular he considered an absurdity. Fix a future date when a disaffected citizen should become a loyal one, and in the meantime develop his loyalty by imposing disabilities on him? Preposterous! The very proposition of the amendment was confession of the unconstitutionality of disfranchising citizens, which had hitherto been attempted without an amendment. The purpose was evidently partisan—to prevent the States lately in revolt from having a voice in choosing the next President. He said in closing:

Sir, a strange spectacle is presented in this measure. States are called upon to deliberate on proposed amendments within their own respective jurisdictions; and these very States are deprived of all opportunity of discussing or voting upon these propositions in Congress, and are States which it is gravely proposed shall not be represented, unless they shall first adopt amendments presented to them by two-thirds of the representatives of twenty-five out of the thirty-six States of this Union. And more than all, these States are thus invited to deliberate on the modest demand made of them to disfranchise a large majority of their own citizens, through legislatures elected or to be elected, by the votes of the very men who are to be disfranchised under this amendment. Sir, the proposition need only be stated to condemn it as anti-republican and wholly at war with all the well-settled principles of a free representative Government.

It is, sir, the assertion of a principle which may embarass the nation in the future. A generation who may come after us may deem it best for the true interest of a country which may then number one hundred million people, and fifty States, to modify the rights of some other States in their representation.

Sir, this measure is dangerous to our safety. It protracts an unfortunate contest without promising any beneficial results to the harmony and prosperity of the country. The time has come, I most respectfully submit, when the feelings of sectional hate and animosity should give way to the higher and nobler principles of magnanimity, of kindness, conciliation, and true charity.

Let us rise equal to the great occasion and imitate the noble

example of our brave armies in the field, who, when the conflict had ended, no longer regarded the Southern people as enemies, but as friends. Let us welcome into these halls Representatives from all the States who may be true to the Constitution and the Union; and, when all these States shall once more gather around this common council chamber of the nation, then, and not till then, let the great questions of amendment be fairly discussed and voted upon.

Gen. James A. Garfield [O.] followed:

Sir, I believe that the right to vote, if it be not indeed one of the natural rights of all men, is so necessary to the protection of their natural rights as to be indispensable, and therefore equal to natural rights. I believe that the golden sentence of John Stuart Mill, in one of his greatest works, ought to be written on the constitution of every State, and on the Constitution of the United States, as the greatest and most precious of truth: "That the ballot is put into the hands of a man, not so much to enable him to govern others as that he may not be misgoverned by others." I believe that suffrage is the shield, the sword, the spear, and all the panoply that best befits a man for his own defence in the great social organism to which he belongs. And I profoundly regret that we have not been enabled to write it and engrave it upon our institutions, and imbed it in the imperishable bulwarks of the Constitution as a part of the fundamental law of the land.

But I am willing, when I cannot get all I wish, to take what I can get. And, therefore, I am willing to accept the propositions that the committee have laid before us, though I desire one amendment which I will mention presently.

I am glad to see this first section here which proposes to hold over every American citizen, without regard to color, the protecting shield of law. The gentleman who has just taken his seat [Mr. Finck] undertakes to show that because we propose to vote for this section we therefore acknowledge that the Civil Rights bill was unconstitutional. He was anticipated in that objection by the gentleman from Pennsylvania [Mr. Stevens]. The Civil Rights bill is now a part of the law of the land. But every gentleman knows it will cease to be a part of the law whenever the sad moment arrives when that gentleman's party comes into power. It is precisely for that reason that we propose to lift that great and good law above the reach of political strife, beyond the reach of the plots and machinations of any

party, and fix it in the serene sky, in the eternal firmament of the Constitution, where no storm of passion can shake it and no cloud can obscure it.

I wish to call the special attention of the House to the third section. The gentleman from Maine [Mr. Blaine] has made a point against it, which has at least this value: that, whatever may be the intention of the committee or of the House, the section is least susceptible of double construction. Some may say that it revokes and nullifies in part the pardons that have already been granted in accordance with law and the proclamations of the President. Others may say that it does not affect them, and will not apply to rebels who have been thus pardoned.

Mr. Stevens.—I admit that a pardon removes all liability to punishment for a crime committed. But there is a vast difference between punishing for a crime and withholding a privilege. Nobody will doubt that you may distinguish between classes in the privileges accorded to them if you think their enjoyment would be dangerous to the community. While I admit that the pardon will be full and operative so far as the crime is concerned, it confers no other advantages than an exemption from punishment for the crime itself.

General Garfield.—I was about to say that, if the section does not apply to those who have been pardoned, then it will apply to so small a number of people as to make it of no practical value; for the excepted classes in the general system of pardons form a very small fraction of the rebels. If the section does apply to those who have received the pardon, the objection of the gentleman from Maine [Mr. Blaine] may be worthy of consideration.

Mr. Speaker, the third section is, in my judgment, the only proposition in this resolution that is not bottomed clearly and plainly upon principle—principle that will stand the test of centuries, and be as true a thousand years hence as it is to-day. If the persons referred to are not worthy to be allowed to vote in January of 1870, will they be worthy in July of that year? If the franchise were withheld until they should perform some specific act of loyalty, if it were conditioned upon any act of theirs, it would commend itself as a principle, but the fixing of an ordinary date, without any regard to the character or conduct of the parties themselves, is indefensible, and will not commend itself to the judgment of reflecting men. What is worse, it will be said everywhere that this is purely a piece of political management in reference to a presidential election.

Suppose this section should become a part of the Constitu-

tion, and suppose that it were entirely defensible as a matter of principle, I ask gentlemen how it is to be carried out in practice. If, under its operation in eleven States of the Union, nine-tenths, and, in some instances, ninety-nine hundredths of the adult population are to be disfranchised for four years, how do you propose to carry its provisions into practical execution? Will nine-tenths of the population consent to stay at home and let one-tenth do the voting? Will not every ballot-box be the scene of strife and bloodshed? It may well be doubted whether this section can be carried out except by having a military force at every ballot-box in eleven States of the Union. Are you ready to make the South a vast camp for four years more. I move that the resolution be recommitted to the committee, with instructions to report it back to the House with the third section stricken out.

The motion was not carried.

Benjamin M. Boyer [Dem.], from Pennsylvania, declared that the effect of the amendment would be to disfranchise for four years nine-tenths of the voting population of eleven States.

You cannot disfranchise a majority of the voters of a State without the establishment of an oligarchy; and the Constitution as our fathers made it guarantees a republican form of government to every State.

Besides, it is not for them alone that the Union is to be restored, but for ourselves also, and our children. Every hour during which we govern the eleven States with their twelve million people as conquered provinces carries us further away from the original landmarks of the Constitution and brings us nearer to centralization and military despotism.

William D. Kelley [Pa.] asked his colleague if "magnanimity required us to hand the Government over immediately to the vanquished but unconverted rebels?"

Mr. Boyer said that the people of the South were rebels no longer, but were prepared to send loyal men to Congress and therefore their right to be there represented could not be constitutionally denied.

In reply Mr. Kelley read a letter from an ex-Confederate soldier of North Carolina, who admitted the right

of the Government to treat the States formerly in rebellion as conquered territory. The letter said:

"I have always held that it was absurd in us, after being reduced to submission by the Federal Government, to set up any claim of right to regulate the terms of settlement.

"To me it is simply ridiculous to assert that the States had both the right to secede, and, upon a failure to establish it, the right to return at pleasure. No conclusion is more logical to my mind than this, namely, that, if the right to secession existed and was exercised, the States are now conquered territory; or that, if it did not exist, the people, after attempting and failing in a revolution, forfeited their most valuable political rights. And, in either case, the consequences are practically not very different. Whatever I may think of the wisdom of your plan of reconstruction, the right of the Government to make one, nobody but an insane man can deny. Like the vanquished everywhere, I think the people of the South will reap true glory now in fortitude alone."

Upon being asked by Andrew J. Rogers [N. J.] for the name of the correspondent Mr. Kelley replied:

Sir, so bloody-minded are some of the baser sort of the reconstructed that I am not disposed to offer a victim or two upon the altar of the curiosity of the distinguished leader of the Democracy from New Jersey. [Laughter.]

Mr. Kelley read further:

"I cannot but think that the President has committed a great blunder, if not a great crime [by attempting reconstruction by unconstitutional means, and so breaking with his party]. I know verily that for two or three months after the surrender —until, indeed, his restoration policy was fully developed and considered here a fixed fact *nolens volens*—the Southern mind was more like a blank sheet of paper than I have ever known it, more free from prejudice, more disposed to broad national views, and more susceptible to impressions favorable to the North and Northern men and Northern ideas. Upon that blank sheet of paper might have been written enduring characters of peace, union, and harmony between every section of the Republic. But the time was lost; when it will return, God only knows. I give it as my deliberate conviction that the prospect is darkening

every day. Sectional pride, sectional hate, sectional ideas are as rampant here as they were before the war. Is it so at the North? I cannot believe it is so. But I am told that the determination is fixed to let no part of the fruits of the war pass away till all be fulfilled. This is right. Nor do I believe that our people will come to their senses until they realize this fact beyond cavil or dispute. The notion is sedulously inculcated here that the Northwest is thoroughly with the President and against Congress."

Upon this Mr. Kelley remarked:

The absurd notions inculcated here in Congress by gentlemen who claim to be the peculiar friends of the South are misleading the poor, impulsive, passion-ruled people of that section, and prompting them to resist all efforts at conciliation and social reconstruction, impelling them to drive Northern men and capital from their respective neighborhoods, and, by threats and deeds of violence, to retard the material development of their own section and the interlinking of ours with theirs by the ties of friendship, of commerce. Yes, it is by promulgating such groundless delusions and catering to their wounded pride that the hour of safe and perfect reconstruction is delayed. No consideration is more important than the *animus* of the masses of the Southern people; and he is not their friend who blinds their judgment or fires their hatred against the overwhelming majority of the people of the North.

Gen. Robert C. Schenck [O.] defended the bill. He said that the contest before the country was between the President's theory of reconstruction and that of the dominant party in Congress and the country.

As I understand the idea of the President of the United States—although his "policy" and his practice, I must say, on this very subject have been by no means consistent—it is that the States which have been in rebellion are now as much as any States of this Union in full, complete, and equal relation to all the other States; that their rights are in all respects the same; that among these rights is included the privilege of unquestioned representation here in the councils of the nation, and that to shut them out from the enjoyment of this is to do them, therefore, absolute wrong.

Now, sir, I will not stop to inquire when that right attached. I will not stop to inquire whether the argument which would prove that proposition would not equally well prove that all

through the rebellion, inasmuch as secession was a void act, these States and their people were fully and completely possessed of all rights in the Union, and, therefore, entitled to representation as now. I do not see where the argument is to stop. If the proposition be true, then at any time during the progress of the rebellion Virginia might have elected Robert E. Lee a Senator to represent that State and her sovereignty at the other end of the Capitol, or any of those men who were serving under him as chiefs of division and brigade to represent districts here upon this floor; and to have excluded them would have been to take away the right of Virginia and of the people of Virginia to be represented in either branch of Congress. And Robert E. Lee and other such arch-traitors could have appeared here on the floor of Congress and spent their winter in obstructing legislation intended for the purpose of aiding the Executive and war-making power in putting down the rebellion, and, whenever the spring opened and they were ready for another campaign, might have taken the field, in order, by force of arms, to attempt the destruction of the Government for which they legislated! Monstrous absurdity!

I will not stop, however, to ask when the time came, at what date the States were entirely and thoroughly and completely restored to that equal relation, because I do not believe they have any such equal, complete, normal relation as they once enjoyed while they were States in full communion with the rest of the Union. If I believed it, if I admitted that theory as to the present condition of the States, then it would follow with me necessarily that I should regard these people as having the right to vote for electors of President and Vice-President and for members of Congress, and, if they possessed this right, then to take away from them, either by statute law or organic law, the due exercise of it would be imposing on them a penalty and punishment in addition to anything else they may have before been deprived of.

Rejecting this presidential theory, as it may be termed, I come, then, to the congressional theory on this subject. I will not stop to go into the inquiry whether these States have ever been out of the Union or not.

I do not believe they ever have. I do not subscribe to the doctrine of their having been reduced to the condition of Territories in the sense in which many understand it. I believe we had the right to subdue them, and subject them to obedience precisely upon the same principle on which a father punishes his own child when he has misbehaved. He thrashes his wicked

and graceless son because he is his son, and not the child of a stranger. I believe we have a like right to inflict punishment on these rebellious States. In the domestic circle we keep the erring child in disgrace away from the table, surrounded by the rest of the inmates of the family, until he has completely, and to our satisfaction, shown by penitence and a manifestation of a proper disposition that he means to deport himself better in the future; and no such sinning child has a right to complain of this discipline.

But to the congressional theory. I understand it to be this: that these rebellious States have, of themselves, as far as they have the power to do so, broken away from their normal and proper relations to the rest of the States; that, when they thus broke away, though they did not release themselves from their obligations, they forfeited certain rights, and, among others, after refusing to be represented here, disclaiming their allegiance and denying their connection through representation with the rest of the States, they forfeited that right of representation and cannot regain it until it is properly and by law restored.

And I understand, further, the theory to be that they can be properly restored only by law, and that, until a law is enacted by which any State that has thus flung itself out of its proper relations to the Union is permitted to come back and stand upon a footing with other States and enjoy its representation here, such right of representation cannot be regained by that State.

Now if this be the true theory, as I think it is, then I have no difficulty on account of the objection made by the gentleman from Maine [Mr. Blaine], because, if those States flung away their right of representation, if they have forfeited by their misbehavior their right to claim their old, normal, formerly existing relation to the rest of the State, it is to be a work of subsequent enactment when and upon what conditions such rights and relations shall be restored to them.

Fully believing this, I aver that there is nothing that should be regarded as penalty or punishment in this third section of the proposed amendment. It takes nothing away from the people of those States. It does not disfranchise, but refuses to enfranchise. If you say that the people of these States, because of their having been engaged in the rebellion, shall not vote for Federal officers, there is nothing taken from them, because they have already divested themselves of that privilege, voluntarily abandoned, given it up, flung it away by breaking loose from

the rest of the Union, as far as by their act, disposition, and power they could do so.

If they can only be restored as States, as reorganized communities, as a people, by our action, to the enjoyment of those rights, then the very fact that we have the power by statute-law or amendment to the Constitution thus to restore them, involves the further proposition that their restoration must be upon such conditions and such terms as we shall prescribe.

My honored colleague [Mr. Garfield] proposes to get rid of this entire section, and to instruct the committee, in case the amendment be recommitted, to erase it altogether.

He says that he would be willing to have a proposition of this nature embodied in the constitutional amendment if, instead of disfranchising these insurgents until 1870, it disfranchises them perpetually.

Now, I deny the principle on which he sets out that there is anything inconsistent or wrong in making it an exclusion for a term of years instead of exclusion altogether. If there be anything in that argument, you ought not to send a man to an insane asylum for one, two, or three years, at the end of which period you may reasonably expect his intellect to be restored; you ought either to let him roam at large altogether or send him off as a lunatic for life. Or, in the case of crime, you must either not sentence a man to the penitentiary at all, or else incarcerate him for the term of his natural life. Or, to compare it to another thing, which perhaps better illustrates the principle involved, when a foreigner arrives upon our shores we should not say to him: "At the end of five years, when you have familiarized yourself with our institutions, and become attached to them, we will allow you to become a citizen, and admit you to all the franchises we enjoy," but we should require that he be naturalized the moment he touches our soil, or else excluded from the rights of citizenship forever.

Sir, I do not see that there is any principle involved in it. It is a mere question of expediency.

It has also been objected that it is exceptionable to incorporate into the Constitution any condition depending on lapse of time or a term of years—a period within or beyond which something is to be allowed or denied; and this is said to be, therefore, altogether a novel and unprecedented proposition. Sir, I deny even that. Any gentleman familiar with the Constitution will recall the provision that the slave trade, existing at the time of its adoption, should be permitted to run on for twenty years, but might be forbidden at the end of that time.

Green Clay Smith [Ky.] replied to General Schenck:

The gentleman from Ohio says that he would not admit that these States were out of the Union; that they had been in the Union and were parts of the body-politic. Well, if that is the fact, how and under what circumstances are they to be gotten out? How are they to be destroyed? The gentleman, in speaking of this subject, adopted a simile, and said that when a child has offended the father whips him, and thus by correction brings him back to obedience to the law. Now, I submit the question whether there was ever on the face of the earth a father who, though he chastised his child because of disobedience, refused that child, even after the chastisement, bread and clothing, and a place in his house. The father whips the child from love, remembering all the time that he is "bone of his bone, flesh of his flesh." He chastises him because he loves him.

Now, sir, these States are in the Union. There is, so far as I know, only one man in this House who says that they are not; and he is the member from the Lancaster district of Pennsylvania [Mr. Stevens].

You will have to live with those people; they are a part of the Government; their States are States of the Union; they are under the Constitution; they are subject to your laws, and they obey every precept that you lay down for them. And, sir, one remarkable thing is this: that, if a rebel obeys the law, you want to hang him because he does obey it! you believe the law must be wrong because he assents to it! But, if he violates the law, you want, also, to hang him! What is the poor man to do?

Relating the story of the judgment of Solomon Mr. Smith compared the Union to the child that was claimed by the mother and the harlot.

The Government of the United States is our mother; harlots North and South have attempted to destroy the child of the Government, the Constitution and the Union. It was proclaimed in the South: "Let the Union slide"; it was echoed back from the North: "Let the Union slide." They said: divide the Union; they attempted it. A long war was prosecuted for this division, but it failed. The wisdom, energy, and patriotism of the people said: "No, we will make sacrifices of blood and treasure and the great institution of slavery; but defend, save, and let live the Union of the States." These harlots cry to-day: the Union is dissolved, it is dissevered and gone; the sacrifice

made, the destruction of slavery, is not enough; let the child be divided. Their followers, but few in number it is to be hoped, however, say: "Let the Union slide"; but the party to which I belong, the great part of the Union, say: "No; we love the Union; it gives us life, protection, homes, plenty, liberty, individual freedom, and 'by the Eternal it shall be preserved.'"

John M. Broomall [Pa.] spoke on May 9. He calculated that not more than one man in twelve in the States formerly in rebellion would be disfranchised by the amendment, and therefore thought it extremely lenient.

Mr. Speaker, this measure has been spoken of as the punishment to be imposed upon the South. Why, is this all that is proposed to be inflicted upon men who have been guilty of crimes so monstrous? Is there to be no further punishment than this? Is treason not to be rendered odious? In fact, this is not a punishment at all. These people have now no rights. They are the conquered, we the conquerors; and the conquered, as everybody knows, must look to the conquerors for their future political and civil position. We propose to grant rights, we propose to give favors, but we propose to leave out one in every twelve for four years in thus giving the favors. It is not as punishment, it is as a means of future security, that this provision is asked to be incorporated in the Constitution. Why, never before were such favorable terms as these offered to any vanquished people by the victors!

These people have murdered two hundred and ninety thousand of our fellow-citizens. The man Probst, who, in Philadelphia, has been tried and sentenced to be hanged for murder, killed eight persons. He is to be hanged, and Alexander H. Stephens, who was one of the main supporters of the rebellion, is to be allowed a seat in the Senate of the United States. What a mockery of human justice!

Alexander H. Stephens sinned against light and knowledge. He was the great champion of the Union in the South. When he was bribed by the love of office into crime, what wonder that the great masses of the South followed him?

Both these men "accept the situation"; both acknowledge that they have been defeated in a war upon society; but Stephens appears before a committee of Congress and actually claims right, like the Pharisee in the temple; while poor Probst can only say: "Lord have mercy upon me a sinner."

To bolster up the pet theory of restoration founded on rebel rights, it is now denied that we have ever been at war. War supposes conquest as one obvious mode of termination, and conquest extinguishes political rights. This would not suit the purposes of those who think the South was right in her demands, but only blundered in the means employed to obtain them. Hence, there has been no war, whatever the soldiers and the bereaved ones may think to the contrary.

The President of the United States, in his recent peace proclamation, has given us from a Democratic standpoint the military history of the country for the last five years. He says that in 1861 certain persons in certain States conspired together to prevent the execution of the laws; that the Government resolved to put down the conspiracy, not in the spirit of conquest, but in that of self-preservation, and that the insurrection has now been suppressed; and this is all. This is the official report of the high Executive to his grand constituency.

From the cold official statement, who that did not feel and know of these eventful years could imagine what scenes of human sorrow are embraced within the unwritten history of that period? There was an insurrection, and it has been suppressed. Has sated ambition forgotten the immense cost to the country of the process by which it became what it is? Why, in this brief history there are hundreds of thousands of treasons unpunished. In this the blood of more than a quarter of a million murdered victims cries aloud for retributive justice. And this the President of the United States calls insurrection. If it is insurrection, in the name of all that is horrible, what is war?

George S. Shanklin [Ky.] particularly opposed the fourth section of the amendment which forbade compensation for emancipated slaves without regard to whether their owners were loyal or not.

You deny to the States the right of repudiation. Yet, in the very act of denying that right, you yourselves commit an act of repudiation. You violate the honor of the nation, which is most solemnly pledged to payment for the slaves which were enlisted in the United States army in loyal slave States. Has such compensation ever been made? It has not. The nation is pledged to the payment of that debt. The nation to-day owes to my State more than $10,000,000 under the provisions of that act. Yet now you propose a constitutional provision denying both to the States and the general Government the right to pay

such debts. By this measure you propose to violate the plighted faith of the nation; you propose to practice upon the people an outrage and a violation of their rights.

Mr. Speaker, what ought to be our policy? Should it be tyrannical and oppressive, or should it be liberal? We are told we cannot trust these people. They have given up the right of secession; they have taken the oath to support the Government and the laws; what are you going to do with them? Are you going to hold them in subjugation? England has tried a policy of that sort toward a noble and generous people, the Irish. What has been the result of that policy? Has it been to conquer them? It has been to implant in the bosom of every Irishman a deep hatred of England. That hatred has descended from sire to son; and I hope it will continue to be transmitted until that noble and generous people will rise in majesty and power and secure their freedom. Russia has pursued a similar policy toward Poland. Has the result been to subjugate the gallant Poles? They are ready at any moment to rise in rebellion. Austria has pursued the same policy. The result has always been the same.

The Southern people whom it is proposed to subjugate are a noble, brave people. They may have been deluded, they may have committed a great crime, but they are now anxious to unite with all of our people to sustain the Government. Will you receive them? Will you make them your friends? Will you rather make them your enemies? This question we must solve.

They would be most invaluable friends if you would adopt a kind, generous policy toward them, receive them and extend to them equal State and individual rights, and that without delay. By your treatment prove to them that the war you waged against them was not a war of conquest or subjugation or from malice or vengeance, but a war to maintain the Constitution of our fathers, and the rights of the Union of the States, as you declared it was when you took up arms and when the strife commenced. Redeem your plighted faith by your acts and your policy, and peace, friendship, and prosperity will once more cover our now distracted country. Then we can bid defiance to the enemies of our free institutions. No nation, however proud or domineering she may be, will dare insult our flag or deny our just rights. Generations unborn will rise up to praise and bless your memories.

Let me beseech you in the name and behalf of patriotism, justice, and a downtrodden and oppressed people, to cease your war on the President of your selection and choice, who has ex-

hibited to the world the highest order of wisdom, patriotism, charity, justice, and devotion to the equal rights of man. Discharge your Joint Committee on Reconstruction; abolish your Freedman's Bureau; repeal your Civil Rights bill, and admit all the delegates from the seceded States to their seats in Congress, who have been elected according to the laws of the country and possess the constitutional qualification, and all will be well.

Henry J. Raymond [N. Y.] expressed his approval of all the sections of the bill but the third. He dismissed as wildly visionary the calculation of Mr. Broomall that only one man in twelve in the States lately in rebellion would be affected by it. The ratio was rather the reverse, and the result of passing the section would be to create an oligarchy in the States instead of the "republican form of government" prescribed by the Constitution. Furthermore, the passage of the section would be laid by the South to the partisan desire of Republicans to win the next presidential election. Why incur this odium when it was clearly foreshadowed that General Grant would be the next Republican candidate, and he was certain to sweep the country by winning the great majority of votes from all parties in the North?

The section was as unjust as it was ungenerous to the South.

The adoption of all the proposed amendments, this one included, by each of the Southern States, is made in the bill reported by the committee a condition essential to their admission to representation in Congress. Now, the amendments are to be adopted by the legislatures of the several States. The legislatures are elected by all the people—those who have voluntarily adhered to the insurrection as well as those who have not—for the gentleman from Pennsylvania [Mr. Broomall] laid special stress upon the fact that the people are still allowed full control of their State governments.

These legislatures, thus elected, are expected to ratify all these amendments, to concede an equality of civil rights, to concede a great reduction of their political power in changing the basis of representation, to concede the repudiation of their debts and the denial of compensation for their slaves; and for what

consideration? What do we offer them in return for all these concessions? The right to be represented on this floor, provided they will also consent not to vote for the men who are to represent them! Nay, more, that they shall accept as the Representatives whom they thus get the right of having here men elected by a small minority of their people who are supposed and conceded to be hostile to them in political sentiment, and against whom they have been waging a bitter war! We offer them, in exchange for all these renunciations of political power and of material advantage, the privilege of being misrepresented in Congress by men in whose election they had no voice or vote, and with whose past political action and present political sentiments they have no sympathy whatever.

Why, sir, this not only "breaks the word of promise to the hope," it does not even "keep it to the ear." It is not merely a sham, it is a mockery. The very price by which we seek to induce their assent to these amendments we snatch away from their hands the moment that assent is secured. Is there any man here who can so far delude himself as to suppose for a moment that the people of the Southern States will accede to any such scheme as this? There is not one chance in ten thousand of their doing it.

Representation ceases to be of the slightest value to them under such conditions. They will not seek it or ask for it. They will infinitely prefer to take the chances of change in the political councils of the nation, to await the election of a Congress more propitious to their claims, especially under the comforting assurance which the gentleman from Pennsylvania [Mr. Stevens] gave them some two months ago when he said frankly that "it is of no importance by whom or when or how reconstruction is effected, for, in three short years, this whole Government will be in the hands of the late rebels and their Northern allies." They will readily wait "three short years" for representation rather than purchase the mockery of it we offer them at such a price.

The gentleman from Ohio [Mr. Schenck], in vindicating the policy of this exclusion of the Southern people from the right of suffrage, insisted that it was necessary as a means of discipline; that they are not yet in a proper frame of mind to take part in the affairs of government; that they are at heart still unfriendly and hostile to our authority and institutions; and, that we must treat them as parents do unruly children, that we must flog them for their offences and then exclude them from the family table or shut them up in a closet until they

come to a better and more submissive mood. Well, sir, this might answer if the eight million people with whom we are dealing would consent to be treated as children, and to regard us here in Congress as standing *in loco parentis* toward them. They might in that case submit tamely to the chastisement we propose, and possibly profit by it. But they are not children. They are men, men tenacious of their rights, jealous of their position, brave, and proud of their bravery, of hot and rebellious tempers, and not at all likely to be subdued in spirit or won to our love by such discipline as the gentleman from Ohio proposes to inflict. We have chastised them already. We have defeated their hostility against the Government. And now what remains? They are to be our fellow-citizens. They must form part of the people of our country. They are to take part, sooner or later, in our Government, unless we intend to discard the fundamental principle of that Government, the right of the people to govern themselves. And we cannot afford to have them, or to make them, sullen, discontented, and rebellious in temper and in purpose, even if they are submissive in act.

Why, sir, if history teaches anything, if any principle is established by the concurrent annals of all nations and all ages, it is that sentiment cannot be coerced; that opinions, even, cannot be controlled by force; and that, with any people fit to be free or to be the countrymen of men who are free, all such efforts defeat themselves and intensify and perpetuate the hostilities sought to be overcome. Ireland offers us a signal example of this, and I am amazed that members upon this floor can shut their eyes or close their minds to the lessons which her sad history teaches. England, for her harsh dealings with that unhappy land hundreds of years ago, is paying the penalty to-day and will for all time to come. By mistakes in policy precisely such in kind as we are making now, England, hundred of years ago, planted in Ireland the seeds of that disaffection which, in spite of all her attempts to undo the wrong, in spite of abundant legislation in redress of grievances, and for the good of Ireland, from time to time bursts out into feeble but bitter insurrection, and which to-day blooms into that shadowy phenomenon of Fenianism, which terrifies one continent and puzzles and poisons the other.

George S. Boutwell [Mass.] also spoke upon the third section of the bill.

I freely confess that the adoption of the third section is not necessary to the subject-matter which we have in hand. My own views of reconstruction lead me in the opposite direction. I should prefer to include those who are our friends rather than exclude even those who are our enemies. But, inasmuch as gentlemen on this floor are not prepared, as they say, to include those in the governing force of the country who have sustained the country, I see no safety in the present except in some sort of exclusion of those who are its enemies. We are to consider what sort of enemies these men are. We have defeated them in arms, but in the proposition of the Democratic party we invite them into the councils of the nation, to the only field in which they have any chance of success in the contest in which they have been engaged.

Who are these men? They are the men who to-day are radically, honestly, persistently, and religiously opposed to this Government if this Government exercises its functions. Gentlemen may not have heard of what Mr. Stephens told the committee. Alexander H. Stephens was believed to be the most conservative, most Union-loving man in the whole Southern country; and, if the opinions to which I shall refer be his opinions, with how much stronger reason may we suppose that they are the opinions of those to whom formerly he himself was somewhat opposed. What does he tell us? He tells us that in 1861 he protested against the action of the secessionists, not because he believed that they had not a constitutional basis upon which to stand, but because he thought secession bad policy, and he says that to-day his opinions are unchanged; that is to say, Mr. Stephens believes that this Government has no right to exist if the insignificant State of Florida, for instance, thinks it ought not to exist.

Mr. Stephens denies the constitutional efficacy of our amendment abolishing slavery. He says that slavery has been abolished by the States. He says that the law taxing the people of this country has no constitutional force, because they are not represented. Do you not see that his insidious and dangerous doctrines, which are responded to by the whole Democratic party of the country, portend the destruction of the public credit, the repudiation of the public debt, and the disorganization of society?

It is admitted by gentlemen on the other sides of the House that when they present a Representative here he must be a loyal man. But I need not say to gentlemen acquainted with the technicalities of the law, that a loyal man, for all purposes of repre-

sentation, is a man whose disloyalty cannot be proved. When we open the doors of the Senate and of this House to Representatives from that section of the country, they will only have to present men who cannot be convicted of having participated actively and willingly in the work of treason; but they may send men here who represent treasonable and disunion opinions, and we shall have no power to protect ourselves against them. When ever was a more insidious idea presented to the people of this country than that there is any security in demanding merely loyal Representatives? We are false to our duty if we do not go further and require that, in each of these States, before they are allowed representation, the masses of the people shall be loyal, for the Representative will reflect the views of the people. You cannot gather figs from thorns, or grapes from thistles. You must wait, if it be necessary to wait, until there is a loyal controlling public sentiment in each one of these States.

Sir, it will be found that the Union party stands unitedly upon two propositions. The first is equality of representation, about which there is no difference of opinion. The second is that there shall be a loyal people in each applicant State before any Representative from that State is admitted in Congress. And there is a third: a vast majority of the Republican party, soon to be the controlling and entire force of that party, demand suffrage for our friends, for those who have stood by us in our days of tribulation. And for myself, with the right of course to change my opinion, I believe in the constitutional power of the Government to-day to extend the elective franchise to every loyal male citizen of the Republic.

On May 10 Samuel J. Randall [Dem.], of Pennsylvania, spoke, chiefly in justification of the support of the President by the democracy.

Complaint is made, Mr. Speaker, of the support which the Democratic party, as a party, throughout the country is giving to the President in his plan of restoration. That should not surprise any one. The Democratic party, during the period of the war, have closely adhered to the Constitution and the laws of the country. They find in President Johnson that same disposition to adhere to the Constitution and the laws. The course of the Democracy, in their support of the President, is actuated by a devotion to principle. It does not emanate from any seeking for office or from any other sordid motive.

There is another matter to which I wish to direct the atten-

tion of the House, and through the House the attention of the country. I would suggest that in the view of just and reasonable men the time has arrived when this system of virulent abuse of the President of the United States should cease. It is time that there should be an end of these appeals to the morbid feelings and prejudices of the people of the North, appeals calculated to array the Northern people against the people of the South, who have laid down their arms, and who, I believe, are now seeking in good faith to conduct themselves in allegiance to the Constitution. They have been punished severely, not more severely, perhaps, than they deserve. But why should we not accept their words as expressing their real sentiments? Why should we treat them as aliens and outlaws, a policy which must for a long time prevent us from securing the full benefits of our victory?

Gentlemen seem to fear that unless something is done by legislation to prevent it the great conservative men of the country, under the leadership of Andrew Johnson, will come into possession of the legislative branch of the Government. Nothing can avert this. Your reckless extravagance, your unnumbered violations of law, your constant effort to change the organic law for party purposes, your persecutions of the President who has planted himself upon the plan of restoration which Mr. Lincoln determined upon, and your careless mode of taxation, relieving affluent men and heaping the expenses of our debt upon those least able to bear it—all these point to your certain overthrow.

The Democracy stand ready to operate with any party or set of men to crush out the party which started with a disposition to let the "South go," and now at the close of the war seek the same practical result—a continued separation of the States of the Union.

Myer Strouse [Dem.], of Pennsylvania, incorporated in his speech an article from a recent issue of the New York *Times* (the paper of Henry J. Raymond). It read in part:

"As a plan of pacification and reconstruction the whole thing is worse than a burlesque. It might be styled a farce, were the country not in the midst of a very serious drama. Its proper designation would be 'A plan to prolong indefinitely the exclusion of the South from Congress by imposing conditions to

which the Southern people will never submit. This being the obvious scope and tendency of the proposition, we are bound to assume that it clearly reflects the settled purpose of the committee.

"There is an anomalous feature in the affair as it stands, which of itself reveals the monstrous nature of the pretensions set up by the committee. All the provisions of the proposed amendment imply the adoption of the extreme view in regard to the relation of the South to the Union. We must begin by assuming that what were States before the war are mere territories now, or this attempt to dictate terms as the condition of recognition becomes undisguised usurpation. And yet the amendment, on its face, declares the existence, as States, of all the States recently in rebellion, and presupposes the exercise by their several legislatures of the highest constitutional attribute of State sovereignty.

"From the dilemma into which the committee have thus plunged there is no logical escape. If the Southern States are in a condition by their legislatures to ratify or reject a constitutional amendment they must of necessity be qualified to send Senators and Representatives to Congress, subject only to the judgment of either House as to the eligibility of the persons sent. A State which may assist in the sovereign task of molding the Constitution under which Congress acts may surely demand a voice in what the Constitution creates. The greater right covers the lesser right in this or in other cases. On the other hand, if the Southern States are not entitled to admission to Congress—are in the condition of Territories—then it follows that they are not entitled to any lot or part in the business of amending the Constitution. Upon which horn shall the 'central directory' be impaled? Shall we take it that this prodigious amendment, this mighty mouse brought forth by a mountain after five months' parturition, does not mean what it says when it speaks of the States lately in rebellion as States still, with their sovereign functions unimpaired, though for a time uninterrupted? Or shall we conclude that the doctrine of State suicide is abandoned, the doctrine of subjugation given up, and the criminal blunder of which the radicals have been guilty in excluding the South from Congress at length confessed? Let there be explicit answers upon these heads of the subject. As it at present appears the position of the committee is utterly untenable.

"Aside from these points the worthlessness of the committee's proposition is obvious. It cannot by any possibility

effect anything. With all their errors and faults the Southern people have shown that they are not cowards. They will not belie their nature by writing themselves down slaves at the bidding of a committee appointed to consider the question of reconstruction."

Gen. Nathaniel P. Banks [Mass.] said that there were two alternative methods by which to accomplish genuine reconstruction: extension of the suffrage to negroes and discrimination between loyal and disloyal white voters. The former he dismissed as at present impracticable. In regard to the second he denied that the President's amnesty had restored the recipients to their political rights.

The power of declaring who shall exercise the franchise is in the first instance conferred upon the States by the first article of the Constitution; and, in the second instance, by the provision conferring the right to judge of the election of its members on the Congress of the United States, and without their concurrence the President has no right to invest franchise in anybody.

General Banks believed that discrimination between loyal and disloyal citizens was entirely practicable.

It was said by the gentleman from Ohio [Mr. Garfield] that there is no tribunal which can judge of the proper or improper enforcement of this provision. That is an error. In regard to the election of members of Congress each House is the tribunal.

In regard to the choice of electors for President and Vice-President of the United States, which seems to have caused more apprehension, the solution is equally simple, certain, and just. There is always a tribunal that is competent to judge whether this provision of the Constitution has been properly enforced. It is not altogether a new question. In 1844 in the State of Tennessee one hundred and seventy-five or one hundred and eighty men voted directly for Polk and Dallas as candidates for President and Vice-President instead of for the presidential electors. If those votes given against the law were counted, then Mr. Polk would receive the electoral vote of that State. If they were excluded, then the electoral vote of the State would be

given for Henry Clay. In 1856 Wisconsin did not vote for electors on the day required by law. Her vote when presented here was not counted. Had the choice of President been in the balance in either case Congress would have been the tribunal to decide the issue. The two Houses would have met in convention according to the Constitution. If they agreed the question would have been decided, and the election of President declared in accordance therewith. If there was difference of opinion in regard to the question presented, the Senate would have withdrawn to its chamber; the House would have remained in its seats; and then after mature deliberation, it may have been for weeks or months, each House would have determined what should be done. And should the two Houses not come to the same conclusion, and refuse to recognize an election, the President of the Senate, or in his absence the honorable Speaker of this House, would have administered the Government until another election could have been held. This would have been done by resolution of Congress within eighteen months from the 4th of March when the vacancy was found to exist. The Constitution is equal to every emergency, and what there is defective, if anything, the wisdom of the people will supply.

Andrew J. Rogers [Dem.], of New Jersey, vehemently opposed the purpose of the bill (frankly confessed at the beginning of the debate by Mr. Stevens, and repeated by other radical Republicans, that the amendment was calculated to force the South to adopt negro suffrage in order to preserve equality of representation with the North).

God deliver this people from such a wicked, odious, pestilent despotism! God save the people of the South from the degradation by which they would be obliged to go to the polls and vote side by side with the negro!

He also repudiated the comparison instituted by Mr. Broomall between the murderer Probst and Alexander H. Stephens.

Rebellion or revolution never has been considered by the civilized world as having that odiousness and moral turpitude that attach to men for the commission of heinous crimes. And when the honorable gentleman from Pennsylvania undertakes to

charge the great masses of the South as being murderers like Probst, he goes counter to the history of the world, and against the revolution which in the end gave Magna Charta to England, and which handed down to this country those bulwarks of liberty upon which our Declaration of Independence and our Constitution are founded. I say they are not murderers, they are not thieves, they are not felons; they are simply political convicts before the altar of patriotism. And the patriotic man who now sits in the presidential chair has, in the spirit of Christianity and humanity, extended to these men pardons, which I say, which the courts say, which tradition says, and which the history of the world says, relieve their recipients of all the effects consequent upon the crime.

Henry L. Dawes [Mass.] opposed the opinion of his colleague, General Banks, that Congress could pass upon disputed votes in the Electoral College.

There is no legislation in the land upon the subject. The only provision governing the counting of the votes of the Electoral College is in the Constitution itself, and it is in these words:

"The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

But who shall decide, if there be a dispute, whether a vote has come from a man legally chosen? There is no tribunal yet erected to determine that fact. Chancellor Kent says that it is *casus omissus*, a case that has not been provided for by the framers of the Constitution; that there is no provision in the laws or the Constitution of the United States by which that may be determined. Whether or not it be beyond our power under the Constitution to make such provision, certain it is that we have made no such provision. The two Houses in their separate capacity act as legislators, and legislators alone, and their functions are all prescribed by the Constitution itself. This is not one of them. They are not clothed with the judicial power of passing upon the validity of an election of President and Vice-President; and suppose the Senate comes to one conclusion and the House to another, what is the result? Suppose the Senate in the Wisconsin case had determined that Mr. Buchanan was elected and the House in its separate capacity had determined that no one was elected, the Constitution requires that the House, thereupon, shall proceed immediately, yes, imme-

diately is the command of the Constitution, without the concurrence of the Senate, to choose a President. Then comes the terrible peril in which this country will be involved, the ordeal through which it will have to pass where the House of Representatives determine one way and the Senate the other.

I do not mean to say it is not within our power under the Constitution to provide a tribunal; upon that question there is no occasion to remark. I have only to say that as yet no such tribunal has been provided. On the occasion alluded to by my colleague it was the opinion of learned men both in the House and in the Senate that the country barely escaped a revolution. They did not decide, as I understood my colleague to say, by passing into their respective halls whether the vote of Wisconsin should be counted or not. The question was not decided, and remains to be decided to this day.

Israel Washburn [Me.] in the House, and Mr. Seward and Mr. Collamer in the Senate, declared the impotency of the two Houses or any tribunal known to the law to solve the difficulty, and at the same time rejoiced at the escape from peril which the immateriality of the vote in question had secured, but pointing out the terrible danger to which the nation would be exposed if ever a material vote in the Electoral College should be questioned.

John A. Bingham [O.] thought that no constitutional amendment was needed to disfranchise citizens; that an act of Congress was all that was required, and he therefore proposed to eliminate the third section from the amendment and incorporate it in a bill.

The franchise of a Federal elective office is as clearly one of the privileges of a citizen of the United States as is the elective franchise for choosing Representatives in Congress or presidential electors. They are both provided for and guaranteed in your Constitution. Why, then, prohibit rebels from the enjoyment of the first for life by an act of Congress and restrict the second for a term of years by a constitutional amendment? To be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic, is exclusively under the control of the States. But, sir, the committee never intimated and never in-

tended to intimate by any measure they have reported that any State lately in insurrection can exercise either that power or any other until it is restored to its constitutional relation to the Union, save by the express or implied consent of the Congress of the United States, nor that after being restored they can exercise that power contrary to the express conditions prescribed by Congress for their restoration. The power to prescribe these conditions is exclusively in Congress.

That is the philosophy of every measure of reconstruction now pending before the House. And that is wherein it is opposed to the opinion of gentlemen on the other side of the House who have spoken, I am sorry to say—and I say it without the slightest intention of giving offence to any man—not in the spirit of representatives of the people, but in the spirit of partisans. For myself, I cannot approach the discussion of this great question, which concerns the safety of all, in the spirit of a partisan. God forbid that I should approach this subject in any other character than that of a representative of the people—a representative of the people not unmindful of the oath which I took, sir, before your tribune.

Mr. Stevens, who began the debate, closed it. Members crowded about him in such eagerness to hear him that his speech was interrupted by protests from those who were unable to catch his words. With characteristic boldness he said:

I am glad, sir, to see great unanimity among the Union friends in this House on all the provisions of this joint resolution except the third one. I am not very much gratified to see any division among our friends on that which I consider the vital proposition of them all. Without that, it amounts to nothing. I do not care the snap of my finger whether it be passed or not if that be stricken out. Before another Congress shall have assembled here, and before this can be carried into full effect, there will be no friends of the Union left on this side of the House to carry it out, as that side of the House will be filled with yelling secessionists and hissing copperheads. Give us the third section or give us nothing. Do not balk us with the pretence of an amendment which throws the Union into the hands of the enemy before it becomes consolidated.

Gentlemen say I speak of party. Whenever party is necessary to sustain the Union I say rally to your party and save the Union. I do not hesitate to say, at once, that section is

there to save or destroy the Union party, is there to save or destroy the Union by the salvation or destruction of the Union party.

The gentleman from Ohio [Mr. Bingham] who has just taken his seat thinks it difficult to carry it into execution, and he proposes to put it into a bill which the President can veto. Will my friend tell me how much easier it is to execute it as a law than as a provision of the Constitution? I say if this amendment prevails you must legislate to carry out many parts of it. You must legislate for the purpose of ascertaining the basis of representation. You must legislate for registry such as they have in Maryland. It will not execute itself, but, as soon as it becomes a law, Congress, at the next session, will legislate to carry it out both in reference to the presidential and all other elections as we have the right to do. So that objection falls to the ground.

Gentlemen tell us it is too strong—too strong for what? Too strong for their stomachs, but not for the people. Some say it is too lenient. It is too lenient for my hard heart. Not only to 1870, but to 18070, every rebel who shed the blood of loyal men should be prevented from exercising any power in this Government. That even would be too mild a punishment for them.

Gentlemen here have said you must not humble these people. Why not? Do not they deserve humiliation? Do not they deserve degradation? If they do not, who does? What criminal, what felon deserves it more, sir? They have not yet confessed their sins; and He who administers mercy and justice never forgives until the sinner confesses his sins and humbles himself at His footstool. Why should we forgive any more than He?

But we are told that we must take them back as equal brothers at once. I shall not agree they shall come back except as supplicants in sackcloth and ashes. Let them come back and ask forgiveness, and let us then consider how many we will forgive and how many we will exclude. All I regret is, this is not sufficiently stringent.

I regret that the true men of these States cannot be brought in, but they cannot be brought in with rebel constituencies behind them. They would misrepresent their States. Therefore I can never agree to let them in under the present state of affairs. Let us have probation; let us be sure that something more than mere willingness to come in has been felt by them.

Mr. Speaker, I do not intend to occupy many minutes. I was indeed astonished to find my respected colleague [M. Russell

Thayer], I will not say so tender-hearted, but so lenient to those toward whom mercy is not rendered necessary. But I know so well his natural kindness of heart and his proximity to that eloquent divine [Henry Ward Beecher] who so lately has slaughtered whole herds of fatted calves, that I cannot be much surprised at it. But, sir, if he is so fond of such associates, let me suggest in all kindness to him that he can find better company nearer home. He lives very near Cherry Hill, where there is a State institution containing several hundred inmates whom, if he wishes to forgive and enfranchise, he will find at present a little restrained of their rights. They have done nothing but err. There is no blood upon their hands; they have only erred in committing such little acts as arson and larceny. Let him go to one of those corridors and cause it to be opened and they will flock around him, and he will see men who are not half as bloody and have not committed half as many crimes as the rebels whom he wishes to see immediately admitted here.

Now, sir, for my part I am willing they shall come in when they are ready. Do not, I pray you, admit those who have slaughtered half a million of our countrymen until their clothes are dried, and until they are reclad. I do not wish to sit side by side with men whose garments smell of the blood of my kindred. Gentlemen seem to forget the scenes that were enacted here years ago, when the men that you propose to admit occupied the other side of the House; when the mighty Toombs, with his shaggy locks, headed a gang who, with shouts of defiance on this floor, rendered this a hell of legislation.

Ah, sir, it was but six years ago when they were here, just before they went out to join the armies of Catiline. Those of you who were here then will remember the scene in which every Southern member, encouraged by their allies, came forth in one yelling body, because a speech for freedom was being made here; when weapons were drawn, and Barksdale's bowie-knife gleamed before our eyes. Would you have these men back again so soon to reënact those scenes? Wait until I am gone, I pray you. I want not to go through it again. It will be but a short time for my colleague to wait. I hope he will not put us to that test.

Mr. Thayer.—I wish to ask my colleague in this connection whether he thinks he can build a penitentiary big enough to hold eight million people.

Mr. Stevens.—Yes, sir, a penitentiary which is built at the point of the bayonet down below, and if they undertake to come

here we will shoot them. That is the way to take care of these people. They deserve it, at least for a time.

Now, Mr. Speaker, I move the previous question.

The amendment was put to vote and was passed with the requisite two-thirds majority—128 yeas, 37 nays, not voting 19. Not a single Republican voted nay. Mr. Raymond voted "Aye!" with a ringing response which elicited loud applause from both the floor and galleries.

Debate in the Senate

The Senate discussed the details of the bill rather than its principle. To prevent dispute over the words "inhabitant" and "citizen," the phrase "inhabitants, being citizens of the United States," was adopted. There was considerable debate over the disqualification-for-office clause. Thomas A. Hendricks [Ind.] wished to disqualify only those who had *during their term of office* engaged in rebellion. Jacob M. Howard [Mich.] thought that engaging in rebellion after such service was also morally heinous.

It seems to me that where a person has taken a solemn oath to support the Constitution of the United States there is a fair implication that he cannot afterwards commit an act which in its effect would destroy the Constitution of the United States without incurring at least the moral guilt of perjury."

Senator Howard's position was maintained by a large majority. It was also decided, after much discussion, that these disabilities could not be removed, even though those affected had been pardoned by the President, except by a vote of two-thirds of both chambers of Congress.

The bill as amended passed the Senate on June 8 by a vote of 33 yeas to 11 nays. Senators Cowan, Doolittle, and Johnson voted in the negative. The House concurred in the Senate amendments on June 13 by a vote of 120 to 32. The bill having received two-thirds majority in advance (as required on a constitutional amendment) was not presented to the President and was

submitted at once to the States for approval. It was ratified by State after State, until on July 28, 1868, it had received the three-fourths majority of the States necessary for it to become a law.

Readmission of Tennessee

When Tennessee, on July 19, 1866, ratified the amendment, the House passed a joint resolution restoring the State to the Union—125 ayes to 12 nays, the latter being all cast by radical Republicans. Thaddeus Stevens [Pa.], however, voted aye. The Senate concurred after modifying the preamble of the resolution to read that "the said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States." This was done to oppose the President's theory that executive action alone was needed to accomplish the restoration.

While the President signed the bill (on July 24) he nevertheless maintained his position in a special message (July 25) on the subject. It was read the same day in the House.

"Ratifying an Anomaly"

Speech of President Johnson in Admitting Tennessee into the Union

If, as is declared in the preamble, "said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States," it would really seem to follow that the joint resolution which at this late day has received the sanction of Congress should have been passed, approved, and placed on the statute books before any amendment to the Constitution was submitted to the legislature of Tennessee for ratification. [Applause from Democratic side.] Otherwise the inference is plainly deducible that, while in the opinion of Congress the people of a State may be too strongly disloyal to be entitled to representation, they may nevertheless, during the suspension of their "former proper, practical relations to the Union," have an equally potent voice with other and loyal States in propositions to amend the Constitution, upon which so essentially depend the stability, prosperity, and very existence of the nation.

Earnestly desiring to remove every cause of further delay, whether real or imaginary, on the part of Congress to the admission to seats of loyal Senators and Representatives from the State of Tennessee, I have, notwithstanding the anomalous character of this proceeding, affixed my signature to the resolution. [General applause and laughter.] My approval, however, is not to be construed as an acknowledgment of the right of Congress to pass laws preliminary to the admission of duly qualified Representatives from any of the States. [Great laughter.] Neither is it to be considered as committing me to all the statements made in the preamble [renewed laughter], some of which are, in my opinion, without foundation in fact, especially the assertion that the State of Tennessee has ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress. [Laughter.] No official notice of such ratification has been received by the Executive or filed in the Department of State; on the contrary, unofficial information from most reliable sources induces the belief that the amendment has not yet been constitutionally sanctioned by the legislature of Tennessee. The right of each House, under the Constitution, to judge of the elections, returns, and qualifications of its own members is undoubted, and my approval or disapproval of the resolution could not in the slightest degree increase or diminish the authority in this respect conferred upon the two branches of Congress.

In conclusion, I cannot too earnestly repeat my recommendation for the admission of Tennessee, and all other States, to a fair and equal participation in national legislation when they present themselves in the persons of loyal Senators and Representatives who can comply with all the requirements of the Constitution and the laws. By this means harmony and reconciliation will be effected, the practical relations of all the States to the Federal Government reëstablished, and the work of restoration, inaugurated upon the termination of the war, successfully completed. [Applause from the Democratic side.]

CHAPTER XIII

Ratification of the Fourteenth Amendment

[controversy between conservatives and radicals]

The "Harmony" Convention (Administration): Sen. Edgar Cowan [Pa.] Reports Resolutions, and Representative Henry J. Raymond [N. Y.], Reads an Address—Reply of President Johnson to Delegation from the Convention: "The Despotism of Congress"—The "Southern Loyalist" Convention (Radical): Speech of ex-Attorney-general James Speed [Ky.], Chairman; Arraignment of the President in Resolutions; Address of Sen. John A. J. Creswell [Md.]—The Soldiers' Convention (Administration): Speech of Gen. John E. Wool, Chairman—The Citizen Soldiers' and Sailors' Convention: Speech of Gen. Jacob D. Cox [O.], Chairman; Resolutions Read by Gen. Benjamin F. Butler [Mass.]—Massacre of Loyalists at New Orleans—Speaking Tour of President Johnson—His Remarks in Cleveland on "Who Is Traitor—The President or Congress?"—His Remarks in St. Louis on "The New Orleans Riot—Who Caused It?" "Some Named Him with Iscariot," and "Kicking Out the Radicals"—Radical Victories in Congressional and State Elections—Popular Demand for Negro Suffrage.

THE year of 1866 is memorable in American politics for the fact that, though it came midway between presidential elections, during it there were held four great national political conventions. The reason for this was that elections to the Fortieth Congress were to be held in the fall, as well as to the State legislatures, which were to choose United States Senators; and that, if less than a two-thirds majority of Radicals were sent to the national legislature, then the President, even if he could not enforce his policy of reconstruction, would be enabled by his veto to prevent the adoption of an opposing one. The Administration hardly ventured to hope that it would secure a majority in its favor, but trusted to hold matters at a standstill until a revolution

of public sentiment should occur and it would be sustained two years later at the presidential election.

The Harmony Convention [Administration]

The first of these national conventions was an Administration one, held at Philadelphia on August 14.

Delegates were present from every State of the country, and the national harmony which this indicated was paraded in spectacular fashion by having them enter the hall by couples—a Northern delegate arm-in-arm with a Southern. This gave the humorists of the Radical press and platform an admirable opportunity to caricature the convention as a "Noah's Ark," into which there went "two and two of clean beasts, and of beasts that are not clean," which they used with great effect during the ensuing congressional campaign.

The Democrats were greatly in the majority in the assembly, causing it to be stigmatized by the Opposition as a "copperhead convention." Clement L. Vallandigham [O.] attempted to take part in the convention, but so great was the opposition to him by the Republicans that he withdrew at an early stage of the proceedings.

The object of the convention was to declare the right of every State to representation in Congress, and this was embodied in a series of resolutions reported by Senator Edgar Cowan [Pa.], and an address read by Representative Henry J. Raymond [N. Y.]. Mr. Raymond took an extreme position, saying:

It is alleged that the condition of the Southern States and people is not such as renders safe their readmission to a share in the government of the country, that they are still disloyal in sentiment and purpose, and that neither the honor, the credit, nor the interest of the nation would be safe if they were readmitted to a share in its counsels. Even if this were so, he said: "We have no right to deny to any portion of the States or people rights expressly conferred upon them by the Constitution of the United States, and we have no right to distrust the purpose or the ability of the people of the Union to protect and defend under all contingencies, and by whatever means may be required, its honor and its welfare."

reassembling of the constitutional convention authorized by the free constitution of the State, adopted in 1864. Fearing that the convention would adopt negro suffrage opponents of that measure rose in a mob against the assembly and began to shoot down the delegates. In an investigation conducted by the next Congress it was found that the mayor of the city and other municipal authorities had purposely misled the military commander of the district so that no troops were available to quell the riot, and that the police aided the rioters. Gen. Philip H. Sheridan, commander of the department, said of the killing that it was "so unnecessary and atrocious as to compel me to say it was murder." An investigation into the affair was also conducted by the War Department, which found that "there was among the class of *violents* known to exist in the State, and among the members of the ex-Confederate associations, a preconcerted plan and purpose of attack upon the convention provided any possible pretext therefor could be found."

None of the rioters were arrested by the municipal authorities, though they were well known to the police. Some of them were civil officials, who not alone escaped punishment but were continued in their places. Instead, the judge of the criminal court in New Orleans instructed the grand jury to indict for murder the members and spectators of the convention, which he declared unlawful.

President Johnson was condemned by the congressional investigating committee for telegraphing on the eve of the convention orders to the military of New Orleans the effect of which, if they had been enforced (as they were not because of the riot intervening), would have been to cause the Federal troops to coöperate with the opponents of the convention in suppressing the meeting.

The "New Orleans Massacre," as it was called by the Radical orators, was referred to with great effect in the attack upon the President and his policy, not only during the congressional campaign but throughout the ensuing session of Congress.

"Swinging Round the Circle"

On August 28, 1866, the President left Washington in company with Gideon Welles, Secretary of the Treasury; Alexander W. Randall, Postmaster-General; Gen. Ulysses S. Grant, Admiral David Farragut, and other army and navy officers, as well as a host of newspaper reporters, to make a speaking tour on the way to attend the inauguration on September 6 of a monument to Stephen A. Douglas at Chicago. The route was through Philadelphia and New York (where the party was joined by William H. Seward, Secretary of State), and thence westward through the principal cities of New York, northern Ohio, and Indiana to Chicago, and thence back to Washington by way of St. Louis.

In several cities through which he passed the President delivered disputatious speeches on the subject of "my policy," which were frequently interrupted (in particular in Cleveland) by remarks, often insolent, from persons in the audience, whereupon he would indulge in repartee in the manner of a stump orator. The facts that he was using an invitation to pay solemn respect to a dead statesman as an opportunity to advance his own interests in a manner entirely foreign to the occasion, and that he did this in a fashion most unworthy of his high position even though he were making a speaking tour pure and simple, were severely commented upon not only by the Opposition but even by editors and public men who were non-partisan, or, indeed, had hitherto been friendly to the Administration.

The journey became aptly known as "swinging round the circle," there being an insinuation in the phrase that the President was preparing the country for his return to the Democratic party. Newspaper humorists played upon this and kindred themes. David R. Locke ("Petroleum V. Nasby"), who signed his letters to the press from "Confedrit X Roads" as a dyed-in-the-wool "butternut" (a less opprobious synonym for "copperhead"), wrote in pretended support of the President that he had undertaken the tour in order "to arouse the

people to the danger of concentrating power in the hands of Congress instead of diffusing it through one man." Says Mr. Blaine: "With whatever strength or prestige the President left Washington, he certainly returned to the capital personally discredited and practically ruined."

The following extracts from his speeches on this tour were cited in the Articles of Impeachment subsequently brought against him by Congress.

In Cleveland, on September 3, he spoke as follows:[1]

Who Is Traitor—The President or Congress?

President Johnson

I will tell you what I did do. I called upon your Congress that is trying to break up the Government. . . .

In conclusion, beside that, Congress has taken much pains to poison their constituents against me. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they have done everything to prevent it; and because I stand now where I did when the rebellion commenced I have been denounced as a traitor. Who has run greater risks or made greater sacrifices than myself? But Congress, factious and domineering, has undertaken to poison the minds of the American people.

In St. Louis, on September 8, replying to an interruption: "How about New Orleans?" he said:

The New Orleans Riot—Who Caused It?

President Johnson

If you will take up the riot at New Orleans and trace it back to its source you will find out who was responsible for the blood that was shed there. You will find that the riot at New Orleans was substantially planned in the radical Congress. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be

[1] As illiteracy was charged against the President, the language of these speeches is given as reported, though somewhat abridged.

called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise the colored population who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made before that convention sat, you will find them incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and I say that every man engaged in that convention was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced having its origin in the radical Congress.

Continuing, he said:

"Some Named Him with Iscariot"

President Johnson

When you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

I know that I have been traduced and abused. I know it has come in advance of me here, as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor because I exercised the veto power in attempting and did arrest for a time a bill that was called a "Freedman's Bureau" bill. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it

Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Savior; and everybody that differs with them in opinion, and to try and stay and arrest the diabolical and nefarious policy, is to be denounced as a Judas.

He concluded with a threat to "kick the Radicals out of office."

Kicking Out the Radicals

President Johnson

Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance, soldiers and citizens, to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me.

Congressional Elections

The Republicans won overwhelmingly in the ensuing elections to choose members of Congress and State legislators, who in a number of States were to select United States Senators. They were even wholly or partially successful in Northern States hitherto reckoned as staunchly Democratic, such as New Jersey, Connecticut, California, and Oregon. They also carried the border States of Missouri and West Virginia. The other border States were strongly Democratic, there being only one Radical Republican elected out of five Representatives in Maryland and one out of eight in Kentucky.

In the Southern States, none of which except Tennessee had yet been restored into the Union, the State officers were elected by a heavy and almost solid Democratic vote, showing that the section defeated in the war would be almost unanimous in the attempt to regain by

the ballot as much as possible of what it had lost by the sword.

The total result of the congressional elections was 143 Republican Representatives to 49 Democratic. Of the Republicans there were but two supporters of the Administration: Charles E. Phelps [Md.] and Thomas E. Noell [Mo.], and Noell died during the session and was succeeded by a Democrat.

This election meant that Congress would be able easily to override any veto of the President and would probably be strong enough to impeach him if, as was feared might happen, he entered upon a course of action regarded by the Republican leaders as unconstitutional.

During the congressional campaign a strong popular demand was manifested for extending the suffrage to negroes as a basis for reconstruction in the South, and this in despite of the fact that to be constitutional the extensions would have to apply throughout the Union, in nearly all the States of which the negro was with general approval disfranchised.

INTRODUCTION

Industry and Education: the True Factors of Southern Reconstruction [1]

THE problem of real reconstruction of the South is the most important that has been presented in our national life. It is not the education of a few millions of neglected persons; it is not the modernizing of a few picturesque institutions; least of all is it the task of imposing on these people the civilization that has been developed elsewhere (for this would be a fool's errand indeed and in no way desirable if it were possible); but the larger question is this:

Since democracy means constant social growtn and social mobility, is Southern life becoming democratic or is it remaining stable, or going back to an essentially aristocratic structure? Are forces inside it asserting themselves that give promise of shaping this life in line with democratic growth? Or are the native forces reactionary? Is democracy there at last to be a failure? Is it equal to the task of assimilating the master race and the freed race?

There are thoughtful men who frankly deny the possibility of such a complete conquest by the democratic idea. I quote one such, a man of learning, if not of wisdom, who wrote this memorandum for me under the mistletoe in an old South Carolina mansion:

[1] Adapted from an article in the *Atlantic Monthly* for May, 1902, entitled "The Rebuilding of Old Commonwealths," afterward published (by Doubleday, Page and Company, New York) in a volume with this title.

"The dominant elements of society in the two sections of the country were different from the beginning. Slavery did not make the difference, it only emphasized it. The unconscious aims and ideals of the two peoples diverged. The abolition of slavery was a matter of force. So also was the suppression of secession. But these events did not change the essential character of the people. Superficially they are now one. But forty years are as nothing in the life of a people, nor fifty years nor a hundred. The South is to-day further from a willing acceptance of real democratic ideals than it was twenty years ago. The growth of such organizations as the Daughters of the Confederacy, the increasing celebration of the heroism of the Confederate soldier, the silent unwillingness of white men to tax themselves to educate the negro, the instinctive denial to the negro of any real standing in the most important matters of life—these things seem to me to point to a different genius, a different tendency, a different ideal, even a different necessity. How the divergence will work itself out, I do not know; but a century hence the South will be, in the essence of its civilization, further from the North than it now is. No outward forms of government can make two different peoples the same."

Another man of learning, if not of wisdom, used to say to me in Cambridge, Mass.: "The Southerners have always seemed foreigners to me. The Northern and the Southern people are different. I do not think they will ever work out the same ideals."

These opinions (which I have heard only in South Carolina and in Massachusetts and there in academic circles) strip the question of all side issues and of all temporary aspects. It is true that the same laws may not mean the same thing North and South (as the Fourteenth Amendment to the Federal Constitution does not); and fifty years have not essentially changed the negro's place in the community; and it is true that no exterior or temporary influence counts for much and the hereditary "essence of a civilization" is everything. No man of thought has ever regarded laws enacted at Washington against the consent of the Southern people as a primary force in shaping their life, nor outside aid to education or to anything else as revolutionary if it ran counter to the native "genius"; preaching is of no avail;

alms-giving is an estranging force; in a word, if Southern life have not in it the seed and the necessity of a true democratic development, then a democratic order cannot be thrust upon it and it were useless to try.

But, if I understand the great forces of our time, and if I know the history of the people of the Southern commonwealths (which to the obscuring of the whole large matter remains unwritten), my friends from whom I have quoted have made a radical misinterpretation of all the large facts and of all dominant present tendencies. There is no undemocratic trait in the Southern people that is not directly accounted for by slavery and by the results of slavery. The most conspicuous institutional results were the political machines that were built on race differences first by one political party and then by the other, and the ecclesiastical machines that are the direct result of popular ignorance and isolation. The country people that I have described are men of good mettle, men to make free commonwealths of. The very strongest impulse they have is patriotic and democratic. The contrary tendencies are clearly survivals of a deflection of their development. So strongly have I been impressed with the democratic quality of Southern character that I believe, if a democracy existed nowhere in the world, Southern life would now evolve one, perhaps even of a radical type.

These old commonwealths were arrested in their development by slavery and by war and by the double burden of a sparse population and of an ignorant alien race. When the weight of these burdens is considered, the progress made these thirty years in the development of the innate democratic tendency is without parallel in our history. The present backwardness of Southern life in rural communities and in old academic or social circles is but a picturesque reminder of the distance we have traveled. Descriptions of these may entertain us, as the charm of the obsolete appeals to all cultivated minds, but they give no hint except by contrast of the real forces of the period in which we live.

The process that has been going on in the upland

South in particular is a process of conscious and natural State-building, constructive at every important step. Reactionary influences have been respectable, but they are spent impulses. There are two great constructive forces. The first is *industry,* which has already given the essential power over to a class of men that bring mobility to social life and opportunity to them that can take it. This industrial development would finally work out the inherent democratic tendency of the people if no other force were brought into play. But no man who knows the gentleness and the dignity and the leisure of the old Southern life would like to see these qualities blunted by too rude a growth of sheer industrialism.

The other great force that frankly recognizes the arrested development of the people and is taking hold of the problem of their natural growth is the new impulse in *public education.* This is native, and it is nothing different from Jefferson's creed and plan. So strong is it that its manifestation may fairly be called a new chapter in our national history. In the presence of this revolutionary force, fear of reaction and doubt about the democratic "essence" of Southern civilization fall away. Besides this all other forces except the force of industrial life count for nothing.

The situation has been discouraging enough, Heaven knows. In the ten cis-Mississippian Southern States the proportion of illiterate white voters was as large at the beginning of the century as it had been in 1850. But it is precisely because the situation was so bad that it has since become so hopeful. The leaders of the best Southern opinion began work in a new way with results which have already proved most gratifying. They discovered that the schools must do something more than teach the three R's, for a people without diversified occupations and without training do not care for the three R's, nor do the three R's profit them greatly. An idle and unproductive man is no less useless because he can read and write.

It was this fundamental fact that General Armstrong saw when he worked out the system of training toward

occupations at Hampton Institute for the negroes; and it is this fundamental fact that the present leaders of popular education in the Southern States understand. They are training hand and mind together. The experience in every rural community where a school of this kind has been established is that the people who cared nothing for what they called "education" are so eager for this training that they will make any sacrifice to obtain it. Herein is the beginning of a complete change in neglected village and rural life. Here, too, is proof that the people are not "in the essence of their civilization" different from the people of the other parts of the country. The "way out" has been found. The problem that the South now presents has at last become so plain that thoughtful men no longer differ about it. It is no longer obscured by race differences, nor by political differences. It is simply the training of the untrained masses. As slavery and war and an isolated life arrested their development and held them in a fixed social condition, so the proper training of them to helpful occupations will release them to usefulness in a democracy.

The new movement is revolutionary for another reason. The old notion of education was that it meant the training of a few. It is now understood that none can be well educated unless all are trained.

The men and women of both races who are leading this great popular movement work with an inspiration that puts conventional teachers to shame. For example: A young agricultural chemist several years ago began with enthusiasm a campaign of education among the farmers. He put much faith in bulletins and leaflets which were sent broadcast. "I soon found out," said he, "that sending out literature did little good as long as many farmers could not read, and many more would not." He left his laboratory and became an educational statesman, and there are few men in America whose influence in building up the people is greater than his. Out of a comparatively small acquaintance, I know many similar experiences. A well-trained preacher, for example, who has had much to do with the administration of the churches of his sect in rural regions, lately gave up his work and became a superintendent of public schools. "Till the country people are educated," said he, "church work will not stick."

Educational work in these States is, therefore, something more than the teaching of youth; it is the building of a new social order. The far-reaching quality of the work that the energetic educators in the South are doing lifts them out of the ranks of mere school-masters and puts them on the level of constructive statesmen. They are the servants of democracy in a sense that no other public servants now are; for they are the rebuilders of these old commonwealths.

Any man who has the privilege to contribute even so small a thing as applause to this great movement feels the thrill of this State-building work so strongly that he is not likely to take a keen interest in such tame exercise as historical speculation. Yet it would be interesting to speculate on the effects of Jefferson's plan for public education if it had been carried out. Would the public schools not have prevented the growth of slavery? True, public schools and slavery, as well as most other human institutions, are the results of economic forces; but, if the masses of the Southern population had been educated, or trained to work (and such training is education), a stronger economic impetus might have been given to diversified pursuits than cotton culture gave to slavery, and the whole course of our history might have been changed. But, whatever may have been the results of Jefferson's educational policy if it had been worked out in Virginia, the development of Southern life in the next hundred years will be determined by the success with which it shall now be worked out. The nature of the problem is clear. The work will be slow and the recovery from these last effects of slavery may require as long a time as it required to abolish slavery; but of the ultimate result no man who can distinguish dominant from incidental forces can have a doubt.

The Southern people were deflected from their nat-

ural development. They are the purest American stock we have. They are naturally as capable as any part of our population. They are now slowly but surely working out their own destiny; and that destiny is a democratic order of society which will be an important contribution to the republic that their ancestors took so large a part in establishing. Rich undeveloped resources of American life lie in these great rural stretches that are yet almost unknown. The foremost patriotic duty of our time is to hasten their development.

Walter H. Page

CHAPTER I

Race, Educational, and Sex Qualifications for the Suffrage

[EQUAL MANHOOD SUFFRAGE IN THE DISTRICT OF COLUMBIA]

Benjamin F. Wade [O.] Introduces in the Senate Bill Granting Equal Male Suffrage in the District of Columbia—Debate on Educational Qualification: in Favor, Lot M. Morrill [Me.]; Opposed, Samuel C. Pomeroy [Kan.], B. Gratz Brown [Mo.], James W. Grimes [Ia.]; the Qualification Is Omitted—Debate on Negro Suffrage: in Favor, Waitman T. Willey [W. Va.]; Opposed, Garrett Davis [Ky.]—Bill Postponed—Debate Resumed in the Next Session—"Equal Suffrage (Manhood and Womanhood) in the District of Columbia"; Varying Views by Sen. Morrill, Sen. Willey, Henry Wilson [Mass.], Sen. Pomeroy, Edgar Cowan [Pa.], Henry B. Anthony [R. I.], George H. Williams [Ore.], Sen. Wade, Richard Yates [Ill.], Reverdy Johnson [Md.], Frederick T. Frelinghuysen [N. J.], Sen. Brown, Sen. Davis, William Sprague [R. I.], Charles R. Buckalew [Pa.], James R. Doolittle [Wis.], James Dixon [Ct.], Willard Saulsbury [Del.], Lafayette S. Foster [Ct.], Thomas A. Hendricks [Ind.], Henry S. Lane [Ind.], Charles Sumner [Mass.]; Congress Passes Bill for Equal Manhood Suffrage in the District, and the President Vetoes It with Remarks; Debate in Senate on Passage Over Veto: in Favor, John Sherman [O.]; Opposed, Sen. Doolittle; Congress Passes Bill Over Veto—Congress Decrees Equal Manhood Suffrage in the Territories, Admits Nebraska into the Union with This Suffrage, Abolishes Peonage in New Mexico, and Establishes Howard University for Negroes.

THE controversies of 1866 developed the fact that the majority opinion of the people of the country was in favor of extending the elective franchise to the negro. Accordingly, upon Congress reassembling in December of that year, the dominant Radicals, who had heretofore acted with great caution upon the issue, resolved to take the District of Columbia (as they had done in the case of emancipation) as the first

subject of legislation embodying the principle of equal manhood suffrage, which, it was contemplated, should afterwards be extended by Federal power throughout the Union.

Negro Suffrage in the District of Columbia

Senate, December 4, 1865-June 27, 1866

A bill was already before Congress upon the subject. On the opening day of the previous session (December 4, 1865) Benjamin Wade [O.] had brought forward in the Senate a bill "to regulate the elective franchise in the District of Columbia." On December 6 it was referred to the Committee on the District. On January 10, 1866, it was brought forward in the Committee of the Whole. As amended by the committee it granted the elective franchise to every male person without distinction of race who was twenty-one years of age and upward and had not been convicted of crime, and was not a pauper or under guardianship, and was able to read the Constitution in English, and write his name. Those who should disturb any lawful elector in his exercise of the franchise were, at the discretion of the court, to be fined not over $1,000, or imprisoned and fed only on bread and water for not over thirty days, or suffer both penalties.

Samuel C. Pomeroy [Kan.] objected to the educational requirements. Not to speak of the fact that many well-educated persons, such as Germans, could not read English, it was wrong to exclude the franchise from those who, like the negroes, had never had any educational opportunities.

After having legislated them away from schools and science and everything else, to thrust in their faces a law saying, "If you can read and write, you can vote," I think is adding insult to injury.

All the amendments proposed by the committee but the educational one were accepted, and this was deferred

for future consideration. The bill was taken up for discussion on January 16. Garrett Davis [Ky.] scouted the educational test proposed as ineffectual. In a short time every negro should be able to spell through the Constitution to the satisfaction of partial judges of election, and really would be no more capable of taking part "in the trivial matter of government" than he had been before.

Senator Davis then discussed the general principles of negro suffrage.

The right to vote is not a natural, but an artificial, right, as well in our country as in all others wherever it has been exercised, and in the countries where it has been most diffused it never was allowed to one-fourth of the people, the women and minors and many other small classes not being permitted to vote under the most popular governments. From our systems the negro has been always shut out, except in a few localities; and in a majority of them for a short period only was this mischievous anomaly tolerated.

How many States allow negro suffrage? Massachusetts, Vermont, Rhode Island, and New York. All the others forbid it, and, notwithstanding the extreme acme to which the negro-mania has risen in the free States since the rebellion broke out, Connecticut, Wisconsin, Minnesota, Nevada, and Colorado have voted against negro suffrage. In this District one-fourth of the whole population are negroes? Of the States which allow negro suffrage, Vermont has 709 negroes and 314,380 whites; Rhode Island has 3,952 negroes and 170,668 whites; Massachusetts has 9,602 negroes and 1,221,464 whites, and New York has 49,005 negroes and 3,831,730 whites, and requires each negro to own real estate of the value of $250 to qualify him to vote. A healthy man may take into his stomach one, or two, or three drops of arsenic without serious detriment to his health, but if he were to swallow one, two, or three hundred drops it would destroy his life. Negro suffrage is political arsenic. If it is not, why do not the free States open wide their throats and gulp down the grateful and invigorating draught? Why does not California give the right of suffrage to her Chinamen; Michigan and many other States to their Indians; and Pennsylvania to her gypsy gangs, that are perpetually vibrating between her plains and mountains?

If the negro population ran upon the white population

the free States in the same proportion as it does in this District and the Southern States, in some of them being from thirty to fifty, and in South Carolina more than fifty per cent., would any of the free States, under such a condition of things, accept negro suffrage? A successful effort to force it upon them would very speedily inaugurate another rebellion.

But, Mr. President, the question whether a few thousand negroes of this District shall vote in its elections is of very trivial importance to the people of the United States, and to that portion of them who are so exercised by it, and who are making such strenuous efforts to bring it about. This contest is but an experiment, a skirmish, an entering wedge to prepare the way for a similar movement in Congress to confer the right of suffrage on all the negroes of the United States, liberated by the recent amendment of the Constitution, the power to be claimed under its second clause. It is following up the tactics of the party four years ago, when the assault upon slavery in this District heralded the general movement that was to be made against it.

Senator Davis argued that the peace and freedom of a country depended upon the homogeneity of its people. The various branches of the Caucasian race, if not brought together too suddenly, mingled without serious antagonism, none of the stocks degrading the others.

But in our country a race of people that is essentially inferior to the Caucasian race in its physical, mental, and moral structure, and that no cultivation can bring to an approximation of that high standard; that has by nature so low an organization as to be wholly incapable of self-civilization, or organizing a self-government, or maintaining a civilization and form of government which had been bestowed upon it by a superior people—a race which could take no part in the great business of government, to improve or uphold it, but only to obstruct, thwart, confound, and break it up, should never have any political power conferred on it. I hold that the negro is such a race; that he is the lowest and the Caucasian is the highest of the races of man, and the others are intermediate; and that he cannot be mingled with the blood, or in the management of the affairs, of the white man without degradation and mischief to him.

The word "negro," as an ethnological term, does not comprehend all the black, much less the dusky families of man; it refers to that race which Cuvier describes as being "marked by a black complexion, crisped or woolly hair, compressed cranium, and a flat nose. The projection of the lower parts of the face and the thick lips evidently approximate it to the monkey tribe." The great naturalist might have added, as other distinctive characteristics of the negro: first, that his skin exhales perpetually a peculiar, pungent, and disagreeable odor; second, that "the hollow of his foot makes a hole in the ground."

Copeland, Chambers, Dr. Moseley, White, Dr. Prichard, Smith, and Vrolih, of Amsterdam, name many other distinctions between the white and the negro race, such as low nervous irritability, all of which mark their approach toward the lower form of animals.

Camper, Soemmering, Lawrence, Virey, Ebel, and Blumenbach agree that the brain of the negro is smaller; and Gall, Spurzheim, and Combe, that it is so distributed as to denote less capacity for reasoning and judging than the Caucasian.

Thomas Carlyle thus addresses himself to the emancipated negroes of the West Indies:

"You are not slaves now, nor do I wish, if it can be avoided, to see you slaves again; but decidedly you will have to be servants to those who are born wiser than you, that are born lords of you—servants to the whites if they are (as what mortal man can doubt they are?) born wiser than you. That, you may depend on it, my obscure black friends, is and was always the law of the world, for you and for all men to be servants, the more foolish of us to the more wise. Heaven's laws are not repealable by earth, however earth may try."

Mr. Jefferson's passionate denunciation of slavery has been often and exultingly quoted by its opponents, yet this is his testimony as to the capability of the negro race:

"Never yet could I find that a black had uttered a thought above the level of a plain narration; never saw even an elementary trait of painting and sculpture."

Theodore Parker, as quoted by Nott, in his work, "Types of Mankind," declares that:

"The Caucasian differs from all other races. He is humane, he is civilized, he progresses. It is intellect, after all, that conquers, not the strength of man's arm. The Caucasian has often been the master of other races, never their slave. Republics are Caucasian. All the great sciences are of Caucasian origin. All inventions are Caucasian. Literature and romance come from the same stock."

Even Prichard, one of the few writers on the natural history of man who does not frankly concede the inferiority of the negro race, admits that:

"By the animality or degradation of the forms of the pelvis, peculiar to the negress and the Bushman and the Hottentot, is implied an approach toward the forms of the chimpanzee and the orang-outang."

The freedman tends to revert to barbarism. Sir Archbald Alison in his "History of Europe" says:

"By the expulsion of the French from San Domingo it has been nominally independent; but slavery has been far indeed from being abolished, and the condition of the people anything but ameliorated by the change. The industrious habits, the flourishing aspect of the island, have disappeared; and the inhabitants, reduced to half their former amount, and bitterly galled by their republican task-masters, have relapsed into the indolence and inactivity of savage life."

All the other races of men were also once benighted savages, but they had been created with a higher and more perfect organism and endowed with superior faculties and powers. More excellent in complexion, form, action, and innate grace; the nicest sensibilities; deep reflection, with long forethought, exhaustless invention, the most complex ratiocination; an active and insatiable desire for progress and perfectibility; the workings within him of a higher divinity; a readier, freer, and closer communion with nature and God, lifted him up and propelled him from his primal and ignoble ignorance and destitution to the achievements of his present civilization, which, grand and affluent as they be, are but the prelude of his vast and incomprehensible future.

But during the long period in which the other races have been moving on with their wonderful creations, almost a continent of negroes have been fixed as a fossil under the weight of the barbarism and ignorance of untold centuries, because their Creator had not endowed them with the faculties and energies to emerge from it. So He made the progenitors of our negroes, the freedmen of the United States, and they can never break away from the essential nature of their parent stock. Individual property in the African slave may have ceased forever, but his involuntary labor, his slavery, in some form, in the fields of the South, is his destiny. The God of nature hath so ordained, and man cannot thwart it.

The Senator declared that negro suffrage, with the attendant element of miscegenation, had been adopted by

the Northern Radicals, especially those of New England, as a means of continuing themselves in power.

For that power to be enthroned in Boston, and by its imperial will to direct how more than six hundred thousand negro votes, spread over fifteen States, should be cast in every election, is a great stake, for which a bold and desperate game is being played, and, if won, it may save the fate and fortunes of the daring political gamblers who are playing it. With the aid of their negro allies, constituting more than half of the whole vote of South Carolina and Louisiana, nearly half of that of several other States, forty thousand in the State of Kentucky, and a heavy proportion in the remainder of the late slave States, and possessed of the Government, and wielding its vast powers and patronage singly to their own ends, they would be omnipotent, and, standing in the name and according to its forms upon our subverted Constitution, they would be the absolute masters of the people.

But their aim is to embody the miscegenation of the races in the Southern States as part of their system. They have noted the permanent national degeneracy and weakness produced in other countries by this blighting curse, and they contemplate similar results in the Southern States. Without those results they know that a regenerated South would soon break away from the base thralldom with which they are seeking to envelop her, but with miscegenation and those results they might make the vassalage of the South to the North permanent. Massachusetts & Co. know that the negro has an invincible aversion to the cold Northern States. They know that so soon as the few negroes resident in the Northern States have the option the most of them will fly back to the sunny South, and the process will be expedited by the vexations and injustice of the "Freedmen's Bureau." The cotton, rice, sugar, and coffee plantations are the theater to which the negro laborer has been allotted by nature; everywhere beside he will be met and vanquished by his white competitor, but there this meeting will never take place. From all these causes the aggregation of the mass of the negroes of the United States in the Southern States will progress rapidly.

Miscegenation would be encouraged by large numbers of the two races inhabiting the same country, and every law and regulation in favor of the white being broken down: by the white race becoming poor and broken in spirit, and cut off from position and office and political power, and the negro race being elevated as the other is depressed, and becoming the ruling

power of the country. The white man is to be driven from his lands, and they are to be given to the negro and the negro's guardian angel, the Yankee. The white man finds the malaria of the country fatal—to the negro it is innoxious. The one can labor in the fields if he will; the other it would speedily transfer to the grave. But wherever money is to be made there is the omnipresent Yankee. He steps in and forms associations with the negro; he engrosses the cotton and rice and sugar lands, and by the agency of the Freedmen's Bureau, and often with its officers as his secret partners, seduces the negro laborers from the employment of the resident landholders, if any of that class should be left, and himself monopolizes the entire labor of the country.

Thus the white resident is excluded from all part or lot in the cultivation and production, and eventually the ownership, of the lands, and all their avails that can pass through the hands of the Yankee proprietor go to the negro laborer. Poverty, destitution, and squalid want await the white residents and their families; and the men who devised this cruel and revolting system knew full well what cogent motive to miscegenation such a deplorable condition of the white race would offer to it. These august architects are gloating over the success of their crude and hastily tried scheme, and the misery it has even now brought on the Southern people, and they are in haste to perfect it by supplementary and new measures of legislation. The whole scheme was concocted after long reflection, by able men, for mischief and oppression, and it was devised with diabolical forecast. The original proposition to amend the Constitution by abolishing slavery throughout the United States was the first section; the succeeding sections rapidly followed: the organization of the oppressive and infamous Freedmen's Bureau, with the object to degrade the white man and elevate the negro; the pending bill "to enlarge its power"; the bill "to protect all persons in the United States in their civil rights, and furnish the means of their vindication"; the pending measure, and the numerous bills to extend the right of suffrage, not to all the free negroes of the United States, but to those recently liberated in the late slave States, all are harmonious parts of a huge system of tyranny and iniquity, built up not only without any rightful power, but in all their essential features against the plainest and most vital constitutional restrictions of power.

The purpose is to bring the South to such a condition of weakness and abasement that it shall have neither the spirit nor resources to throw off the galling yoke of the North; that it shall

become a permanent colony, and be made to pay tribute under measures and laws passed by the North to build up its own sectional interests; that it shall become so much Mexicanized as to be incapable of self-government, and its government by the North become a necessity.

Mr. President, throughout his whole history the negro has been found in but two conditions: living separately to himself as an ignorant savage, or with some other race of people as a slave or dependent. Freedom, with ignorance and barbarism, or slavery with civilization, is his destiny.

The bill did not come again before the Senate until June 27.

Lot M. Morrill [Me.] argued for the educational qualification. This was opposed by B. Gratz Brown [Mo.]. He said:

I do not wish the suffrage restricted by any educational qualifications, nor do I wish it restricted by any property qualifications. I want it simple and absolute, a right of human nature, which is as much a right as any other of self-defence in political communities or out of political communities.

Senator Pomeroy again opposed the requirement that the voter should be able to read English.

I have yet to learn that a man is any more of a patriot by writing in English than he would be by writing in German or some other language. I have believed that a man was an American as truly when he became so from choice as though he was so from necessity. The Senator from Maine and myself were born here, but we could not help it. There is no great merit in that. But the man who becomes an American from choice, who looking over the ocean and seeing America, learning of our institutions, breathing somewhat of our freedom, longing to identify himself with us in this great struggle for self-government, comes here and voluntarily assumes the duties of a citizen, enters our army, and carries our flag to victory; I say such a man, if he cannot write a word in English, is an American; he is a patriot; he is loyal, and he should be entitled to vote.

Senator Morrill insisted on the requirement of a knowledge of English.

It is the language of this country. There is none other recognized in the publication of the laws of Congress. The Constitution of the United States is not furnished by Congress to anybody except in the English language. The five years' quarantine, within which a foreigner is to have an opportunity to learn our institutions, are sufficient, if he is intelligent, to learn the English language, and to enable him to read the Constitution, and therefore it is no hardship. I believe for the sake of unity, unity in our civilization, unity in our language, unity in our sentiments and opinions, that we ought to inculcate as a standard and a formula that the laws should always be printed in the English language; and, so far as any qualification is concerned, certainly our civilization is worth but little in its influence and its effect upon aliens and foreigners if at least we do not require them to speak our language. That is the reason that influences me more than anything else, and leads me to desire the adoption of some such proposition. At the same time, I do not think it of importance enough to divide our friends upon that subject, and in order to accommodate the question to the views of gentlemen I am perfectly willing to modify the amendment by striking out the words "in the English language," so that it will read, "and who can read the Constitution and write his name."

James W. Grimes [Ia.] thought that reading the Constitution in a foreign language was an impracticable test owing to the fact that the Constitution had not been printed in one-half of the languages spoken in the United States. The entire educational qualification was stricken out by a vote of 15 yeas to 19 nays.

Waitman T. Willey [W. Va.] supported the bill. He admitted that suffrage was not a natural right; "the universal law of self-defence, belonging to communities no less than to individuals, involves the principle of restricted suffrage."

On this principle our naturalization laws are based, and these laws imply that no person belonging to any one of these communities has the right to incorporate himself into the body-politic of any other community without its consent and without complying with such conditions as shall be prescribed for his admission. On this foundation, too, has been erected the whole superstructure of international law. Every nation or com-

munity, therefore, has the absolute right to regulate its own affairs and govern its own people.

But, said Senator Willey, the nation or community has no right to exercise this power *arbitrarily, or in derogation of the principles of justice and equity toward all or toward any of its people.*

These principles, he said, required us to extend the suffrage to the negro. He is here by no fault of his own, and here to stay. Having freed him, we must extend to him equal civil rights to enable him to preserve that freedom.

This protection involves, on his part, obedience to the law; the same obedience that the white man renders. Enjoying the full benefit of this relation to civil government, he must also bear its burdens, the same burdens which the white man bears. He must pay taxes. He must render military service. He must work upon or pay for keeping in repair the public highways. He must, in short, respond to all the obligations and duties which rest upon the white man. Does the mere color of his skin constitute any rational disability? Surely not in the mind of any Christian statesman.

What is the logical inference from these statements? Can it be true that a class of men may be justly entitled to all the civil rights and privileges of the citizen, and still be wholly unworthy of all political rights? Is not the relation between civil and political rights intimate, if not indissoluble? How can they be logically separated? Does not civil obligation imply political right unless some motive of the public welfare and safety intervenes to justify the exclusion? The fundamental principle of our political institutions is that all rightful government must rest on the consent of the governed. If the freedmen are to be subject to the laws, are they not, therefore, entitled in justice and equity to some authority in the appointment of those who are to make the laws? There is another fundamental principle of American liberty involved in the question. It was the cardinal complaint of our revolutionary fathers that they were taxed without representation. Upon this issue they went to war. Upon this issue the revolutionary war was fought. How can we consistently tax the freedmen and wholly exclude them from representation? And upon what principle of justice or American liberty, I ask, can a freedman be com-

pelled to perform military service, and yet be excluded from having any voice in the Government which sends him to the field? Is he to be intrusted with the bayonet and not with the ballot? Is he worthy to die for his country, and yet necessarily unworthy of the elective franchise?

Should we fear to give the ballot to him who is ready to give his life for his country? His country, sir! He who is morally and intellectually qualified to vote, and to whom the privilege is denied, can hardly be said to have a country. He is virtually still a slave. Sir, we have seen the blood of the black man and the blood of the white man during the late terrible rebellion mingling undistinguishably together as a common libation to liberty on the altar of their country. Is not such a sacrifice sufficient to propitiate the favor of a magnanimous race, and to merit the boon of political enfranchisement? For myself, sir, I should be ashamed to deny it wherever there is capacity to appreciate it and use it discreetly, and where I have the right to bestow it.

Again, Mr. President, what is the legitimate effect on the status of the freedman of the constitutional amendment abolishing slavery? If he was not a citizen before that amendment took effect, is he not now? According to the spirit of our institutions, if not according to the letter of our Constitution, it appears to me that he is. I can conceive of no intermediate state between slavery and citizenship among the natives of our soil and within our jurisdiction, unless there be an exclusion in express terms. Why were negroes born on our soil heretofore ruled not to be citizens? Was it simply because they were of African descent? I suppose not—no more than it would be competent to exclude on account of German descent or French descent. It was because the negro belonged to an enslaved race; it was on account of slavery; it was because their ancestors were brought to this country as chattels and not as persons. But slavery being now abolished, and all men born on our soil being now made free by our organic law, the reason of the original exclusion no longer exists. With the extinction of slavery, its incidents and disabilities are necessarily extinguished. I know it is said that the sole effect of the constitutional amendment was to release him from the control of his master—nothing more. But it seems to me that this is a narrow view of the subject. Freedom is a fact if it is anything—a reality, not a mere shadow without substance.

But the freedman is not the only party interested in this question. I consider the political enfranchisement of such of

the freedmen as shall become capable of a judicious and intelligent use of the right of suffrage as very materially connected with the welfare of the white man and of the nation. The great argument against emancipation was the danger to be apprehended from the want of homogeneity between the two races. I shall not attempt to deny that there was force in the argument. But the deed is done. Slavery has been abolished. It is for the future we are required to provide. Four million colored slaves have been emancipated—forever emancipated. They are in our midst, and we cannot help it. There may be danger in giving to them the elective franchise, but is there not equal if not greater danger in withholding it from them? They may not be homogeneous as voters, but will they be any less so as freedmen deprived of the right to vote? Is there not more danger in the want of homogeneousness in the endowment of political rights than in race or color? May they not claim the right to vote at some time? Is there no danger here? If we tax them, will they always peaceably submit to it without representation? Will they always yield unresisting obedience to a government imposed upon them without their consent? Will they have courage enough to bear arms in our defence, and to die in our defence, as they have done recently, and yet be incapable of exerting equal courage and determination in asserting their own rights, real or imaginary? Remember, they are four millions now—more in numbers than our fathers were when they fought the battles of the Revolution and established our independence as a nation. There may be danger in the direction indicated, but is there not, I repeat, equal, if not greater, danger in the contrary direction?

Now, I know that it has been said that any attempt to elevate the negro to an equality with the white man at the polls will certainly provoke a conflict with the white voter; that the white man will submit to no such humiliation. Where is the humiliation? Can there be any humiliation in granting to any and to every human being what he is worthy of receiving or what he is entitled to receive? Nay, sir. The degradation, I think, would consist in withholding it from him. Besides, sir, I suppose the white man would be no more humiliated by the equality of the negro at the ballot-box than he would be by equality at the bar of a court of justice. There ought to be, there is in truth, no good reason why justice to the negro should provoke the hostility of the white man, but there would be reason in the revolt of the former if the latter should be guilty of injustice to him. It may be impossible sometimes

to give practical effect to abstract principles of right and justice, but wherever it is possible to do so we ought not to fear evil consequences from doing it. What is right is always expedient if it is practicable.

But, Mr. President, I may as well notice this outcry against negro equality a little more particularly. It is an unmeaning clamor, addressed to the passions and prejudices of the unthinking rather than the respectful consideration of the statesman. Will you, it is frequently asked, will you make the negro equal to the white man? Well, sir, what does that mean? If it were possible to make the negro fully equal to the white man—equal in virtue, in knowledge; equal in all the attributes of our common human nature—why should it not be done? And, if he were really and truly made our equal, what would we have to complain of? It would take away the grounds of complaint. And, if the elective franchise really had any such wondrous power of transmutation and refinement of the negro, why should it not be bestowed upon him? If the power to vote would really make the negro equal to us, we ought to desire it to be given to him, for it is his inequality with us of which we complain. It would at once remove the apple of discord which has been so long disturbing the peace of the nation. But unfortunately it could have no such effect. Equality of civil and political rights could have but little influence on the social relations of the races.

Why, sir, the negro has an equal right to breathe the same vital air which we do; and he does breathe it equally with us; and it is equally necessary to the life of us all. Does that prove the social equality of the races? The right of suffrage is the vital principle of republican institutions, but its equal enjoyment by the white man and the black man does not and cannot in any wise change the personal identity of either or affect their social relations. Social relations cannot be regulated by law. They are beyond its power. They are not the legitimate subject of legal regulation. Social equality is a matter of taste, of feeling, and of every man's unfettered sense of propriety. The idea that because a negro can vote he is thereby placed on a social equality with the white man is supremely ridiculous. The idle, vicious, dissolute, dishonest white man votes; am I thereby placed under any obligation to acknowledge his social equality, or any other kind of personal equality? Is he, therefore, my equal? I may not and ought not to associate with him at all, nor will the law compel me to do it. Mr. President, such arguments are intended for other ears than ours. I am

willing they shall go to those for whom they are intended, assured that the good sense of the people will readily distinguish between what is artfully addressed to their prejudices and passions and what shall justly challenge their enlightened judgment.

Akin to this class of objection is another even more trivial. I allude to the intermarriage and miscegenation of the races. It admits of the same reply. These also are matters of taste and feeling. And I have this further remark to make about it, that if any white man should ever so far forget all the instincts of nature and all sense of propriety as to intermarry with a negress, I would say, Heaven help the negress! She would certainly have the harder part of the bargain. But how could the elective franchise affect this matter? It imposes no obligation on the races to intermarry. It holds out no inducements to do it. There is no possible relation between the elective franchise and such intermarriage. It leaves the two races, in that respect, precisely where they now are. Moreover, it creates no barrier to the interposition of legislative prohibitions against such intermarriage. Every State, I suppose, has statutory provisions inhibiting the marriage relation between persons within certain degrees of kindred. The same policy might be observed in reference to these races, if the good of society should render it necessary. On the question of illegitimate miscegenation I need only refer to the census. The Southern mulatto furnishes a conclusive answer to the argument on miscegenation. There has been brutality in both races. But in proportion as we shall elevate the negro, and increase his self-respect by extending to him the rights of man, these instincts and evidences of lechery and brutality will disappear. In my judgment, one of the most beneficial results of the abolition of slavery will be the decline of miscegenation.[1]

Slavery has been abolished, not by the will or the wisdom of man, but by the folly of its friends and the providence of God. Shall we superinduce a repetition of the sanguinary history of the last five years in another form? Shall we lay the foundation of another insurrection? I think I may confidently anticipate increasing agitation in this hall, and in all the councils of the country, and through every avenue reaching the public mind until the political enfranchisement of the negro in this District is accomplished. "The tide has set that way." It may ebb, but it will flow again as ceaseless as the sea. For the sake of the public peace, therefore; to avoid a conflict as

[1] This prophecy has been strikingly fulfilled.

irrepressible as that through which we have passed; to prevent the sorrows and desolations of another civil war; to complete the harmony and symmetry of our political system, and reconcile the logical demands of our cherished principles of civil and political liberty by exhibiting a practical recognition of the Declaration of Independence, let the experiment be made. Our race can well afford to make it. It imperils none of our rights. It curtails none of our privileges or power. It cannot appeal to our fears, but it does challenge our magnanimity. If it fail, then the strife will be ended and the question forever settled. If it succeed, who is there so basely recreant to the high behests of his own humanity as to say he would not rejoice?

Sir, we are admonished against the radicalism of the times. Perhaps there is some necessity for the admonition. But let us not be so cautious as to err in the opposite direction. This is an age of progress—progress of ideas, of science, of philosophy, of civilization, of law, of liberty. The truth does not change, the fundamental principles of government as proclaimed by our fathers may not change, but their application may be made more complete. It would be unwise, it would be ludicrous, to stand still, steadfastly adhering to the same policies and measures which were appropriate to the radically different condition of affairs existing a century ago. Slavery is abolished. It is forever prohibited by our organic law. Shall our feelings, our prejudice, our policy, our laws relating to the freedman be the same now as when he was a slave?

"Tempora mutantur, et nos in illis mutamur."[1]

The only worthy interpretation of the tremendous conflict which has just convulsed the nation, but which has been crowned with such resplendent victory, is progress—progress especially in the principles of human freedom. Let us not refuse the providential hand extended to lead us onward and upward toward a more exalted destiny. The great rebellion proclaimed that slavery was to be the chief corner-stone of its treasonable organization. And thus it was a revolt not only against legitimate human authority, but it was also a rebellion against the law of God. The result is announced by a fundamental decree of universal emancipation. This revolution will not stop there. It has awakened a spirit that will never slumber again until all laws and all statesmen shall recognize the authority of the precept which was uttered by the divine Law-giver on the mount more than eighteen hundred years ago in tones that, however

[1] "Times change and we change with them."

gentle and sweet, have sounded along down through the successive centuries, commanding an eager responsive echo from every liberal human heart: "Therefore, all things whatsoever ye would that men should do to you, do ye even so to them"; which was republished, in effect, by the great apostle in the midst of Mars hill: "And hath made of one blood all nations of men for to dwell on the face of the earth," and which, at last, was essentially incorporated into the great national charter of American independence at Philadelphia. In America this Christian principle of humanity and freedom first received a legal definition and found a practical political recognition. In America let it have its complete and glorious consummation.

Action on the bill was postponed owing to the illness of Senator Morrill, who had the bill in charge, and the radical leaders, knowing that the President would reject the measure, and fearing that they would not be able to override the veto, deferred its consideration until the next session, by which time they hoped that the voice of the people in the elections to the succeeding Congress would have given a clear mandate to the national legislature to take this forward step toward removing race disability in the United States.

This question came immediately to the front in the following session of Congress. As soon as the organization of the Senate was completed (December 3, 1866) Charles Sumner [Mass.] brought forward the bill which had been postponed from the previous session. Discussion upon it, however, was postponed.

Equal Suffrage in the District of Columbia[1]

[Including Negro and Woman Suffrage]

Senate, December 10, 1866-January 8, 1867

On December 10 Senator Morrill introduced the measure in a speech of considerable length. He called attention to the fact that since the last session had closed a vote had been taken to find the sentiment of the citizens

[1] Compiled from the "History of the Thirty-ninth Congress" by William H. Barnes, 1868.

of the District on the question with the result that some 6,500 ballots had been cast against it, and only 30 or 40 in its favor.

"But," said the Senator, "this is a matter affecting the capital of the nation, one in which the American people have an interest, as indirectly, at least, touching the country at large. What the national Congress pronounce here as a matter of right or expediency, or both, touching a question of popular rights, may have an influence elsewhere for good or for evil. We can not well justify the denial of the right of suffrage to colored citizens on the protest of the voters of the corporation of Washington. Our action should rest on some recognized general principle, which, applied to the capital of the nation, would be equally just applied to any of the political communities of which the nation is composed."

In closing his speech Senator Morrill remarked:

"In a nation of professed freemen, whose political axioms are those of universal liberty and human rights, no public tranquillity is possible while these rights are denied to portions of the American people. We have taken into the bosom of the Republic the diverse elements of the nationalities of Europe, and are attempting to mold them into national harmony and unity, and are still inviting other millions to come to us. Let us not despair that the same mighty energies and regenerating forces will be able to assign a docile and not untractable race its appropriate place in our system."

Waitman T. Willey [W. Va.] wished to restore the educational qualification.

"There ought to be some obligation, either in our fundamental laws in the States, or somewhere, by some means requiring the people to educate themselves, and if this can be accomplished by disqualifying those who are not educated for the exercise of the right of suffrage, thus stimulating them to acquire a reasonable degree of education, that of itself, it seems to me, would be a public blessing."

"I am against this qualification of reading and writing," said HENRY WILSON [Mass.]. "I never did believe in it. I do not believe in it now. I voted against it in my own State, and I intend to vote against it here. There was a time when

I would have taken it, because I did not know that we could get anything more in this contest, but I think the great victory of manhood suffrage is about achieved in this country."

"Reading and writing, as a qualification for voting," said SAMUEL C. POMEROY [Kan.], "might be entertained in a State where all the people were allowed to go to school and learn to read and write, but it seems to me monstrous to apply it to a class of persons in this community who were legislated away from school, to whom every avenue of learning was shut up by law."

EDGAR COWAN [Pa.] proposed to amend the bill by striking out the word "male" before the word "person," that females might enjoy the elective franchise. "I propose to extend this privilege," said he, "not only to males, but to females as well; and I should like to hear even the most astute and learned Senator upon this floor give any better reason for the exclusion of females from the right of suffrage than there is for the exclusion of negroes.

"If you want to widen the franchise so as to purify your ballot-box, throw the virtue of the country into it; throw the temperance of the country into it; throw the purity of the country into it; throw the angel element—if I may so express myself—into it. [Laughter.] Let there be as little diabolism as possible, but as much of the divinity as you can get."

On the following day, Henry B. Anthony [R. I.] advocated Mr. Cowan's amendment.

"I suppose that the Senator from Pennsylvania introduced this amendment rather as a satire upon the bill itself, or, if he had any serious intention, it was only a mischievous one to injure the bill. But it will not probably have that effect, for I suppose nobody will vote for it except the Senator himself, who can hardly avoid it, and I, who shall vote for it because it accords with a conclusion to which I have been brought by considerable study upon the subject of suffrage."

After having answered objections against female suffrage, Senator Anthony remarked in conclusion:

"I should not have introduced this question; but as it has been introduced, and I intend to vote for the amendment, I desire to declare here that I shall vote for it in all seriousness, because I think it is right. The discussion of this subject is not

confined to visionary enthusiasts. It is now attracting the attention of some of the best thinkers in the world, both in this country and in Europe; and one of the very best of them all, John Stuart Mill, in a most elaborate and able paper, has declared his conviction of the right and justice of female suffrage. The time has not come for it, but the time is coming. It is coming with the progress of civilization and the general amelioration of the race, and the triumph of truth, and justice, and equal rights."

George H. Williams [Ore.] opposed the pending amendment.

"To extend the right of suffrage to the negroes in this country I think is necessary for their protection; but to extend the right of suffrage to women, in my judgment, is not necessary for their protection. Wide as the poles apart are the conditions of these two classes of persons. The sons defend and protect the reputation and rights of their mothers; husbands defend and protect the reputation and rights of their wives; brothers defend and protect the reputation and rights of their sisters; and to honor, cherish, and love the women of this country is the pride and the glory of its sons.

"When the women of this country come to be sailors and soldiers; when they come to navigate the ocean and to follow the plow; when they love to be jostled and crowded by all sorts of men in the thoroughfares of trade and business; when they love the treachery and the turmoil of politics; when they love the dissoluteness of the camp, and the smoke of the thunder, and the blood of battle better than they love the affections and enjoyments of home and family, then it will be time to talk about making the women voters; but, until that time, the question is not fairly before the country."

Benjamin F. Wade [O.], who had introduced the original bill, putting it upon the most liberal principle of franchise, said:

"The question of female suffrage had not then been much agitated, and I knew the community had not thought sufficiently upon it to be ready to introduce it as an element in our political system. While I am aware of that fact, I think it will puzzle any gentleman to draw a line of demarcation between the right of the male and the female on this subject. Both are liable to

all the laws you pass; their property, their persons, and their lives are affected by the laws. Why, then, should not the females have a right to participate in their construction as well as the male part of the community? There is no argument that I can conceive or that I have yet heard that makes any discrimination between the two on the question of right.

"I shall give a vote on this amendment that will be deemed an unpopular vote, but I am not frightened by that. I have been accustomed to give such votes all my life almost, but I believe they have been given in the cause of human liberty and right and in the way of the advancing intelligence of our age; and, whenever the landmark has been set up, the community have marched up to it. I think I am advocating now the same kind of a principle, and I have no doubt that sooner or later it will become a fixed fact, and the community will think it just as absurd to exclude females from the ballot-box as males."

Richard Yates [Ill.] opposed the pending amendment, deeming it a mere attempt on the part of the Senator from Pennsylvania to embarrass this question.

"Logically, there are no reasons in my mind which would not permit women to vote as well as men, according to the theory of our government. But that question, as to whether ladies shall vote or not, is not at issue now. I confess that I am for universal suffrage, and, when the time comes, I am for suffrage by females as well as males."

"While I will vote now," said SENATOR WILSON, "or at any time, for woman suffrage as a distinct, separate measure, I am unalterably opposed to connecting that question with the pending question of negro suffrage. The question of negro suffrage is now an imperative necessity; a necessity that the negro should possess it for his own protection; a necessity that he should possess it that the nation may preserve its power, its strength, and its unity."

Reverdy Johnson [Md.] opposed the pending amendment.

"I think if it was submitted to the ladies—I mean the ladies in the true acceptation of the term—of the United States, the privilege would not only not be asked for, but would be rejected. I do not think the ladies of the United States would agree to enter into a canvass and undergo what is often the degradation of seeking to vote, particularly in the cities, getting up to the

polls, crowded out and crowded in. I rather think they would feel it, instead of a privilege, a dishonor."

Senator Johnson was unwilling to vote for the amendment with a view to defeat the bill.

"I have lived to be too old, and have become too well satisfied of what I think is my duty to the country to give any vote which I do not believe, if it should be supported by the votes of a sufficient number to carry the measure into operation, would redound to the interests and safety and honor of the country."

"The women of America," said FREDERICK T. FRELINGHUYSEN [N. J.], "vote by faithful and true representatives, their husbands, their brothers, their sons; and no true man will go to the polls and deposit his ballot without remembering the true and loving constituency that he has at home. More than that, sir, ninety-nine out of a hundred, I believe nine hundred and ninety-nine out of a thousand, of the women in America do not want the privilege of voting in any other manner than that which I have stated. In both these regards there is a vast difference between the situation of the colored citizens and the women of America.

"The learned and eloquent Senator from Pennsylvania said yesterday with great beauty that he wanted to cast the angel element into the suffrage system of America. Sir, it seems to me that it would be ruthlessly tearing the angel element from the homes of America; and the homes of the people of America are infinitely more valuable than any suffrage system. It will be a sorry day for this country when those vestal fires of piety and love are put out."

On the next day, December 12, the discussion being resumed, B. Gratz Brown [Mo.] advocated the amendment.

"I stand for universal suffrage, and, as a matter of fundamental principle, do not recognize the right of society to limit it on any ground of race, color, or sex. I will go further and say that I recognize the right of franchise as being intrinsically a natural right; and I do not believe that society is authorized to impose any limitation upon it that does not spring out of the necessities of the social state itself."

Believing "that the metaphysical always controls the practical in all the affairs of life," Senator Brown gave the "abstract grounds" upon which he deemed the right of woman to the elective franchise rested. Coming finally to the more practical bearings of the subject, he answered the objection, that, "if women are entitled to the rights of franchise, they would correspondingly come under the obligation to bear arms."

"Are there not large classes, even among men in this country, who are exempt from service in our armies for physical incapacity and for other reasons? And, if exemptions which appertain to males may be recognized as valid, why not similar exemptions for like reasons when applied to females? Does it not prove that there is nothing in the argument so far as it involves the question of right? There are Quakers and other religious sects; there are ministers of the Gospel; persons having conscientious scruples; indeed, all men over a certain age who, under the laws of many of the States, are released from service of that character. Indeed, it is the boast of this Republic that ours is a volunteer military establishment. Hence, I say, there is nothing in the position that, because she may not be physically qualified for service in your army, therefore you have the right to deny her the franchise on the score of sex."

In closing his extended speech Senator Brown remarked:

"Even though I recognize the impolicy of coupling these two measures in this manner and at this time, I shall yet record my vote in the affirmative as an earnest indication of my belief in the principle, and my faith in the future."

Garrett Davis [Ky.] made a protracted speech against both the amendment and the original bill.

"The great God who created all the races, and in every race gave to man woman, never intended that woman should take part in national government among any people, or that the negro, the lowest, should ever have coördinate and equal power with the highest, the white race, in any government, national or domestic."

"When it is necessary," said WILLIAM SPRAGUE [R. I.], "that woman shall vote for the support of liberty and equality

I shall be ready to cast my vote in their favor. The black man's vote is necessary to this at this time. Do not prostrate all the industrial interests of the North by a policy of conciliation and of inaction. Delays are dangerous, criminal. When you shall have established, firmly and fearlessly, governments at the South friendly to the Republic; when you shall have ceased from receiving terms and propositions from the leaders of the Rebellion as to their reconstruction; when you shall have promptly acted in the interest of liberty, prosperity will light upon the industries of your people, and panics, commercial and mercantile revolutions will be placed afar off; and never, sir, until that time shall have arrived. And, as an humble advocate of all industrial interests of the free people of the North, white and black, and as an humble representative of these interests, I urge prompt action to-day, to-morrow, and every day until the work has been completed. Let no obstacle stand in the way now, no matter what it may be. You will save your people from poverty and free principles from a more desperate combat than they have yet witnessed. Ridicule may be used in this chamber, calumny may prevail through the country, and murder may be a common occurrence South to those who stand firmly thus and who advocate such measures. Let it be so; for greater will be the crowning glory of those who are not found wanting in the day of victory. Let us, then, press to the vote; one glorious step taken, then we may take others in the same direction."

"The objection," said CHARLES R. BUCKALEW [Pa.], "which I have to a large extension of suffrage in this country, whether by Federal or State power, is this: that thereby you will corrupt and degrade elections, and probably lead to their complete abrogation hereafter. By pouring into the ballot-boxes of the country a large mass of ignorant votes, and votes subjected to pecuniary or social influence, you will corrupt and degrade your elections and lay the foundation for their ultimate destruction."

"After giving some considerable reflection to the subject of suffrage," said JAMES R. DOOLITTLE [Wis.], "I have arrived at the conclusion that the true base or foundation upon which to rest suffrage in any republican community is upon the family, the head of the family; because in civilized society the family is the unit, not the individual."

The vote being taken on Senator Cowan's amendment conferring the elective franchise upon women the result was: yeas, 9; nays, 37.

James Dixon [Conn.] then moved to amend the bill by adding a proviso:

"That no person who has not heretofore voted in this District shall be permitted to vote unless he shall be able, at the time of offering to vote, to read and also write his own name."

"I would deny to no man," said SENATOR DIXON, "the right of voting solely on account of his color; but I doubt the propriety of permitting any man to vote, whatever his race or color, who has not at least that proof of intelligence which the ability to read and write furnishes."

"What is the test?" asked WILLARD SAULSBURY [Del.]. "A person who can read and write. Is it his name, or only read and write?"

"His name," said one.

"Read and write his name!" continued SENATOR SAULSBURY. "A wonderful amount of education to qualify a man for the discharge of the high office and trust of voting! Great knowledge of the system of government under which we live does this impart to the voter!"

"If this were really an intelligence qualification," said MR. COWAN, "I do not know what I might say; but of the fact that the ability of a man merely to write his own name and read it, is intelligence, I am not informed. To write a man's name is simply a mechanical operation. It may be taught to anybody, even people of the most limited capacity, in twenty minutes; and to read it afterward certainly would not be very difficult."

"I understand the amendment to include," said SENATOR WILLEY, "the qualification of reading generally, and also of writing his name! two tests, one the reading generally, and the other the writing of his own name."

"Where is its precision?" asked SENATOR COWAN; "where is it to end, and who shall determine its limits? I will put the case of a board belonging to the dominant party, and suppose they have the statute amended by my honorable friend from Connecticut before them, and a colored man comes forward and proposes to vote. They put to him the question: 'Can you write your name and read?' 'Oh, yes.' 'Well, let us see you try it.' He then writes his name and he reads it, and he is admitted if he is understood to belong to that party. But suppose, as has recently happened, that this dark man should come to the conclusion to vote on the other side, and it were known that he meant to vote on the other side, what kind of a chance would he

have? Then the man of the dominant party, who desires to carry the election, says: 'You shall not only write your name and read it, but you must read generally. I have read the senatorial debates upon this question, and the honorable Senator from West Virginia, who originated this amendment, was of opinion that a man should read generally. Now, sir, read generally, if you please.' 'Well,' says he, 'what shall I read?' 'Read a section of the "Novum Organum," or some other most difficult and abstruse thing, or a few sections from Okie's "Physiology."' "

On the 13th of December, the last day of the discussion, Senator Anthony occupied the chair during a portion of the session, and Lafayette S. Foster [Conn.], the President *pro tem.*, took the floor in favor of the amendment proposed by his colleague.

"The honorable Senator from Pennsylvania, from the manner in which he treats this subject, I should think, was now fresh from his reading of 'Much Ado about Nothing,' and was quoting Mr. Justice Dogberry, who said: 'To be a well-favored man is the gift of fortune, but to read and write comes by nature.' The Senator from Pennsylvania and others seem inclined to say: 'Away with writing and reading till there is need of such vanity.' I believe that the idea of admitting men to the elective franchise who can neither read nor write is going backward and downward.

"Who are the men who come forward to deposit their ballots in the ballot-boxes? They are the people of this country, to whom all questions must ultimately go for examination and correction. They correct the mistakes which we make, and which Congress makes, and which the Supreme Court makes. The electors at the ballot-boxes are the grand court of errors for the country. Now, sir, these Senators propose to allow men who cannot read and write to correct our mistakes, to become members of this high court of errors.

"The honorable Senator from Massachusetts [Mr. Wilson] says he wants to put the ballot into the hands of the black man for his protection. If he can not read the ballot, what kind of protection is it to him. A written or printed slip of paper is put into the hands of a man, black or white, and, if he can not read it, what is it to him? What does he know about it? What can he do with it? How can he protect himself by it? As well might the honorable Senator from Massachusetts put in the hands of

a child who knew nothing of firearms a loaded pistol with which to protect himself against his enemies. The child would be much more likely to endanger himself and his friends by the pistol than to protect himself. A perfectly ignorant man who cannot read his ballot is much more likely to use it to his own detriment, and to the detriment of the country, than he is to use it for the benefit of either."

"The argument in favor of making the right to vote universal," said SENATOR FRELINGHUYSEN, in making a second speech upon the question, "is that the ballot itself is a great education; that, by its encouraging the citizen, by its inspiring him, it adds dignity to his character, and makes him strive to acquire learning. Secondly, that, if the voting depended on learning, no inducement is extended to communities unfavorable to the right of voting in the colored man to give him the opportunity to learn; they would rather embarrass him to prevent his making the acquisition, unless they were in favor of his voting; while, if voting is universal, communities, for their own security, for their own protection, will be driven to establish common schools, so that the voter shall become intelligent."

Senator Wilson pursued a similar line of thought:

"Allow the black men to vote without this qualification and they will demand education, school-houses will rise, school-teachers will be employed, these people will attend the schools, and the cause of education will be carried forward in this District with more rapidity than at any other period in its history. Give the negro the right of suffrage, and before a year passes round you will see these men, who voted that they should not have the right to vote, running after them and inquiring after the health of their wives and children. I do not think the Senator from Kentucky [Mr. Davis] will be examining their pelvis or shins, or making speeches about the formation of their lips, or the angle of their foreheads on the floor of the Senate. You will then see the Democracy, with the keen scent that always distinguishes that party, on the hunt after the votes of these black men [laughter]; and, if they treat them better than the Republicans do, they will probably get their votes, and I hope they will.

"And it will be just so down in these rebel States. Give the negroes of Virginia the right to vote, and you will find Wise and Letcher and the whole tribe of the secessionists undertaking to prove that, from the landing at Jamestown in 1607, the first

families of the Old Dominion have always been the champions and the special friends of the negroes of Old Virginia, and that there is a great deal of kindred between them [laughter]; that they are relations, brethren; that the same red blood courses in the veins of many of them. They will establish all these things, perhaps by affidavits. [Laughter.] And I say to you, sir, they will have a good opportunity to get a good many of their votes, for in these respects they have the advantage of us poor Republicans."

Of the pending amendment Thomas A. Hendricks [Ind.] said:

"I propose to vote for it, not because I am in favor, as a general proposition, of an intelligence qualification for the right to vote, but because in this particular instance I think it to be proper to prescribe it."

"I shall vote," said HENRY S. LANE [Ind.], "to enfranchise the colored residents of this District because I believe it is right, just, and proper; because I believe it is in accordance with those two grand central truths around which cluster every hope for redeemed humanity—the common fatherhood of God above us and the brotherhood of universal mankind."

"The bill for impartial suffrage in the District of Columbia," said CHARLES SUMNER [Mass.], "concerns directly some twenty thousand colored persons, whom it will lift to the adamantine platform of equal rights. If it were regarded simply in its bearings on the District it would be difficult to exaggerate its value; but when it is regarded as an example to the whole country under the sanction of Congress, its value is infinite. It is in the latter character that it becomes a pillar of fire to illumine the footsteps of millions. What we do here will be done in the disorganized States. Therefore we must be careful that what we do here is best for the disorganized States.

"When I am asked to open the suffrage to women, or when I am asked to establish an educational standard, I can not, on the present bill, simply because the controlling necessity under which we act will not allow it. By a singular Providence we are now constrained to this measure of enfranchisement for the sake of peace, security, and reconciliation, so that loyal persons, white or black, may be protected and that the Republic may live. Here, in the District of Columbia, we begin the real work of reconstruction by which the Union will be consolidated forever."

The question was taken upon Mr. Dixon's amendment, which was lost, eleven voting for, and thirty-four against, the proposition. The vote was then taken upon the bill to regulate the elective franchise in the District of Columbia. It passed the Senate, 32 voting in the affirmative, and 13 in the negative.

On the following day, December 14, the bill came before the House of Representatives and passed without discussion, 118 voting in the affirmative and 46 in the negative.

On the 7th of January, 1867, President Johnson returned the bill to the Senate with his objections. The veto message was immediately read by the Secretary of the Senate.

The President's first objection to the bill was that it was not in accordance with the wishes of the people to whom it was to apply, they having "solemnly and with such unanimity" protested against it.

It seemed to the President that Congress sustained a relation to the inhabitants of the District of Columbia which was analogous to the relation of a legislature to the people of a State, and therefore that Congress "should have a like respect for the will and interests of its inhabitants."

Without actually bringing the charge of unconstitutionality against this measure the President declared "that Congress is bound to observe the letter and spirit of the Constitution as well in the enactment of local laws for the seat of government as in legislation common to the entire Union."

The Civil Rights bill having become a law it was, in the opinion of the President, a sufficient protection for the negro. "It can not be urged," said he, "that the proposed extension of suffrage in the District of Columbia is necessary to enable persons of color to protect either their interests or their rights."

The President argued that the negroes were unfitted for the exercise of the elective franchise, and "can not be expected correctly to comprehend the duties and responsibilities which pertain to suffrage."

"It follows, therefore, that, in admitting to the ballot-box a new class of voters not qualified for the exercise of the elective franchise, we weaken our system of government instead of adding to its strength and durability. It may be safely assumed that no political truth is better established than that such indiscriminate and all-embracing extension of popular suffrage must end at last in its destruction."

The President occupied a considerable portion of his message with a warning to the people against the dangers of the abuse of legislative power. He quoted from Judge Story that the legislative branch may absorb all the powers of the government. He quoted also the language of Mr. Jefferson that one hundred and seventy tyrants are more dangerous than one tyrant.

The statements of the President in opposition to the bill were characterized by Senator John Sherman [O.] as "but a *résumé* of the arguments already adduced in the Senate," hence but little effort was made by the friends of the measure to reply.

Senator Sherman, in noticing the President's statements in regard to the danger of invasions by Congress of the just powers of the executive and judicial departments, said:

"I do not think that there is any occasion for such a warning, because I am not aware that in this bill Congress has ever assumed any doubtful power. The power of Congress over this District is without limit, and, therefore, in prescribing who shall vote for mayor and city council of this city, it cannot be claimed that we usurp power or exercise a doubtful power.

"There can be but little danger from Congress; for our acts are but the reflection of the will of the people. The recent acts of Congress at the last session, those acts upon which the President and Congress separated, were submitted to the people, and they decided in favor of Congress. Unless, therefore, there is an inherent danger from a republican government, resting solely upon the will of the people, there is no occasion for the warning of the President. Unless the judgment of one man is better than the combined judgment of a great majority, he should have respected their decision, and not continue a controversy in which our common constituency have decided that he was wrong."

Abolition of Peonage

An act abolishing peonage in New Mexico was approved by the President on March 2 1867.

Howard University

An act incorporating Howard University in Washington, D. C., an institution intended for the normal, collegiate, professional, and agricultural education of negroes, was approved on the same day.

The last speech before taking the vote was made by Senator Doolittle.

"Men speak of universal negro suffrage as having been spoken in favor of in the late election. There is not a State in this Union, outside of New England, which would vote in favor of universal negro suffrage. When gentlemen tell me that the people of the whole North, by anything that transpired in the late election, have decided in favor of universal, unqualified negro suffrage, they assume that for which there is no foundation whatever."

The question being taken whether the bill should pass over the President's veto, the Senate decided in the affirmative by a vote of 29 yeas to 10 nays.

The next day, January 8, 1867, the bill was passed over the veto by the House of Representatives, without debate, by a vote of 113 yeas to 38 nays. The Speaker then declared that, notwithstanding the objections of the President of the United States, the act to regulate the elective franchise in the District of Columbia had become a law.

Equal Rights in the Territories

An act forbidding denial of the elective franchise in the Territories to any citizen on account of race, color, or previous condition of servitude was passed by Congress on January 14, 1867. Not being approved by the President, it became a law on the expiration of ten days, excluding Sunday.

Admission of Nebraska

An act admitting Nebraska into the Union on condition that there be in the State no denial of the elective franchise to any person, by reason of race or color, except Indians not taxed, was passed by Congress. This was vetoed by the President, and was passed over his veto by the Senate on February 8, and by the House on February 9, 1867.

CHAPTER II

Military Reconstruction by Congress

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IN his annual message at the opening of Congress on December 3, 1866, President Johnson spoke as follows upon the burning subject of reconstruction. The address, contrary to expectations, was moderate and judicially impartial in tone.

Beneficence, Not Power, the True Strength of Government

Second Annual Message of President Johnson

After rehearsing his actions in regard to reconstruction of the States lately in rebellion, and deploring the non-concurrence of Congress in them, leading to the continued absence from the national legislature of the representatives of ten States, more than one-fourth of the whole number, and the consequent perpetuation of discontent in the outlawed section, he combated the idea that there was any danger in restoring these States without any further guaranties, the two ideas, secession and slavery, which had divided the Union, having been forever destroyed, both practically by the war, and the latter legally by the Thirteenth Amendment.

In the admission of Senators and Representatives from any and all of the States, there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation; for this could not happen when the Constitution and the laws are enforced by a vigilant and faithful Congress. Each House is made the "judge of the elections, returns, and qualifications of its own members," and may, "with the concurrence of two-thirds, expel a member." When a Senator or Representative is refused admission as a member

for want of due allegiance to the Government, and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation, and the political power and moral influence of Congress are thus effectively exerted in the interests of loyalty to the Government and fidelity to the Union. If this anomalous condition is right now—if, in the exact condition of these States at the present time, it is lawful to exclude them from representation, I do not see that the question will be changed by the efflux of time. Ten years hence, if these States remain as they are, the right of representation will be no stronger; the right of exclusion will be no weaker.

The admission of loyal members from the now unrepresented States would consummate the work of restoration, and exert a most salutary influence in the reëstablishment of peace, harmony, and fraternal feeling. It would tend greatly to renew the confidence of the American people in the vigor and stability of their institutions. It would bind us more closely together as a nation, and enable us to show to the world the inherent and recuperative power of a Government founded upon the will of the people, and established upon the principles of liberty, justice, and intelligence. Our increased strength and enhanced prosperity would irrefragably demonstrate the fallacy of the arguments against free institutions drawn from our recent national disorders by the enemies of republican government. The admission of loyal members from the States now excluded from Congress, by allaying doubt and apprehension, would turn capital, now awaiting an opportunity for investment, into the channels of trade and industry. It would alleviate the present troubled condition of those States, and, by inducing emigration, aid in the settlement of fertile regions now uncultivated, and lead to an increased production of those staples which have added so greatly to the wealth of the nation and the commerce of the world. New fields of enterprise would be opened to our progressive people, and soon the devastations of war would be repaired, and all traces of our domestic differences effaced from the minds of our countrymen.

In our efforts to preserve "the unity of government which constitutes us one people," by restoring the States to the condition which they held prior to the rebellion, we should be cautious, lest, having rescued our nation from perils of threatened disintegration, we resort to consolidation, and, in the end, absolute despotism, as a remedy for the recurrence of similar troubles. The war having terminated, and with it all occasion

for the exercise of powers of doubtful constitutionality, we should hasten to bring legislation within the boundaries prescribed by the Constitution, and to return to the ancient landmarks established by our fathers for the guidance of succeeding generations. "The Constitution, which at any time exists until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all." "If, in the opinion of the people, the distribution or modification of the constitutional powers be, in any particular, wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation; for" "it is the customary weapon by which free governments are destroyed." Washington spoke these words to his countrymen when, followed by their love and gratitude, he voluntarily retired from the cares of public life. "To keep in all things within the pale of our constitutional powers, and cherish the Federal Union as the only rock of safety," were prescribed by Jefferson as rules of action to endear to his "countrymen the true principles of their Constitution, and promote a union of sentiment and action equally auspicious to their happiness and safety." Jackson held that the action of the general Government should always be strictly confined to the sphere of its appropriate duties, and justly and forcibly urged that our Government is not to be maintained nor our Union preserved "by invasions of the rights and powers of the several States. In thus attempting to make our general Government strong, we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves; in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each to move unobstructed in its proper constitutional orbit." These are the teachings of men whose deeds and services have made them illustrious, and who, long since withdrawn from the scenes of life, have left to their country the rich legacy of their example, their wisdom, and their patriotism. Drawing fresh inspiration from their lessons, let us emulate them in love of country and respect for the Constitution and the laws.

Most of the first two months of the session of Congress was occupied with discussion of the political condition of the South. The Radicals claimed that the spirit of rebellion still existed in the South, and pointed to numerous outrages against the loyalists, chiefly the

New Orleans "Massacre,"[1] as evidence of this. They therefore demanded reconstruction in a more drastic form than had hitherto been presented. With a majority sufficient to override every presidential veto, they determined to ignore the executive department of government except as the agent of the legislative department. This determination was expressed in the strongest and most direct form by Samuel L. Warner [Conn.] in a speech delivered in the House of Representatives on January 18, 1867. It was high time, he said, that Congress should take the matter of reconstruction entirely in its own hands. The work will never commence, he told the House, until you have declared, in the language of the Supreme Court, that the Executive, as commander-in-chief of the army and navy, can not exercise a civil function. He reviewed the reconstruction acts of the President in the light of usurping such a function, and plainly hinted at his impeachment if the usurpation continued.

Various drastic plans of reconstruction under the supreme control of Congress were proposed, which were referred to the Special Committee on Reconstruction. This committee, through Thaddeus Stevens [Pa.], its chairman, reported its bill on February 6. The bill, after sundry amendments, became the leading measure of the session. In its original form it declared:

"Whereas the pretended State governments of the late so-called Confederate States afford no adequate protection for life or property, but countenance and encourage lawlessness and crime; and, whereas it is necessary that peace and good order should be enforced in said so-called Confederate States until loyal State governments can be legally established; therefore be it enacted that said so-called Confederate States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed; and for that purpose Virginia shall constitute the first district, North Carolina and South Carolina the second district, Georgia, Alabama, and Florida the third district, Mississippi and Arkansas the fourth district, and Louisiana and Texas the fifth district."

[1] See Volume VII, page 458.

The subordinate provisions of the bill are thus summarized by Mr. Blaine in his "Twenty Years of Congress":

It was made the duty of the general of the army to assign to the command of each of said districts an officer not below the rank of brigadier-general, and to detail a sufficient force to enable such officer to perform his duties and enforce his authority within the district to which he was assigned. The protection of life and property, the suppression of insurrections, disorders, and violence, the punishment of all criminals and disturbers of the public peace, were entrusted to the military authority, with the power to allow civil tribunals to take jurisdiction and try offenders; and, if that was not sufficient in the officer's judgment, he was authorized to organize military commissions, "anything in the constitutions and laws of these so-called Confederate States to the contrary notwithstanding." It was further declared that all legislative acts or judicial processes to prevent the proceedings of such tribunals, and all interference by "said pretended State governments with the exercise of military authority under this act, shall be void and have no effect." The courts and judicial officers of the United States were forbidden to issue writs of *habeas corpus*, except under certain restrictions which further established the military authority over the people. Prompt trials were guaranteed to all persons arrested, cruel and unusual punishments were forbidden, and no sentence could be executed until it was approved by the officer in command of the district.

Military Reconstruction [1]

House of Representatives, February 7-13, 1867

On the following day, February 7th, Mr. Stevens introduced the discussion with a brief speech.

"This bill provides that the ten disorganized States shall be divided into five military districts, and that the commander of the army shall take charge of them through his lieutenants as governors, or you may call them commandants if you choose, not below the grade of brigadiers, who shall have the general supervision of the peace, quiet, and the protection of the people, loyal and disloyal, who reside within those precincts; and that to do so he may use, as the law of nations would authorize him to do, the legal tribunals wherever he may deem them competent; but they are to be considered of no validity *per se*, of no intrinsic force, no force in consequence of their origin, the question being wholly within the power of the conqueror, and to remain until that conqueror shall permanently supply their place with something else."

[1] This and the two succeeding debates in the chapter are compiled from the "History of the Thirty-ninth Congress" by William H. Barnes.

"Of all the various plans," said Augustus Brandegee [Conn.], "which have been discussed in this hall for the past two years, to my mind it seems the plainest, the most appropriate, the freest from constitutional objection, and the best calculated to accomplish the master aims of reconstruction. It begins the work of reconstruction at the right end, and employs the right tools for its accomplishment.

"The American people demand that we shall do something, and do it quickly. Already fifteen hundred men have been massacred in cold blood whose only crime has been loyalty to your flag. Thousands of loyal white men, driven like partridges over the mountains, homeless, penniless, to-day throng this capital. They crowd the avenues, they gather in these marble corridors, they look down from these galleries, and, with supplicating eye, ask protection from the flag that hangs above the Speaker's chair—a flag which has thus far unfurled its stripes but concealed the promise of its stars."

Francis C. LeBlond [Dem.], of Ohio, declared that the bill struck down every important provision in the Constitution.

"You have already inaugurated enough here to destroy any government that was ever founded. I do not predict anything; I do not desire war, but, Mr. Speaker, as one American citizen I do prefer war to cowardly submission to a total destruction of the fundamental principles of our Government."

William E. Finck [Dem.], of Ohio, talked in a similar vein.

"I declare it as my solemn conviction that no government can long continue to be free when one-third of its people and one-third of its States are controlled by military power."

John A. Bingham [O.], a moderate Republican, begged that the House "make haste slowly in the exercise of this highest possible power conferred by the Constitution upon Congress."

"For myself, sir, I am not going to yield to the proposition of the chairman of the committtee for a single moment, that one rood of the territory within the line of the ten States enumerated in this bill is conquered territory. The Government of the United States does not conquer any territory that is under the jurisdiction of the Constitution."

William Lawrence [O.] said:

"For myself I am ready to set aside by law all these illegal governments. They have rejected all fair terms of reconstruction. They have rejected the Constitutional amendments we have tendered them. They are engines of oppression against all loyal men. They are not republican in form or purpose. Let them not only be ignored as legal governments but set aside because they are illegal."

M. Russell Thayer [Penn.] said:

"This measure will be of brief duration, and will be followed, as I am informed, by other measures which will secure the permanent and peaceful restoration of these States to their proper and just position in the Union, upon their acceptance of such terms as are necessary for the future security of the country. When that is done, and when order is restored, and permanent protection is guaranteed to all the citizens of that section of the country, this measure will be abrogated and abandoned."

Samuel Shellabarger [O.] said:

"This measure, taken alone, is one which I could not support unaccompanied by provisions for the rapid and immediate establishment of civil government based upon the suffrages of the loyal people of the South. I could not support a military measure like this if it was to be regarded as at all permanent in its character. It is because it is entirely the initiative, because it is only the employment of the army of the United States as a mere police force, to preserve order until we can establish civil government based upon the loyal suffrages of the people, that I can support this measure at all. If it stood by itself I could not, with my notions of the possibility and practicability of establishing civil governments in the South, based upon loyal suffrage, vote for this bill."

Henry L. Dawes [Mass.] inquired:

"After the general of the army has, under this bill, assigned a competent and trustworthy officer to the duties prescribed is there anything to hinder the President of the United States, under virtue of his power as commander-in-chief, from removing that officer and putting in his place another of an opposite character, thus making the very instrumentality we provide one of terrible evil?"

John A. Griswold, who became the Republican candidate for Governor of New York the ensuing year, earnestly opposed the bill.

"By it we are proceeding in the wrong direction. For more than two years we have been endeavoring to provide civil governments for that portion of our country, and yet, by the provisions of this bill, we turn our backs on our policy of the last two years, and by a single stride proceed to put all that portion of the country under exclusively military control. For one, I prefer to stand by the overtures we have made to these people, as conditions of their again participating in the government of the country. We have already placed before them conditions which the civilized world has indorsed as liberal, magnanimous, and just. I regret exceedingly that those very liberal terms have not been accepted by the South, but I prefer giving those people every opportunity to exhibit a spirit of obedience and loyalty."

Henry J. Raymond [N. Y.] opposed the bill in a vigorous speech.

"Because we cannot devise anything of a civil nature adequate to the emergency it is urged that we must fly to the most violent measure the ingenuity of man could devise. Let me remind gentlemen that this has been the history of popular governments everywhere, the reason of their downfall, their decadence, and their death."

James A. Garfield [O.] indicated his support of the measure if it could be amended.

"But I call attention to the fact that from the collapse of the Rebellion to the present hour, Congress has undertaken to restore the States lately in rebellion by coöperation with their people, and that our efforts in that direction have proven a complete and disastrous failure."

Alluding to the fact that the Fourteenth Amendment had been submitted as the basis of reconstruction, General Garfield continued:

"The constitutional amendment did not come up to the full height of the great occasion. It did not meet all I desired in the way of guaranties to liberty, but, if the rebel States had adopted it as Tennessee did, I should have felt bound to let them in on the terms prescribed for Tennessee. I have been in favor of waiting to give them full time to deliberate and to act. They have deliberated. They have acted. The last one of the sinful ten has, at last, with contempt and scorn, flung back in our teeth the magnanimous offer of a generous nation. It is now our turn to act. They would not coöperate with us in building what they destroyed. We must remove the rubbish and build from the bottom."

Nathaniel Banks [Mass.] asked for deliberation and delay in the discussion.

"We might reach a solution in which the two Houses of Congress will agree, which the people of this country will sustain, and in which the President of the United States will give us his support. And, if we should agree on a measure satisfactory to ourselves, in which we should be sustained by the people, and the President should resist it, then we should be justified in dropping the subject of reconstruction and considering the condition of the country in a different sense."

The allusion of General Banks, says Mr. Blaine, though thus veiled, was understood to imply the possible necessity of impeaching the President.

John A. Kasson [Ia.] objected that the bill was too sweeping in its provisions, that it affected the loyally disposed in the South with the same severity as it did the disloyally disposed.

"Instead of erecting this great military power over people of some portions of the South who are, in fact, at peace and observing law and order, our rule should be so flexible that we may apply martial law wherever peace and law and order do not prevail, without imposing it upon people whose subordination to the law renders military rule unnecessary."

He therefore proposed, as a substitute for the pending measure, "A bill to establish an additional article of war for the complete suppression of the insurrection against the United States." This provided for a division of the rebel territory into military districts, as did the original bill, and authorized commanders to declare martial law wherever it should be necessary for the "complete suppression of violence and disorder."

James M. Ashley [O.] moved an amendment providing for the restoration to loyal owners of property confiscated by the rebel government, and providing that military government should cease so soon as the people of the rebel States should adopt State constitutions securing to all citizens equal protection of the laws, including the right of the elective franchise, and should ratify the proposed amendment to the Constitution.

Mr. Raymond thought that on account of the great diversity of opinion the whole subject should be referred to a select committee who should be instructed to report within three or four days a bill which should "provide temporarily for the protection of rights and the preservation of the peace in the States lately in rebellion, and also for the speedy admission of those States to their relations in the Union upon the basis of the constitutional amendment." Thus he hoped a result could be reached which "would command the support of Congress and of the country, and the approval, or at least the assent, of the Executive."

George S. Boutwell [Mass.] remarked that, previous propositions having been referred to the Committee on Reconstruction, they had agreed upon the bill before the House with a unanimity which no other report had ever obtained, nor had any bill submitted by that committee ever been so carefully considered as this.

"To-day there are eight millions and more of people, occupying six hundred and thirty thousand square miles of the territory of this country, who are writhing under cruelties nameless in their character—injustice such as has not been permitted to exist in any other country in modern times; and all this because in this capital there sits enthroned a man who, so far as the executive department is concerned, guides the destinies of the Republic in the interest of rebels; and because, also, in those ten former States rebellion itself, inspired by the executive department of this Government, wields all authority, and is the embodiment of law and power everywhere. Until, in the South, this obstacle to reconstruction is removed, there can be no effectual step taken toward the reorganization of the Government."

William E. Niblack [Dem.], of Indiana, said:

"A well man needs no remedies; it is only when he is sick that you can require him to submit to medicinal applications. A country at peace does not need and ought not to allow martial law and other summary remedies incident to a state of war. The highest and dearest interests of this country are made subordinate to party exigencies and to special and particular interests. No wonder, then, that trade languishes and commerce declines."

On the 12th of February Mr. Bingham proposed an amendment making the restoration of the rebel States conditional upon their adoption of the constitutional amendment, and imposing upon them, meanwhile, the military government provided by the pending bill.

William D. Kelley [Pa.] advocated the bill as reported from the committee.

"This is little more than a mere police bill. The necessity for it arises from the perfidy of the President of the United States. Had he been true to the duties of his high office and his public and repeated pledges, there would have been no necessity for considering such a bill."

Said Horace Maynard [Tenn.]: "Throughout the region of the unreconstructed States the animating, life-giving principle of the rebellion is as thoroughly in possession of the country and of all the political power there to-day as it ever has been

since the first gun was fired upon Fort Sumter. The rebellion is alive. It is strong—strong in the number of its votaries, strong in its social influences, strong in its political power, strong in the belief that the executive department of this Government is in sympathy and community of purpose with them, strong in the belief that the controlling majority of the supreme judiciary of the land is with them in legal opinion, strong in the belief that the controversy in this body between impracticable zeal and incorrigible timidity will prevent anything of importance being accomplished or any legislation matured."

William B. Allison [Ia.] said: "It is because of the interference of the President of the United States with the military law which exists in those States that this bill is rendered necessary. In my judgment, if we had to-day an Executive who was desirous of enforcing the laws of the United States to protect loyal men in those States, instead of defending the rebel element, this bill would not be needed."

James G. Blaine [Me.] submitted an amendment providing that any one of the "late so-called Confederate States" might be restored to representation and relieved of military rule when, in addition to having accepted the constitutional amendment, it should have conferred the elective franchise impartially upon all male citizens over twenty-one years of age. Mr. Blaine maintained that the people in the elections of 1866 had declared in favor of "universal, or, at least, impartial suffrage as the basis of restoration."

On the 13th of February the discussion was continued. Said Burt Van Horn [N. Y.]:

"That the spirit of rebellion still lives and now thrives in the South no sane man can deny; that the determination exists to make their rebellion honorable and the loyalty of the South a lasting disgrace and a permanent badge of dishonor is equally true and cannot be denied. The leaders of the rebellion, being in power in all the ten States unreconstructed, still defy the authority of the United States to a great extent, and deny the power of the loyal millions of the country, who have saved our nation's life against their treason and rebellion, to prescribe terms of settlement of this great controversy, and deny also that they have lost any rights they had before the war or committed any treason against the Government."

Mr. Stevens said that the measure before the House, as it came from the Committee on Reconstruction, "was not intended as a reconstruction bill."

"It was intended simply as a police bill to protect the loyal men from anarchy and murder, until this Congress, taking a little more time, can suit gentlemen in a bill for the admission of all those rebel States upon the basis of civil government."

The various amendments proposed were designed by their authors to add a plan of reconstruction to the pending bill. Of these Mr. Boutwell remarked:

"Without examining into the details of the amendments, I have this to say: that any general proposition for the restoration of these States to the Union upon any basis not set forth in an act of Congress is fraught with the greatest danger to the future peace and prosperity of the Republic."

The amendments of Mr. Bingham and Mr. Blaine were finally combined by their authors. The combination made an amendment providing that the "States lately in insurrection" should be restored and relieved of military rule upon their ratification of the constitutional amendment and adoption of impartial suffrage. In order to "disentangle what seemed so much entangled," it was moved that the bill be recommitted to the Judiciary Committee, with instructions to report back immediately the amendment of Messrs. Blaine and Bingham.

Mr. Stevens then addressed the House, promising that in his state of health a few words must suffice. He felt a moral depression in viewing the condition of the party responsible for the doings of Congress.

"For the last few months Congress has been sitting here, and, while the South has been bleeding at every pore, Congress has done nothing to protect the loyal people there, white or black, either in their persons, in their liberty, or in their property."

Of his previous bill, which had been consigned to its tomb in being referred to the Committee on Reconstruction, Mr. Stevens said:

"I thought it was a good bill; I had labored upon it in conjunction with several committees of loyal men from the South for four months; I had altered and realtered it, written and rewritten it four several times, and found that it met the approbation of numerous societies and meetings in all the Southern States. It was, therefore, not altogether my fault if it was not so good a bill as might be found; but I did think that, after all, it was uncivil, unjust, indecent, not to attempt to amend it and make it better, to see whether we could do something to enable our friends in the Southern States to establish institutions according to the principles of republican government."

Mr. Stevens deprecated a disposition among his friends to be hypercritical in relation to mere verbal details.

"If I might presume upon my age, without claiming any of the wisdom of Nestor, I would suggest to the young gentlemen around me that the deeds of this burning crisis, of this solemn day, of this thrilling moment will cast their shadows far into the future and will make their impress upon the annals of our history, and that we shall appear upon the bright pages of that history just in so far as we cordially, without guile, without bickering, without small criticisms, lend our aid to promote the great cause of humanity and universal liberty."

The question being taken on the motion to refer to the Committee on the Judiciary it was decided in the negative—yeas, 69; nays, 94. The question was then taken on the passage of the bill. It passed the House—109 voting in the affirmative, and 55 voting in the negative.

When the vote was announced Mr. Stevens said:

"I wish to inquire, Mr. Speaker, if it is in order for me now to say that we indorse the language of good old Laertes, that Heaven rules as yet, and there are gods above."

The bill reached the Senate on the 13th of February. On the 14th George H. Williams [Ore.], who had the bill

in charge, gave notice that he would offer an amendment which was almost literally the same as that offered by Mr. Blaine in the House, but fearing that it might obstruct the passage of the bill he withdrew it. Reverdy Johnson, of Maryland, renewed the amendment with the remark that if it should be adopted it would make the bill very much less objectionable than it then was. Upon the Johnson amendment the debate then proceeded.

Military Reconstruction

Senate, February 13-18, 1867

William M. Stewart [Nev.] sustained the amendment. He said that the history of military bills was that they were always represented in the beginning as temporary measures.

"But suppose the President of the United States approved it, or the next President, if you please, should like the bill, and should veto your measure repealing it, or suppose a bare majority in either House of Congress should like it, then you could not repeal it. It may be years after you desire to get rid of it before you can. I say, when you use the military for temporary purposes you should give the people of the South a chance to comply with all the requirements which you propose to make. If, in the Blaine amendment, as it is called, there are not sufficient guaranties, not enough conditions, then put in more and make it sufficient."

Lot M. Morrill [Me.] thought Senator Stewart was unnecessarily troubled about military governments in the South.

"Are we, who have stood here for five long, bloody years and witnessed the exercise of military power over these rebel States, to be frightened now by a declaration of that sort? That is not the temper in which I find myself to-day. I have got so accustomed to the exercise of this authority——"

Senator Stewart.—"That is the trouble."

Senator Morrill.—"It has not been our trouble that we have exercised power; that has been the salvation of the nation. The trouble has arisen from our hesitation to exercise authority when authority was required."

John B. Henderson [Mo.] thought that the remedy proposed by him long before would be found the only cure for the ills of the nation.

"I offered twelve months ago a proposition, as a constitutional amendment, that was to give political rights to the negroes. Some Senators said it was a humbug, that it was Jacob Townsend's Sarsaparilla, or something to that effect; that it would amount to nothing. Now, I will ask what other protection can you give to a Union man in the Southern States than the ballot?"

On February 15 Senator Williams was anxious that the bill be passed at once so that, if it were vetoed by the President, time would remain before the close of the session to pass it over the veto.

James R. Doolittle [Wis.], an Administration Republican, protested against this haste in a measure of so great importance: "a bill that proposed to establish a military despotism over eight million people and a country larger than England, France, and Spain combined is to be pressed to a vote in this Senate the first day it is taken up for consideration."

Thomas A. Hendricks [Ind.] said:

"If the measure will not bear argument then let it be passed in the dark hours of the night. When despotism is established in this free land, that the best blood that ever ran in mortal veins was shed to make free, it is becoming that it be done when the sun does not shed its bright light upon the earth. It is a work for darkness and not for light."

Said Senator Henderson:

"Why, sir, the Southern States have presented nothing but a despotism for the last six years, and, since the rebel rule ceased, the President of the United States certainly has governed the Southern States without ever consulting Congress on the subject."

The Senate held an evening session for the consideration of the bill. Mr. Hendricks proposed to modify the pending amendment so as to provide for impartial rather

than universal suffrage. He thought that States should be allowed to limit suffrage. Willard Saulsbury [Del.] would not vote for this amendment because he was unwilling to "touch, taste, or handle the unclean thing." On the other hand Garrett Davis [Ky.] could vote for it because he preferred a "little unclean thing" to "a big one." Mr. Hendricks finally withdrew his amendment.

Mr. Doolittle hoped that the majority would seriously weigh this question because on it might depend whether the people of the South would accept the constitutional amendment, and accept the proposition necessary to get rid of military despotism.

"Make them," said Henry Wilson [Mass.].

Senator Doolittle.—"I ask, if that is the true language of a statesman to say to a people who have been educated in the largest liberty, a people in whose veins the Anglo-Saxon blood is flowing, which, for a thousand years, has been fighting against despotism of every form: 'You must accept this position at the point of the bayonet or forever live with the bayonet at your throats'? Is that the way to make peace?"

Senator Wilson.—"I think it is statesmanship to settle this question of reconstruction upon the solid basis of the perfect equality of rights and privileges among citizens of the United States. Colored men are citizens, and they have just as much right as this race whose blood has been fighting against oppression for a thousand years, as he says, and any settlement of this civil war upon any other basis than perfect equality of rights and privileges among citizens of the United States is not statesmanship; it is mere trifling; only keeping open questions for future controversy. Nothing is settled unless it is settled upon the basis of justice."

Senator Johnson.—"The amendment is objectionable to me only upon the ground that it denies to those States the right of coming into the Union entitled to representation until they extend the suffrage, because I believe the right of suffrage is a matter with which the Congress of the United States has no concern."

The opponents of the bill, by making long speeches, kept it from coming to a vote, the Senate adjourning

at three o'clock the next morning (Saturday, February 16).

Reassembling at the usual hour, the Senate was addressed by Senator Doolittle. Saying that the measure was founded on heresies which originated in Massachusetts, and had for their chief advocate Senator Charles Sumner, he acknowledged that these were now dominant in the country, and that he would be crucified by his former political associates for opposing them; yet nevertheless he would fight to the last against the bill since he believed that it was destruction of that spirit which gave life to the Republic.

The session lasted until six o'clock Sunday morning.

John Sherman [O.] offered a substitute for the whole bill, embodying the Blaine amendment of the House, and giving the President power to control assignments of army officers in the military districts. This was passed by a vote of 29 to 10.

Debate on the Sherman Substitute

House of Representatives, February 18-March 2, 1867

The bill as amended by the Senate returned to the House on Monday, February 18. Mr. Stevens moved that the amendments be not concurred in. and that the House ask a Committee of Conference.

He asked: "What has the Senate done? Sent back to us an amendment which contains everything else but protection. It has sent us back a bill which raises the whole question in dispute as to the best mode of reconstructing these States by distant and future pledges which this Congress has no authority to make and no power to execute. What power has this Congress to say to a future Congress: When the Southern States have done certain things, you shall admit them, and receive their members into this House? Our friends, who love this bill, love it now because the President is to execute it, as he has executed every law for the last two years, by the murder of Union men, and by despising Congress and flinging into our teeth all that we seek to have done."

Mr. Stevens thought that in two hours a Committee of Conference could frame a bill and report it to the House free from all these difficulties—free from all this extraneous matter—which would protect every loyal man in the Southern States, and do no injustice to the disloyal.

Mr. Boutwell supported the motion of Mr. Stevens. He objected to the bill on the ground that it proposed to reconstruct the rebel State governments at once through the agency of disloyal men, and that it gave additional power to the President when he had failed to use the vast power which he already possessed in behalf of loyalty and justice.

William B. Stokes [Tenn.] saw in the bill the principle of universal amnesty and universal suffrage.

"I would rather have nothing if these governments are reconstructed in a way that will place the rebels over Union men."

Mr. Blaine supported the bill as it came from the Senate.

"Congress no more guarantees, under this bill, the right of any rebel in any State to vote than did Congress guarantee to the rebels in Tennessee the right to vote."

Said James F. Wilson [Ia.]: "Although this bill does not attain all I desire to accomplish, it does embrace much upon which I have insisted. It reaches far beyond anything which the most sanguine of us hoped for a year ago. It secures equal suffrage to all loyal men; it sets aside the pretended governments which now abuse power in the rebel States; it insists on the ratification of the constitutional amendment, under the operation of which all the rebels who now occupy official position in the States affected by this bill will be rendered ineligible to office, State or national; it presents an affirmative policy, on the part of Congress, hostile to that of the President; it demonstrates the ability of Congress to agree upon a given line of future action; and, finally, it reserves to Congress jurisdiction over the whole case when the people of any Southern disorganized State may present a Constitution and ask for admission to this body as a part of the governing power of the nation. There is too

much of good in this to be rejected. I will vote to concur in the amendment of the Senate."

John P. Farnsworth [Ill.] supported the bill.

"It provides a platform ten steps in advance of the platform upon which we went to the people last fall. We then only expected the ratification of the amendment to the Constitution proposed by Congress at its last session, and the formation of Constitutions, republican in form, which should give the people there the right to send loyal men here as Senators and Representatives. But by this bill we extend impartial suffrage to the black man—universal suffrage."

Robert C. Schenck [O.].—"I believe we ought to declare to these rebel States, as we do by this bill, that they shall be put under martial law, and held by the strong hand to keep the peace until they have complied with whatever conditions are imposed upon them. But, while we do this, I think it equally important to announce to them, to announce to the country, to announce to our constituents as the completion of the whole platform upon which we go before the nation the terms which we require of them."

General Garfield favored the Senate amendment.

"There are some gentlemen who live among the eagles on the high mountain peaks, beyond the limit of perpetual frost, and they see the lineaments in the face of freedom so much clearer than I do; whenever any measure comes here that seems almost to grasp our purpose, they rise and tell us it is all poor and mean and a surrender of liberty."

Giles W. Hotchkiss [N. Y.] opposed the bill as amended.

"If you allow this bill to go into operation as it now stands without making any amendment of its provisions, and permit these elections to be held, as they must necessarily be held under this bill, under the authority, control, and regulation of the rebel governments in those States, there will be no security whatever, and you will have the elections in New Orleans held under the control of Mayor Monroe and the mob which he used to such fell purpose last summer. That is the entertainment to which this bill invites us."

HENRY H. P. BROMWELL [Ill.].—"I regard this as a flank movement by which is to be brought about that darling scheme of certain politicians—universal amnesty and universal suffrage. Whether it end in universal suffrage or not one thing is certain, it is universal amnesty."

IGNATIUS DONNELLY [Minn.].—"It would be emphatically a government of rebels. I say a government of rebels because, although the amendment which has reached us from the Senate contains the words, 'Except such as may be disfranchised for participation in the rebellion,' that disfranchisement has to come from the rebels themselves, and, surely, there is no man upon this floor weak enough to suppose that they will so disfranchise themselves."

Mr. LeBlond opposed both bills. Of the one before the House he said:

"This bill is quite as infamous, quite as absurd, as the bill that the distinguished gentleman from Pennsylvania [Mr. Stevens], who is chairman of the Committee on Reconstruction, contends for and hangs so tenaciously to. It confers all the powers that that bill gives; it confers all the powers that the most radical could claim consistently."

GENERAL BANKS.—"If this bill be passed in my belief there will be no loyal party known and no loyal voice heard in any of these States, from Virginia to Texas."

Many members subsequently presented arguments and opinions for and against the bill in speeches limited to fifteen minutes in length. This occupied a session protracted until near midnight.

On the following morning, February 19, a vote was taken and the House refused to concur in the amendments of the Senate and asked a Committee of Conference. The Senate immediately proceeded to consider a motion made by Mr. Williams that they insist on their amendment and agree to the conference. The vote was finally taken after a prolonged discussion. The Senate insisted on its amendment, and refused to appoint a Committee of Conference.

The bill having gone back to the House of Representatives they resolved by a vote of 126 to 46 to recede from their disagreement to the amendment of the

Senate, and to concur in the same with amendments providing that no person excluded from holding office by the recently proposed constitutional amendment should be eligible for membership in the convention to frame a constitution for any of the rebel States, nor should any such person be allowed to vote for members of such convention. Another amendment proposed by the House was the addition of a section (sixth) to the bill providing that, until the rebel States should be admitted to representation in Congress, any civil governments existing therein should be deemed provisional only, and subject to the paramount authority of the United States, who may at any time abolish, modify, control, or supersede them.

This qualified concurrence on the part of the House having been announced in the Senate, that body proceeded immediately to consider the question of acquiescence.

After an extended discussion the vote was taken upon the final passage of the bill as amended by the House; it passed the Senate—yeas, 35; nays, 7.

The bill "to provide for the more efficient government of the rebel States" having thus passed both Houses of Congress on the 20th of February, it was immediately submitted to the President for his approval. On the second of March the President returned the bill to the House in which it originated with his objections, which were so grave that he hoped a statement of them might "have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest." The veto message was immediately read by the clerk of the House of Representatives. The following were the President's principal objections to the measure:

"The bill places all the people of the ten States therein named under the absolute domination of military rulers.

"It is not denied that the States in question have, each of them, an actual government, with all the powers—executive, judicial, and legislative—which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern

their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of the State upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established State illegal is to say that law itself is unlawful.

"The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

"I submit to Congress whether this measure is not, in its whole character, scope, and object, without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive of those great principles of liberty and humanity for which our ancestors on both sides of the Atlantic have shed so much blood and expended so much treasure.

"The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void.

"I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer certainly not, if we derive our authority from the Constitution, and if we are bound by the limitations which it imposes. This proposition is perfectly clear; that no branch of the Federal Government—executive, legislative, or judicial—can have any just powers except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our functions and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place more than in another that which the Constitution says we shall not do at all. If, therefore, the Southern States were, in truth, out of the Union, we could not treat their people in a way which the fundamental law forbids.

"If an insurrection should take place in one of our States

against the authority of the State government, and end in the overthrowing of those who planned it, would they take away the rights of all the people of the counties where it was favored by a part or a majority of the population? Could they, for such a reason, be wholly outlawed and deprived of their representation in the legislature? I have always contended that the Government of the United States was sovereign within its constitutional sphere; that it executed its laws, like the States themselves, by applying its coercive power directly to individuals; and that it could put down insurrection with the same effect as a State, and no other. The opposite doctrine is the worst heresy of those who advocated secession, and cannot be agreed to without admitting that heresy to be right.

"This is a bill passed by Congress in time of peace. There is not, in any one of the States brought under its operation, either war or insurrection. The laws of the States and of the Federal Government are all in undisturbed and harmonious operation. The courts, State and Federal, are open and in the full exercise of their proper authority. Over every State comprised in these five military districts life, liberty, and property are secured by State laws and Federal laws, and the national Constitution is everywhere enforced and everywhere obeyed.

"Actual war, foreign invasion, domestic insurrection—none of these appear, and none of these in fact exist. It is not even recited that any sort of war or insurrection is threatened."

Upon this question of constitutional law and the power of Congress the President gave quotations from "a recent decision of the Supreme Court *ex parte* Milligan." Having commented upon this question, the President proceeded with his objections:

"I need not say to the Representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one; that is, by the ordained and established courts. It is equally well known that, in all criminal cases, a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman, or speak of the danger to public liberty, in all parts of the country, which must ensue from a denial of it anywhere, or upon any pretence.

"The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this

obligation is not palpably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority.

"The purpose and object of the bill—the general intent which pervades it from beginning to end—is to change the entire structure and character of the State governments, and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them, as well as the whites, to use it in a particular way. If they do not form a constitution with prescribed articles in it, and afterward elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites, can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Africanizing the Southern part of our territory, I would simply ask the attention of Congress to that manifest, well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle.

"This bill imposes martial law at once, and its operation will begin so soon as the general and his troops can be put in place. The dread alternative between its harsh rule and compliance with the terms of this measure is not suspended, nor are the people afforded any time for free deliberation. The bill says to them: Take martial law first, then deliberate.

"The bill also denies the legality of the governments of ten of the States which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States, and practically excludes them from the Union.

"That the measure proposed by this bill does violate the Constitution in the particulars mentioned, and in many other ways which I forbear to enumerate, is too clear to admit of the least doubt.

"I am thoroughly convinced that any settlement, or compromise, or plan of action which is inconsistent with the principles of the Constitution will not only be unavailing, but mis-

chievous; that it will but multiply the present evils instead of removing them. The Constitution, in its whole integrity and vigor, throughout the length and breadth of the land, is the best of all compromises. Besides, our duty does not, in my judgment, leave us a choice between that and any other. I believe that it contains the remedy that is so much needed, and that, if the coördinate branches of the Government would unite upon its provisions, they would be found broad enough and strong enough to sustain, in time of peace, the nation which they bore safely through the ordeal of a protracted civil war. Among the most sacred guaranties of that instrument are those which declare that 'each State shall have at least one Representative,' and that 'no State, without its consent, shall be deprived of its equal suffrage in the Senate.' Each House is made the 'judge of the elections, returns, and qualifications of its own members,' and may, 'with the concurrence of two-thirds, expel a member.'

"And is it not far better that the work of restoration should be accomplished by simple compliance with the plain requirements of the Constitution than by a recourse to measures which, in effect, destroy the States and threaten the subversion of the general Government? All that is necessary to settle this simple but important question, without further agitation or delay, is a willingness, on the part of all, to sustain the Constitution, and carry its provisions into practical operation. If, to-morrow, either branch of Congress would declare that, upon the presentation of their credentials, members constitutionally elected and loyal to the general Government would be admitted to seats in Congress, while all others would be excluded and their places remain vacant until the selection by the people of loyal and qualified persons; and if, at the same time, assurance were given that this policy would be continued until all the States were represented in Congress, it would send a thrill of joy throughout the entire land, as indicating the inauguration of a system which must speedily bring tranquillity to the public mind.

"While we are legislating upon subjects which are of great importance to the whole people, and which must affect all parts of the country, not only during the life of the present generation but for ages to come, we should remember that all men are entitled at least to a hearing in the councils which decide upon the destiny of themselves and their children. At present representation is denied to ten States, and, when the Fortieth Congress assembles, on the fourth day of the present month, sixteen States will be without a voice in the House of Representatives. This

grave fact, with the important questions before us, should induce us to pause in a course of legislation which, looking solely to the attainment of political ends, fails to consider the rights it transgresses, the law which it violates, or the institutions which it imperils."

House Debate on the Veto

March 2, 1867

After the reading of the message the question came up, "Shall the bill pass, the objections of the President to the contrary notwithstanding?"

Mr. Eldridge declared it was the duty of the minority if it were within their physical power to defeat the bill.

"But we are conscious that no effort of ours can prevent its passage, and the consequent accomplishment of a dissolution of the Union, and the overthrow and abandonment of our constitution of government. We can only, in the name of the Constitution, in the name of the Republic, in the name of all we hold dear on earth, earnestly, solemnly protest against this action of this Congress."

Mr. LeBlond said that "the passage of this bill would be the death-knell of republican liberty upon this continent." He declared his willingness, if a sufficient number on his side of the House would stand by him, to resist to the utmost extremity of physical exhaustion the passage of this bill which would "strike a death-blow to this Government."

Mr. Stevens would not be discourteous to those who were opposed to this bill. "I am aware," said he, "of the melancholy feelings with which they are approaching this funeral of the nation." He was unwilling, however, to lose the opportunity to pass the bill at once, and send it to the Senate, that the House might proceed to other matters.

The vote was taken and the House passed the bill over the President's veto—yeas, 135; nays, 48. The announcement of this result was followed by great applause on the floor and in the galleries.

The veto message having been read in the Senate by the secretary, the pending question at once became whether the bill should pass notwithstanding the objections of the President.

Senator Johnson advocated the passage of the bill over the veto.

"The President's message contains some legal propositions which are unsound, and many errors of reasoning. I lament the course he has thought it his duty to pursue, because I see that it may result in continued turmoil and peril, not only to the South, but to the entire country. I see before me a distressed, a desolated, country, and, in the measure before you, I think I see the means through which it may be rescued and restored ere long to prosperity and a healthful condition, and the free institutions of our country preserved."

The Senator urged upon the people of the South their acceptance of the terms proposed by Congress. In view of the probability these overtures should be rejected, harsher measures would be resorted to.

Senator Saulsbury expressed his admiration for the wisdom of the President in "vetoing the most iniquitous bill that ever was presented to the Federal Congress."

"I hope that there may be no man within the limits of these ten States who will participate in his own disgrace, degradation, and ruin: let them maintain their honor. If there be wrath in the vials of the Almighty, if there be arrows of vengeance in His quiver, such iniquity and injustice cannot finally prove successful."

Senator Hendricks disagreed with the Senator from Delaware that the people of the South, at once and without consideration, must turn their backs upon the proposition now made them in order to maintain their honor. He hoped they would bring to the consideration of the subject the coolest judgment and the highest patriotism. He was still opposed to the bill; he approved of the President's veto. His judgment against the measure had been "fortified and strengthened by that able document."

The question being taken, the bill was passed over the veto by a vote of 38 to 10.

The Fortieth Congress, meeting on the 4th of March, immediately upon the close of its predecessor, proceeded without delay to perfect and pass over the President's veto a bill supplementary to the act to provide for the more efficient government of the rebel States. By this act it was provided that the commanding general of each district should cause a registration to be made of the male citizens twenty-one years of age in his district, qualified to vote under the former act. In order to be registered as a voter under this act a person was required to swear that he had not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony; that he had never been a member of any State legislature, nor held any executive or judicial office in any State and afterward engaged in insurrection or rebellion against the United States, nor given aid or comfort to the enemies thereof; that he had never taken an oath as a member of Congress of the United States, nor as a member of any State legislature, nor as an executive or judicial officer of any State, to support the Constitution of the United States, and afterward engaged in insurrection or rebellion against the United States, nor given aid or comfort to the enemies thereof; and that he will faithfully support the Constitution and obey the laws of the United States, and encourage others to do so.

Persons thus qualified might vote at elections held for the purpose of selecting delegates to the conventions for framing constitutions for the States.

A majority of voters so qualified should determine whether constitutional conventions should be held in the several States, and vote for delegates who should be as numerous as the members of the most numerous branch of the legislature of such State in the year 1860. This convention having framed a constitution, it should be submitted to the people, and, if ratified by a majority of the qualified voters, it should be forthwith transmitted to Congress. If this constitution was satisfactory to

Congress, and found to be in accordance with the provisions of the act of which this is supplementary, the State should be declared entitled to representation. All elections were required to be by ballot, and all officers acting under the provisions of this act were required to take the test oath.

During this session Congress repealed section 13 of the Confiscation Act of July 17, 1862. Not being approved by the President, to whom it was presented on January 9, 1867, it became a law on the expiration of ten days, excluding Sunday.

Pardoning Power of the President

The section referred to gave the President power to extend pardon and amnesty to former rebels. The bill was intended to remove an abuse which had arisen in the sale of pardons in Washington by various persons, including women, who had influence with the Administration. It was passed by the House on the first day of the session (December 3, 1866).

James G. Blaine, in his "Twenty Years of Congress," thus describes the course of the bill through the Senate and its enactment over the President's veto:

The repeal of the clause did not take from the President his constitutional power of pardoning, but in the judgment of Lyman Trumbull [Ill.], who had charge of the bill in the Senate, it took from him the power to pardon by proclamation and confined him to his right of issuing individual pardons. The difference between pardon and amnesty was defined by Senator Trumbull. Pardon is an act of mercy extended to an individual. It must be by deed. It must be pleaded. According to Chief-Justice John Marshall, it is essential to its validity that it be delivered to the person pardoned. But an amnesty is a general pardon by proclamation. Senator Trumbull thought the repeal would be a "valuable expression of opinion on the part of Congress that general pardons and restoration of property will not be continued, and, if the President continues to pardon

rebels and restore their property by individual acts under the Constitution, let him do so without having the sanction of Congress for his act."

Reverdy Johnson took issue with Senator Trumbull. He maintained that the President's power to grant pardons, as conferred by the Constitution, had not been affected by the provision of law whose repeal was now urged. He declared that the power of the President "to grant reprieves and pardons for offences against the United States" was as broad, as general, as unrestricted as language could make it. He could find no logical ground for the distinction made by Senator Trumbull between individual pardons and general amnesties by proclamation—in illustration of which he said President Washington had by proclamation pardoned the offenders engaged in the Whiskey Insurrection. The enactment of the provision had not, in Mr. Johnson's opinion, enlarged the President's pardoning power, and its repeal would not restrict it.

A majority of the Senate concurred in Mr. Johnson's interpretation of the Constitution, but they passed the bill as a rebuke to the scandalous sale of pardons by a class of "middle men" who had in some form the opportunity to secure the interposition of men who could reach the ear of the President or the Attorney-General. It is hardly necessary to add that neither of those high officials was in the remotest degree reflected upon even by their bitterest opponents. It was believed that the nefarious practice was stopped by this bill. Exposure made public men careful to examine each application for pardon before they would consent to recommend it to the President.

The President obviously took the view that had been advanced by Senator Johnson, and did not take the trouble to sign it, much less to veto it. It was *brutum fulmen*, and the President used his constitutional power to pardon by proclamation just as freely after its enactment as before.

The old Congress was so distrustful of what the President might do in the usual recess that it summoned

the new Congress (the Fortieth) to convene immediately at the close of the session. Accordingly it assembled on March 4, 1867. It sat until March 30, on which date the House took a recess, and the Senate immediately convened in a special session which lasted until April 19. Both chambers reassembled on July 3, and sat until July 20. Reassembling on November 21 they sat until December 1.

The House of Representatives elected Schuyler Colfax [Ind.] Speaker; in his speech accepting the office he clearly intimated that the Radicals would take no steps backward in their reconstruction policy, and that they would further advance to negro suffrage extending throughout the Union.

The chief business of Congress in 1867 was the passage of supplementary legislation to the Military Reconstruction act. On March 19 Congress passed an act prescribing the mode of registering voters and for calling constitutional conventions in the ex-rebel States in order that Congress might know if the constitutions adopted were approved by a majority of the qualified (*i. e.*, loyal) citizens of these States. The President immediately vetoed the bill on the ground that the oath it required of voters rendered them liable to uncertain penalties, the region affected by the act being under martial law. "If ever the American citizen," he said, "should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live."

Congress passed the act over the President's veto on March 23: the House by 114 ayes to 25 nays, and the Senate by 40 ayes to 7 nays.

During the spring recess (on March 24 and June 12) Henry Stanbery, Attorney-General, gave forcible opinions of the supplementary Reconstruction act calculated to nullify its execution. Accordingly, when Congress reassembled in June, it set to work to remedy the defects of the act by framing another supplementary bill. This was passed on July 13, and was vetoed by the President on July 19. In his veto message he said:

"The military commander is, as to the power of appointment, made to take the place of the President, and the general of the army the place of the Senate, and any attempt on the part of the President to assert his own constitutional power may, under pretence of law, be met by official insubordination. It is to be feared that these military officers, looking to the authority given by these laws, rather than to the letter of the Constitution, will recognize no authority but the commander of the district or the general of the army. While I hold the chief executive authority of the United States, while the obligation rests upon me to see that all laws are faithfully executed, I can never willingly surrender that trust or the powers given for its execution. I can never give my assent to be made responsible for the faithful execution of laws, and at the same time surrender that trust and the powers which accompany it to any other executive officer, high or low, or to any number of executive officers."

The Radicals construed these words of the President as a threat to assume sole direction over the military officers in charge of the ex-rebel States, and thus to frustrate the plans of Congress. In the debate in the House on the message there were veiled threats of impeaching him, which his supporters characterized as "mere bluster." On the same day Congress passed the bill over the veto: the House by 108 ayes to 25 nays, the Senate by 30 ayes to 6 nays.

During these sessions of Congress the work of reconstruction under military authority proceeded with expedition. Distinguished Union generals were placed at the heads of the departments with veteran troops at their command, and as a result no attempt was made to resist or nullify the provisions of the act. Qualified voters were registered with no discrimination against negroes, and elections to the constitutional conventions were held without disorder. The State conventions assembled and formed constitutions calculated to be acceptable to Congress, and the people duly ratified these. State governments were organized, legislatures were elected, and the Fourteenth Amendment was ratified in virtually the same manner and form in all the ex-rebel States.

Unconstitutionality and Impracticability of Military Reconstruction

Third Annual Message of President Johnson

In his third annual message to Congress at the beginning of the regular session on December 3, 1867, the President presented a doleful view of the condition of the country. He said that there was no Union in the sense in which the fathers used that term, for many of the States were deprived of their constitutional rights. Disregard of the Constitution if persisted in would inevitably be followed by disaster.

"We can look forward only to outrages upon individual rights, incessant breaches of the public peace, national weakness, financial dishonor, the total loss of our prosperity, the general corruption of morals, and the final extinction of popular freedom."

He reiterated that his policy of reconstruction was the only true one, and that military reconstruction was utterly unconstitutional.

The acts of Congress in question are not only objectionable for their assumption of ungranted power, but many of their provisions are in conflict with the direct prohibitions of the Constitution. The Constitution commands that a republican form of government shall be guaranteed to all the States; that no person shall be deprived of life, liberty, or property without due process of law, arrested without a judicial warrant, or punished without a fair trial before an impartial jury; that the privilege of *habeas corpus* shall not be denied in time of peace; and that no bill of attainder shall be passed even against a single individual. Yet the system of measures established by these acts of Congress does totally subvert and destroy the form as well as the substance of republican government in the ten States to which they apply. It binds them hand and foot in absolute slavery, and subjects them to a strange and hostile power, more unlimited and more likely to be abused than any other now known among civilized men. It tramples down all those rights in which the essence of liberty consists, and which a free government is always most careful to protect. It denies the *habeas*

corpus and the trial by jury. Personal freedom, property, and life, if assailed by the passion, the prejudice, or the rapacity of the ruler, have no security whatever. It has the effect of a bill of attainder, or bill of pains and penalties, not upon a few individuals, but upon whole masses, including the millions who inhabit the subject States, and even their unborn children. These wrongs, being expressly forbidden, cannot be constitutionally inflicted upon any portion of our people, no matter how they may have come within our jurisdiction, and no matter whether they live in States, Territories, or districts.

I have no desire to save from the proper and just consequences of their great crime those who engaged in rebellion against the Government; but, as a mode of punishment, the measures under consideration are the most unreasonable that could be invented. Many of those people are perfectly innocent; many kept their fidelity to the Union untainted to the last; many were incapable of any legal offence; a large proportion even of the persons able to bear arms were forced into rebellion against their will; and of those who are guilty with their own consent the degrees of guilt are as various as the shades of their character and temper. But these acts of Congress confound them all together in one common doom. Indiscriminate vengeance upon classes, sects, and parties, or upon whole communities, for offences committed by a portion of them against the governments to which they owed obedience was common in the barbarous ages of the world. But Christianity and civilization have made such progress that recourse to a punishment so cruel and unjust would meet with the condemnation of all unprejudiced and right-minded men. The punitive justice of this age, and especially of this country, does not consist in stripping whole States of their liberties and reducing all their people, without distinction, to the condition of slavery. It deals separately with each individual, confines itself to the forms of law, and vindicates its own purity by an impartial examination of every case before a competent judicial tribunal. If this does not satisfy all our desires with regard to Southern rebels, let us console ourselves by reflecting that a free Constitution, triumphant in war and unbroken in peace, is worth far more to us and our children than the gratification of any present feeling.

I am aware that it is assumed that this system of government for the Southern States is not to be perpetual. It is true this military government is to be only provisional, but it is through this temporary evil that a greater evil is to be made

perpetual. If the guaranties of the Constitution can be broken provisionally to serve a temporary purpose, and in a part only of the country, we can destroy them everywhere and for all time. Arbitrary measures often change, but they generally change for the worse. It is the curse of despotism that it has no halting place. The intermitted exercise of its power brings no sense of security to its subjects; for they can never know what more they will be called to endure when its red right hand is armed to plague them again. Nor it is possible to conjecture how or where power, unrestrained by law, may seek its next victims. The States that are still free may be enslaved at any moment; for, if the Constitution does not protect all, it protects none.

It is manifestly and avowedly the object of these laws to confer upon negroes the privilege of voting, and to disfranchise such a number of white citizens as will give the former a clear majority at all elections in the Southern States. This, to the minds of some persons, is so important that a violation of the Constitution is justified as a means of bringing it about. The morality is always false which excuses a wrong because it proposes to accomplish a desirable end. We are not permitted to do evil that good may come. But, in this case, the end itself is evil as well as the means. The subjugation of the States to negro domination would be worse than the military despotism under which they are now suffering. It was believed beforehand that the people would endure any amount of military oppression for any length of time rather than degrade themselves by subjection to the negro race. Therefore they have been left without a choice. Negro suffrage was established by act of Congress, and the military officers were commanded to superintend the process of clothing the negro race with the political privileges torn from white men.

The blacks in the South are entitled to be well and humanely governed, and to have the protection of just laws for all their rights of person and property. If it were practicable at this time to give them a government exclusively their own, under which they might manage their own affairs in their own way, it would become a grave question whether we ought to do so or whether common humanity would not require us to save them from themselves. But, under the circumstances, this is only a speculative point. It is not proposed merely that they shall govern themselves, but that they shall rule the white race, make and administer State laws, elect Presidents and members of Congress, and shape, to a greater or less extent, the future

destiny of the whole country. Would such a trust and power be safe in such hands?

The peculiar qualities which should characterize any people who are fit to decide upon the management of public affairs for a great State have seldom been combined. It is the glory of white men to know that they have had these qualities in sufficient measure to build upon this continent a great political fabric, and to preserve its stability for more than ninety years, while in every other part of the world all similar experiments have failed. But, if anything can be proved by known facts—if all reasoning upon evidence is not abandoned, it must be acknowledged that in the progress of nations negroes have shown less capacity for government than any other race of people. No independent government of any form has ever been successful in their hands. On the contrary, wherever they have been left to their own devices they have shown a constant tendency to relapse into barbarism. In the Southern States, however, Congress has undertaken to confer upon them the privilege of the ballot. Just released from slavery, it may be doubted whether, as a class, they know more than their ancestors how to organize and regulate civil society. Indeed, it is admitted that the blacks of the South are not only regardless of the rights of property, but so utterly ignorant of public affairs that their voting can consist in nothing more than carrying a ballot to the place where they are directed to deposit it. I need not remind you that the exercise of the elective franchise is the highest attribute of an American citizen, and that, when guided by virtue, intelligence, patriotism, and a proper appreciation of our free institutions, it constitutes the true basis of a democratic form of government in which the sovereign power is lodged in the body of the people. A trust artificially created, not for its own sake, but solely as a means of promoting the general welfare, its influence for good must necessarily depend upon the elevated character and true allegiance of the elector. It ought, therefore, to be reposed in none except those who are fitted morally and mentally to administer it well; for, if conferred upon persons who do not justly estimate its value, and who are indifferent as to its results, it will only serve as a means of placing power in the hands of the unprincipled and ambitious, and must eventuate in the complete destruction of that liberty of which it should be the most powerful conservator.

The plan of putting the Southern States wholly, and the general Government partially, into the hands of negroes is proposed at a time peculiarly unpropitious. The foundations of

society have been broken up by civil war. Industry must be reorganized, justice reëstablished, public credit maintained, and order brought out of confusion. To accomplish these ends would require all the wisdom and virtue of the great men who formed our institutions originally. I confidently believe that their descendants will be equal to the arduous task before them, but it is worse than madness to expect that negroes will perform it for us. Certainly we ought not to ask their assistance until we despair of our own competency.

The great difference between the two races in physical, mental, and moral characteristics will prevent an amalgamation or fusion of them together in one homogeneous mass. If the inferior obtains the ascendency over the other, it will govern with reference only to its own interests—for it will recognize no common interest—and create such a tyranny as this continent has never yet witnessed. Already the negroes are influenced by promises of confiscation and plunder. They are taught to regard as an enemy every white man who has any respect for the rights of his own race. If this continues, it must become worse and worse, until all order will be subverted, all industry cease, and the fertile fields of the South grow up into a wilderness. Of all the dangers which our nation has yet encountered none are equal to those which must result from the success of the effort now making to Africanize the half of our country.

I would not put considerations of money in competition with justice and right. But the expenses incident to "reconstruction" under the system adopted by Congress aggravate what I regard as the intrinsic wrong of the measure itself. It has cost uncounted millions already, and, if persisted in, will add largely to the weight of taxation, already too oppressive to be borne without just complaint, and may, finally, reduce the treasury of the nation to a condition of bankruptcy. We must not delude ourselves. It will require a strong standing army and probably more than two hundred million dollars per annum to maintain the supremacy of negro governments after they are established. It is vain to hope that negroes will maintain their ascendency themselves. Without military power they are wholly incapable of holding in subjection the white people of the South.

We cannot be too cautious of a policy which might, by possibility, impair the confidence of the world in our Government. That confidence can only be retained by carefully inculcating the principles of justice and honor on the popular mind, and by the most scrupulous fidelity to all our engagements of every sort. If we repudiate the Constitution we will not be expected

to care much for mere pecuniary obligations. The violation of such a pledge as we made on the 22d day of July, 1861, to wage the war solely to preserve the Union, without impairing the rights of the States, will assuredly diminish the market value of our other promises. Besides, if we now acknowledge that the national debt was created, not to hold the States in the Union, as the taxpayers were led to suppose, but to expel them from it and hand them over to be governed by negroes, the moral duty to pay it may seem much less clear.

I therefore urge you to repeal the reconstruction laws. The great interests of the country require immediate relief from these enactments. Business in the South is paralyzed by a sense of general insecurity, by the terror of confiscation, and the dread of negro supremacy. The Southern trade, from which the North would have derived so great a profit under a government of law, still languishes and can never be revived until it ceases to be fettered by the arbitrary power which makes all its operations unsafe. That rich country—the richest in natural resources the world ever saw—is worse than lost if it be not soon placed under the protection of a free constitution. Instead of being, as it ought to be, a source of wealth and power, it will become an intolerable burden upon the rest of the nation.

On December 4, upon a formal resolution to print the President's message and the reports of the Cabinet ministers, with 3,000 additional copies for the use of the Senate, certain Radical Senators seized the occasion to denounce the message.

On the President's Message

Senate, December 4, 1867

Jacob M. Howard [Mich.].—I cannot vote for the printing of the President's message. I do not think it is worthy of that attention, especially as to the extra number which the resolution calls for. I will not be instrumental in publishing to the world what I regard as a most singular and wanton libel on the two Houses of Congress who enacted the reconstruction laws, and a libel on the laws themselves. I look upon that document as an insidious but unmistakable invitation to the people of the rebel States to use violence in resistance of that legislation, and, of course, as such it is an act on the part of the President entirely unconstitutional and revolutionary in its character.

Simon Cameron [Pa.].—Mr. President, there was one part of the President's message which we heard read yesterday which I approved; it was the suggestion recommending economy in our expenses. We cannot begin at a better time than now, and, therefore, I oppose the printing of these extra numbers.

Charles Sumner [Mass.].—There is really a reason, independent of economy, why we should not circulate extra copies of the President's message. It has already been characterized as a libel; unquestionably it is a libel; it is an incendiary document, calculated to stimulate the rebellion once more and to provoke civil war. It is a direct appeal to the worst passions and the worst prejudices of those rebels who, being subdued on the battlefield, still resist through the aid of the President of the United States. It is the evidence of a direct coalition between the President and the former rebels. If Jefferson Davis were President of the United States he could not send to this chamber a message different in character. I have often said that Andrew Johnson was the successor of Jefferson Davis, and this message is a complete confirmation of all that I have heretofore said. I move to strike out the words relating to the President's message.

Charles R. Buckalew [Pa.].—As to the amendment which the Senator from Massachusetts has proposed, it would be giving undue or untimely prominence to the differences of opinion which exist concerning the message to adopt his motion. Be it remembered, sir, that this message proposes to Congress the repeal of certain laws which were enacted in the month of March and in the month of July last. The President, under his clear constitutional power to recommend to Congress such measures as he may think important to the public interest, recommends the repeal of those laws, and, as a reason for that repeal, he goes on at length to submit an argument against their constitutionality. Now, sir, all that is perfectly legitimate; and to describe that argument of his as a libel on Congress or as a libel on those laws is an abuse of terms. There is certainly no impropriety in the fact that he denounces those laws as unconstitutional when he appeals to us to repeal them, because it is in the legitimate course of the argument which arises upon his recommendation. If we disagree with him in opinion we shall meet him in debate; we shall be heard by the country, and the people to whom we are both responsible will judge between us.

Henry Wilson [Mass.].—Mr. President, nothing, I am sure, is to be gained by refusing to print the President's message ac-

cording to the usual custom of the Senate. I go quite as far as any one in condemnation of the tone, temper, and doctrines of the message, but I think we are not justified in departing from the ordinary practice of this body. The message is an assault of the President of the United States upon the Congress of the United States for attempting by legislation to take the governments of the rebel States out of the control of traitors into whose keeping he had placed these governments. The writer of this message seems to have forgotten that we ever had any rebellion at all. The message remembers to forget that President Johnson, in the summer and autumn of 1865, assumed and exercised constitutional powers for the exercise of which he now condemns the legislative branch of the Government. If the President's reconstruction policy was within the provisions of the Constitution surely the reconstruction policy of Congress is within the provisions of the Constitution. If the President without the authority of law could fix the terms and conditions for the reconstruction of the rebel States surely Congress, the law-making power of the Government, could determine the terms and conditions of reconstruction.

From those once conquered States, restored by Andrew Johnson to the control of rebels, there came to us a cry of agony, a voice of supplication, demanding the interposition of Congress and the protection of the national Government. Congress heard that cry; the country heard it; the world heard it; the God of the Universe heard it; but President Johnson could not hear it. Congress, after giving the President's policy a trial of nearly two years, adopted the policy of reconstruction against which the President now hurls his denunciations. This reconstruction policy of Congress immediately carried peace and comparative law and order into and through the rebellious States. The President's policy has failed, has been abandoned, and will not be revived. The policy of Congress is progressing, will be inflexibly adhered to, and will be consummated.

The statement of the President in this message that the black men of the South, enfranchised by Congress, knew only enough to deposit their votes where they were told to deposit them is a libel upon the seven hundred thousand black men whose hands have been weaponed with the ballot. Sir, how stands the great fact? These enfranchised black men without property, without homes, surrounded by the great landholders, the cultivated, the intellectual men, sometimes called the "natural leaders" of the South—men who had held them and their ancestors in bondage, who owned their humble cabins, the ground they trod upon, in

whose employment they are, were in positions to be swayed and controlled by love, authority, interest, and fear. When Congress passed the reconstruction acts the rebel presses and leaders appealed with the utmost confidence to these enfranchised black men. We were told quite as confidently as we were told in other days that the black men would not fight against their old masters, that the black men of the South would vote as they were directed by their old masters. The rebel leaders, the great landholders, the old slave-masters, uttered honeyed words and brought to bear every seductive influence they were masters of to win a controlling influence over the enfranchised black men. Even Wade Hampton, the representative of the white aristocracy of South Carolina, led off with Beverly Nash, the black man. He graciously admitted that the colored people ought to have the right of suffrage, and he appealed to them to unite with him and the men of his class. Others joined in these appeals; the black men were told on the stump in public speeches by these men, the great landholders and late slave-masters, that they had played together in childhood, that they had fished and hunted together, and they were invoked to give their votes to the conservatives; yet all those influences utterly failed. When flattery, persuasion, and cajolery failed they were threatened. They were told that there might be a war of races, that they might be turned out of employment, their families driven from their cabins. Thousands of these poor men without property have been turned from their homes, dismissed from employment for the votes they gave, and yet that body of enfranchised men, in spite of every oppression brought to bear upon them, have voted as patriotism, liberty, justice, and humanity dictated. These black men into whose hands Congress has put the ballot, never to be wrenched from them by President or rebel, with the loyal white men and the few repentant rebels, will bring the rebel States back into these chambers and thus rebuke this assault of the President of the United States upon Congress for attempting to save that section of the country from rebel domination.

James Dixon [Ct.].—The Senator from Massachusetts [Mr. Sumner] says the President is the successor of Jefferson Davis and equally guilty, and still he complains that the President has been guilty of a libel. It struck me at the time that if there was any competition of vehement language between the President and that Senator it would be very easy to decide who, in vituperation had the advantage.

Now, sir, what is this message? Is it a libel? Is it violent

in language? Does it show, as the Senator from Massachusetts says, bad temper? In the first place, what is the duty of the President? The Constitution says that he shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He has now done so. I confess that I can see nothing of violence or ill temper, much less of a libelous character, in this message. He expresses strong opinions —with regard to what? With regard to the constitutionality of certain laws now on the statute-book.

The statute-book is full of laws of questionable constitutionality in the opinion of some men; and certainly if a law is supposed to be unconstitutional no better reason can be given for its repeal; nor is it any reflection upon Congress to say that a bill is unconstitutional. The President says that he has the misfortune to differ from Congress. That, too, has been my severe misfortune; I have been compelled to differ from Congress. I objected to the passage of this very bill on the ground that it was so palpably unconstitutional that for me to vote for it would be a violation, a conscious, known violation of my official oath. Did anybody say that was criminal? Have we come to that that the opinions of a Senator or a President with regard to the unconstitutionality of a measure cannot be expressed in earnest language?

If the President is too sanguine, if he believes too readily that Congress will bow to the will of the nation as expressed at the ballot-box, certainly it is not matter of condemnation and is not disrespectful. I confess I have no hopes, for one, that Congress will retrace its steps; but, if the President sees fit to express a hope to the contrary, I am not prepared to condemn him, nor am I prepared to say that in that there is anything disrespectful to Congress.

Will Senators say that the President's remark that reconstruction was done "with a view to the ultimate establishment of negro supremacy" is disrespectful to Congress? Has not the Senator from Massachusetts [Mr. Wilson] to-day declared in express language that "we put the destinies of that portion of the country in the hands of the blacks"?

Senator Wilson.—The Senator will certainly find that I included in my remark the loyal white men of that part of the country, and I spoke also of repentant rebels, because many of the rebels are working and toiling for the reconstruction policy of Congress as hard as any other class of men. Some of them who were in the military service and attained the position of

major-general in the rebel army have used all their influence this year to carry out our policy, and, in some of the States, men who have been leaders, who have been compromised by the rebellion, and cannot vote or hold office, have done this.

Senator Dixon.—Well, sir, with regard to that question, whether those States are under the control of the black population, it is unnecessary to make any remark. It is a notorious, acknowledged fact. How is it that seven hundred thousand black men govern the South; how is it that they govern the white population, ten millions in number, of that country, unless your law has provided that they, and they alone, shall control the ballot-box?

Is it a crime for the President of the United States to say that he is a defender of the Constitution? Certainly I have thought sometimes that it was a crime in the minds of some men, that it was not only proof of guilt but guilt itself to advocate the Constitution and to defend it.

Senator Howard.—I think the expression as used by the President in his message is arrogant and unauthorized; that it is not constitutional language. He is no more the defender of the Constitution than I am here in my place. He is invested with more powers, to be sure, but his obligation is precisely the same, and I think, therefore, it is in very bad taste for the President of the United States to assume that he is "the elected defender" *par excellence* of the Constitution. It is an assumption on his part by which he seeks to place himself above the law-making power and to become its dictator.

Senator Dixon.—The Senator says it is "arrogant," "presumption," "in bad taste" on the part of the President of the United States to call himself the defender of the Constitution: that it is unconstitutional language. Let us see the oath which he is required by the Constitution to take:

> "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and *defend* the Constitution of the United States."

It is a very different form of oath from that which the Senator himself takes. The Constitution requires a Senator only to swear to support the Constitution. Why was the oath in the two cases expressed in different language? If the President of the United States sees fit to declare himself, after having sworn to defend the Constitution, its "elected defender," I can see nothing in that disrespectful to Congress, nor can I see anything arrogant in it.

He says that "if the legislative department should pass an act" to abolish a coördinate department of the Government, "the President must take the high responsibilities of his office, and save the life of the nation at all hazards."

Does any Senator doubt that? Are there not cases when the President of the United States is bound to assume high responsibilities to save this nation? If anything which President Lincoln ever did endeared him to the hearts of the American people it was his taking the responsibility in April, 1861, of defending the Constitution of the United States against rebels who attacked it, although he was not then sustained and supported by the proper laws. We actually made the laws afterward. We legalized his acts, although at that time technically illegal, and we sustained and justified him. Now, I think nobody will deny that if it were possible to suppose that Congress could under any circumstances be guilty of passing an act to abolish the office of President of the United States, one of the coördinate departments of this Government—a thing which I do not suppose possible, and which the President of the United States only hypothetically states in his message—it would be the duty of the President to resist it.

Sir, I have said this much because the President has been charged with ill temper, with disrespect, and with arrogance in this message. I think he is not liable to that charge. I think the message is respectful in its form and correct in its reasoning, as it is acknowledged to be of unsurpassed ability. I know that the President expresses himself warmly. He is a man of earnest convictions, and believing what he says to be true he declares it in earnest and expressive language; and no doubt he is somewhat strengthened—and it is natural that it should be so—by the fact that the people of the United States in their recent elections have stamped on this reconstruction policy their condemnation in the clearest and most explicit manner.

I am aware that Senators may consider it their duty to persevere in what they regard to be right without reference to what may seem to be popular or unpopular. I have done that myself; I may do it again. But this I say: that when the question is asked, what is the opinion of the American people? no man who looks at the recent elections can doubt that it is against the policy of Congress.

And the unanimous voice of the country is that this message and the entire series of messages which have come from President Johnson since he has been in office have never been surpassed in ability by the State papers of any administration since

THE GREAT AMERICAN TANNER
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the adoption of the Constitution. Such papers can never be suppressed or concealed by refusal of the Senate to print them.

On December 5 the resolution to print the extra copies of the President's message was adopted by a vote of 36 to 9.

Acts of Congress

During this session Congress passed two acts making appropriations for reconstruction: the first received by the President on January 31, 1868, and, not being returned by him, becoming a law ten days thereafter, excluding Sundays; the second received by him on May 19 and treated in similar fashion.

Acts were passed admitting Arkansas, North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress; they were vetoed by the President and passed over his veto June 20-25. These acts required that negro suffrage, with which these States were admitted, should never be repealed. Georgia was compelled to repeal an act of her legislature which virtually outlawed debts of her citizens to creditors outside of the State. The Senators and Representatives admitted from these States were Republicans. About half were natives of the South, and half were "carpet-baggers"—Northern adventurers, who had packed their grips and gone South to take advantage of the anomalous political situation there.

In the Presidential contest of 1868 General Ulysses S. Grant [Ill.] and Schuyler Colfax [Ind.], the Speaker of the House, were nominated by the Republicans as candidates respectively for President and Vice-President, and ex-Governor Horatio Seymour [N. Y.] and General Francis P. Blair [Mo.] were nominated by the Democrats, the latter gaining the nomination by a letter read at the convention declaring himself in favor of complete overthrow of congressional reconstruction.

In the Democratic platform the reconstruction acts of Congress were declared to be "usurpations, unconstitutional, revolutionary and void." General Wade Hampton [S. C.], a member of the Committee on Resolu-

tions, subsequently stated that he was the framer of this sweeping declaration. In the Democratic convention and overflow meetings denunciations of military reconstruction were indulged in by Mr. Seymour, August Belmont [N. Y.], and General Thomas Ewing [Kan.].

Mr. Belmont characterized the rule of Congress over the South as a "ruthless tyranny" such as even Russia did not dare inflict on conquered Poland. And this was but the beginning of a military despotism which would extend over the Union if it should be permitted Congress to seat as President the one who now was commanding general of the armies of the United States. Then congressional usurpation of all the branches of government would be enforced by the bayonet.

Military Reconstruction Defeats the Purpose of the War

General Ewing

General Ewing reviewed the history of reconstruction. He praised the spirit with which the South had accepted the results of the war, amending their State constitutions so as to abolish slavery and the harsh codes founded upon it; abandoning the doctrine of secession, and repudiating the rebel debt.

The Republican party was bound in honor to accept this submission by admitting the Southern States to representation in Congress, since it had declared during the rebellion that the war was waged solely to effect the unconditional restoration of the Union upon the submission of the rebels. And the people suppressed the rebellion on this understanding.

But the Republican party, upon the submission of the South, repudiated this pledge, not desiring to increase the power of the Democratic party.

Yet, with the prestige and moral power resulting from a successful prosecution of the war, and a prompt and cordial restoration of the Union, it could have retained power until this generation of voters had passed away or had forgotten the anti-

war follies of the Democratic party. But it took counsel of its fears, doubted its own destiny, forgot the inextinguishable love in the hearts of the Northern people for the Constitution and the Union, and therefore refused to take what the war was alone waged to get—a prompt and cordial pacification and reunion under the Constitution. It did this in the vain hope of controlling the Southern States by making voters of the negroes, and proscribing all the intelligent white men whom Congress and the Freedmen's Bureau could not bribe, or coax, or kick, or cuff into republicanism. But, while destroying the ten Southern States, and building in their stead ten rotten boroughs, to be represented in Congress in the interests of the Northern radicals by white adventurers and plantation negroes, the party is losing its strong hold on the *Northern* States, and, like the dog in the fable, drops the substance to snatch at the shadow. [Laughter and applause.]

Having adopted the rebel theory that the Southern States were out of the Union, and unsheltered by the broad ægis of the Constitution, Congress declared invalid the governments chosen by the electors of those States under the advice of Presidents Lincoln and Johnson, in conformity with State constitutions and laws, and established over them military dictatorships, through which to inaugurate the rule of the negroes and their Northern allies. But here a new rent in their program was discovered, requiring to be patched by a newly invented dogma. The Calhoun-Stevens theory of the validity of secession was good as far as it stretched; but, like a shelter tent, was neither broad nor long enough. It took the States out, and made them conquered provinces, but did not increase the power of Congress, nor deprive the inhabitants of the conquered territory of those guaranties of life, liberty, and property which the Constitution extends *to citizens and aliens alike* on every foot of ground within the jurisdiction of the United States. While these guaranties remained in the Constitution, and were obeyed, the whole governing talent of the South could not be disfranchised by a sweeping *ex post facto* law.

It was indispensable, therefore to get rid of these constitutional provisions, which are at once guaranties of the liberties of the people and prohibitions of power to Congress. To avoid an avowal of a purpose to trample on the Constitution, the party, with decent hypocrisy, claimed a new derivation of congressional power. They said that a formidable rebellion was never contemplated by the framers of the Constitution, and no powers were conferred in anticipation of such an emergency.

Congress, therefore, was compelled, in the matter of reconstruction, to act *outside of the Constitution.*

As to Congress deriving power in any contingency outside of the Constitution, it is enough to say that Congress gets all its powers from the Constitution, and outside of it has no powers, and *is no Congress* [applause]: and that all its acts not authorized by the Constitution are mere usurpations, whether against express prohibitions or not. If you present this argument to Radicals, they will reply that the Constitution in not giving Congress such authority is therein defective, and Congress needs, and must exercise it. A French philosopher once propounded to Professor Faraday a new theory of the transmission of light, which the English philosopher heard patiently and then objected to it that the theory was inconsistent with certain established facts of natural science. "So much ze worse for ze *facts,*" was the ready answer of the confident Frenchman. So, if you prove the reconstruction plan unconstitutional, the Radicals, in effect, answer, "So much the worse for the *Constitution.*" [Great applause.]

Thus, to secure a reconstruction giving the Radicals of the North absolute control of the ten States of the South, not only were the State governments abolished and military despotisms built on their ruins, but every revered guaranty of life, liberty, and property, which the Southern people and ourselves inherited from a free ancestry, and which our forefathers and their forefathers placed in the Constitution to be beyond the reach of the rude hand of faction, was boldly destroyed. No civilized people on this earth are as wholly without legal protection from the capricious oppression of their rulers as the Southern people under these military despotisms. It is amazing how passively the people, North and South, have borne this gross, dangerous, insolent usurpation. But it has been quietly submitted to because of the belief—now, thank God! almost certainty—that the Northern people will, in November, seize this Radical party and its half-executed usurpations, and dash them to pieces [prolonged cheering]; and because many of the military commanders have tempered the harsh rule they were sent to inflict out of that love for our ancient liberties which is born in every true American, and which so shone through the administration of at least one of those commanders as to cover with new and fadeless glory the twice-illustrious name of Winfield S. Hancock. [Tumultuous cheering and waving of hats.]

What a spectacle for gods and men does this reconstruction present! See the black laborers of the South, fed in idleness

out of moneys wrung from the toil of Northern white men [applause], filled with ambition to rule the whites, and to grow rich by confiscations, and becoming each year more utterly and irreclaimably idle and thriftless. The splendid sugar, cotton, and rice plantations, at once the evidence and the product of a century of civilization, overgrown with weeds; idle machinery rusting in the sugar houses; the floods of the Mississippi sweeping over neglected levees and abandoned plantations, and the boorish negro field hands sitting in conventions! Behold Virginia, the Niobe of States, the mother of Presidents and illustrious statesmen—her at whose call our great free Republic was formed—her by whose free gift the Republic acquired the territory of the six great States of the Northwest! See the civil government founded by her Washington [applause], Madison [applause], Jefferson [applause], Lee [applause], the foremost statesmen of their day on the earth, destroyed, supplanted by a military despotism, and that, in turn, about to be supplanted by a civil government framed by infamous whites like Hunnicutt, and a rabble of half-civilized negroes [hisses]. If this be prosperity, progress, and liberty, God send us misfortune, reaction, and despotism forever! [Prolonged applause.]

The Radicals endeavor to smooth the hideous visage of this reconstruction by asserting that it is indispensable to prevent the Democracy getting power and repudiating the national debt. In other words, to prevent repudiation, some device must be arranged by which a majority of the legal electors of ten States shall not be permitted to rule them. If that necessity really exists, the dire event cannot be long postponed by devising in the interest of the national creditors a scheme of reconstruction which violates the Constitution and the fundamental theory of our Government; breaks pledges of infinitely more sacred obligation than the money debt; cripples every industry of the land, and while reducing one-half every man's ability to pay taxes doubles his share of the public burden—the essential condition of which scheme is the perpetuation of the rule of a party which now represents not one-third of the white people of the nation. But, thank God, that necessity does not exist! The credit of the Republic, as the union of the States, rests secure *in the hearts of the people.* [Applause.] A vast majority of all parties will preserve and defend it, as they did the Union. But, if the national credit could be shaken, it would be by the public creditors flocking into one party, and, under the panoply of the national honor, scheming to perpetuate the power of that party at the cost of the established con-

stitutions and liberties of the States and the nation. [Great applause—cries of "That's so."]

To accomplish this scheme of reconstruction, the Constitution is not only abrogated so far as the Southern States are concerned, but the form of our Government is being destroyed by the absorption by Congress of the chief powers of the national Executive:

Congress has assumed to take from the President the control of the army which the Constitution gives him, and to commit that part of it employed in the South to General Grant and five district commanders [hisses], independent of the orders of the President. By this bold assumption of power, it has converted many high officers of the regular army to radicalism, and made them zealous instruments of its usurpations.

It has usurped the pardoning power, which the Constitution gives solely to the President, and, by sweeping bills of pains and penalties, proscribed the intelligent white men of the South, notwithstanding the pardons of the President. And it now shamelessly avows that it will give *congressional pardon* only to those who eat the leek of radicalism. [Hisses.] All such are *loyal,* though, like Governor Brown, of Georgia, they drove and dragged their people into rebellion, and, coward-like, seized our arsenals and navy yards while yet wearing the mask of loyalty; while men like George W. Jones, of Tennessee, who stood by the Union from the first, but who opposed negro suffrage and white disfranchisement, are stigmatized as *"heart malignants,"* deserving only proscription at the hands of the Sumners, and Kelleys, and Butlers of Congress. [Great hisses. Cries, "Who stole the spoons?" etc.]

> "Those pseudo privy-councilors of God,
> Who write down judgments with a pen hard-nibbed."

The Republican party represents no principle for which we fought. We thought not of negro suffrage [applause and cries of "No, no"], or of white disfranchisement; of forcing on the Southern States unequal fellowship in the Union ["Never, never"], of changing our beneficent form of government. ["No, never"], or of perpetuating the Republican party ["Never, never"]. Out of the five hundred thousand of Union soldiers, Democrats and Republicans, who sleep on fields washed by the waters of the Atlantic and the Gulf, not one laid down his life for any such end. Of the fifteen hundred thousand of their surviving comrades, not one will say he would have risked his life

for either of these objects. And these measures of the Republican party are not only not the objects of the war, but are so prosecuted as to defeat those objects, and to inflict on the nation evils as great as those the war was waged to prevent. [Shouts, "That's so."]

The Democratic party is now the only party true to the Constitution and the Union. [Applause.] If we would accomplish the purposes of our service and sacrifice, if we would save the Union, the States, their liberties, and laws, we must unite with the Democracy. [Long continued applause.] We must not ask what men *have been,* but what they *are;* not who *lately* defended the Constitution, but who *now* defend it. [Great applause.] In the path which the Democratic party treads we see the footprints of Washington, Jefferson, Madison, Adams, and all the heroes of the Revolution; of Webster, Jackson, Clay, Wright, and all the giants of the generation just gone before us; and while it keeps that line of march, and bears the flag of the Constitution and the Union, we can follow it with pride and with unfaltering trust. [Immense applause, cheers, and waving of hats, followed by the band playing "Rally Round the Flag."]

In the beginning of the ensuing campaign General Blair took the lead of his party, forcing reconstruction to the front as the chief issue. But as the campaign wore on the October State elections showed by Republican victories that on this question the Democracy was doomed to defeat, and Blair was withdrawn from the stump and Governor Seymour put forward to win the battle, if it were possible. During October he made a speaking tour of New York, Pennsylvania, and the Central States, dwelling on economic subjects rather than constitutional ones. The change of program, however, was unavailing. General Grant was chosen President by 214 electoral votes to Governor Seymour's 80. Nevertheless the Republican popular majority was only 309,584, and, had Virginia, Mississippi, and Texas, which were still unreconstructed, voted, this would have been further reduced, the "black Republican" (a phrase which had now become literally true) majority of Mississippi being overbalanced by the white Democratic majorities of the two other States.

AN IMPENDING CATASTROPHE
From the collection of the New York Historical Society

The Republicans carried six of the eight reconstructed States (all but Georgia and Louisiana), owing to the negro vote, to which a considerable white vote was added in Tennessee and North Carolina, the mountains of which had been loyalist strongholds during the war. It was charged in Congress that negroes had been kept from the polls in Louisiana by violence and intimidation, and that there had been gross frauds in counting the vote. The fact that the Republicans had carried the spring election in the State by 12,000 majority, and that the Democratic majority was now reported as 47,000 gave color to these charges. There being no legal evidence before Congress as to the frauds, however, the returns from the State were accepted on their face. Various investigations of the charges were made later by Congress, one committee reporting that over 2,000 persons had been killed or wounded within the few weeks prior to the election; that the State had been overrun by midnight raids and open riots, Ku-Klux Klans hounding the Republicans through the swamps, and intimidating them by scattering through the city of New Orleans warnings not to vote. The committee reported that in one parish, where but a single vote for General Grant was recorded, the white Republican leaders had been either killed or driven away, and the negroes had been herded to the polls and compelled to vote the Democratic ticket, and that in another parish the entire registered vote (4,787) had been cast for the Democratic ticket, although in the spring election the Republicans had won by 678 majority.

CHAPTER III

The Fifteenth Amendment

[EQUAL MANHOOD SUFFRAGE]

Resolution of John B. Henderson [Mo.] Made the Basis of the Senate's Proposal of the Constitutional Amendment Establishing Equal Manhood Suffrage—Debate: William M. Stewart [Nev.], Garrett Davis [Ky.], Henry Wilson [Mass.], Thomas A. Hendricks [Ind.], James Dixon [Conn.], Samuel C. Pomeroy [Kan.]; Debate Postponed—George S. Boutwell [Mass.] Proposes a Similar Resolution in the House—Debate: Mr. Boutwell, William E. Niblack [Ind.], Charles A. Eldridge [Wis.], James Brooks [N. Y.], Samuel Shellabarger [O.]; Resolution Passed; Senate Substitutes It for Its Own Resolution—Debate: Orris S. Ferry [Conn.], Willard Warner [Ala.], George H. Williams [Ore.], Charles Sumner [Mass.], George Vickers [Md.], Waitman T. Willey [W. Va.], Henry W. Corbett [Ore.], James A. Bayard, Jr. [Del.], Frederick T. Frelinghuysen [N. J.], Edmund G. Ross [Kan.], Sen. Davis, Joseph S. Fowler [Tenn.], Willard Saulsbury [Del.], Adonijah S. Welch [Fla.], Sen. Hendricks, Oliver P. Morton [Ind.], James R. Doolittle [Wis.], Charles D. Drake [Mo.], Frederick A. Sawyer [S. C.], Sen. Wilson, Simon Cameron [Pa.], Lyman Trumbull [Ill.], James W. Patterson [N. H.], Roscoe Conkling [N. Y.], John Sherman [O.], Charles R. Buckalew [Pa.]; Resolution Amended and Passed; Joint Conference Committee Reports Resolution Without the Amendments, Which Is Passed by Both Chambers; Fifteenth Amendment Ratified by the States.

THE Fortieth Congress met for its third session on December 7, 1868. On that day Aaron H. Cragin [N. H.] introduced in the Senate a joint resolution to submit to the State legislatures what was in effect the present Fifteenth Amendment to the Constitution granting negro suffrage throughout the Union. Samuel C. Pomeroy [Kan.] also introduced what was virtually the same joint resolution. On the same day William D. Kelley [Pa.], John M. Broomall [Pa.], and William B. Stokes [Tenn.] introduced similar resolu-

tions in the House of Representatives, which were referred to the Committee on Judiciary.

On the 9th both Chambers listened to the reading of the fourth annual message of President Johnson. In this the President reiterated his fixed opposition to military reconstruction and deplored its evil results in non-representation of States in Congress, and in "negro domination" in the South.

Late in the preceding session John B. Henderson [Mo.] had submitted what was virtually the present Fifteenth Amendment, forbidding any State to deny or abridge the rights of its citizens to vote or hold office on account of race, color, or previous condition of servitude.

Congress was not then ready to pass so sweeping a measure, affecting as it did the Northern States, in most of which the negro was disfranchised. Neither was the Republican party prepared to accept this policy in the ensuing presidential campaign. But the decisive victory of that campaign emboldened it to take the advanced position toward which the logic of emancipation and equal civil rights was indeed driving it. As we have noted, constitutional amendments embodying this principle were submitted in the Senate on the first day that it convened after the election. Being referred to the Judiciary Committee, they were laid aside, and the bill of Mr. Henderson was made the basis of the committee's bill. This was reported by William M. Stewart [Nev.], chairman, on January 18, 1869, in the form of a joint resolution submitting the following constitutional amendment to the State legislatures for ratification.

"The right of citizens of the United States to vote and hold office shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."

The Amendment came up for discussion on January 28, 1869.

The Fifteenth Amendment

Senate, January 28-29, 1869

Senator Stewart.—This great question is the culmination of a contest which has lasted for thirty years. It is the logical result of the rebellion, of the abolition of slavery, and of the conflicts in this country during and before the war. Every person in the country has discussed it; it has been discussed in every local paper, by every local speaker; it has been discussed at the firesides; and now we are to place the grand result, I hope, in the Constitution of the United States. And let me remind my fellow-Senators that it is well that this work be now done, for we have realized the force of the very pointed sentence which was read here from the Swiss address,[1] that "undetermined questions have no pity for the repose of mankind." This question can never rest until it is finally disposed of. This amendment is a declaration to make all men, without regard to race or color, equal before the law. The arguments in favor of it are so numerous, so convincing, that they carry conviction to every mind. The proposition itself has been recognized by the good men of this nation; and it is important, as the new Administration enters upon the charge of the affairs of this country, that it should start on this high and noble principle that all men are free and equal, that they are really equal before the law. We cannot stop short of this.

It must be done. It is the only measure that will really abolish slavery. It is the only guaranty against peon laws and against oppression. It is that guaranty which was put in the Constitution of the United States originally, the guaranty that each man shall have a right to protect his own liberty. It repudiates that arrogant, self-righteous assumption, that one man can be charged with the liberties and destinies of another. You may put this in the form of legislative enactment; you may empower Congress to legislate; you may empower the States to legislate, and they will agitate the question. Let it be made the immutable law of the land; let it be fixed; and then we shall have peace. Until then there is no peace. I want a vote. I will not occupy time. The proposition itself is more eloquent than man can be. It is a declaration too high, too grand, too noble, too just, to be ornamented by oratory.

[1] To Congress on the subject.

Garrett Davis moved to amend the joint resolution by having it and all future propositions of constitutional amendments submitted to the vote of the people of the States instead of to the State legislatures. The people, he said, had no idea that such an important proposition as this would come before the legislators when they had elected them. Consequently the legislators might not be truly representative of their constituencies. To the objection that this method of submission was not constitutional, he replied: "Then make it constitutional." The Republican party, he said, ought to live up to its professions of belief in popular government. "Are you afraid to trust your people? What does Republican mean? He who represents the will of his constituency." But he knew that the Republican politicians feared to submit this amendment to the people lest it be rejected. The State legislatures they could control. The evident purpose of the bill was to keep the Republican party in power.

Henry Wilson [Mass.] replied to Senator Davis.

For the sake of justice the Republican party had dared to endanger its political power, instead of seeking to maintain it. The struggle to give the negro his rights had cost the party a million and a quarter votes, so unpopular was, and still continues, the policy.

But no matter how unpopular the doctrine is, no matter what it costs, no matter whether it brings victory or defeat, our duty is to hope on and struggle on and work on until we make the humblest citizen of the United States the peer and the equal in rights and privileges of every other citizen of the United States. Sir, I do not intend to cease my efforts until that end is fully accomplished. Let us give to all citizens equal rights, and then protect everybody in the United States in the exercise of those rights. When we attain that position we shall have carried out logically the ideas that lie at the foundation of our institutions; we shall be in harmony with our professions; we shall have acted like a truly republican and Christian people. Until we do that we are in a false position, an illogical position —a position that cannot be defended; a position that I believe is dishonorable to the nation with the lights we have before us. Through all the contests of the past thirty-five years I have

looked to the final consummation of the perfect equality of citizens of the United States in rights and privileges and the complete protection of all citizens in their rights and privileges. Peace can come in all its power and beauty only by the complete triumph of equality and justice.

This constitutional amendment, which, if it be submitted to the people and sustained by the States, is to crown the great work, to make every citizen equal in rights and privileges, will cost us the opposition of some of our political associates. But with an Administration coming into power pledged to liberty and equality of rights and privileges, pledged to peace, I believe before the four years pass away we shall become accustomed in all parts of the country to see all classes of our citizens peacefully exercising their rights. When the work is achieved all sections of the country will thank God that it is accomplished, and the people will wonder why it was that they ever made any opposition to its accomplishment.

Thomas A. Hendricks [Ind.].—I call your attention to the election of last fall, honorable Senators, and I ask you now to stand upon the pledge of honor that your party made to the people in the election last fall.

The position of the Democratic party last summer, I presume, is not a question of doubt or of uncertainty. That the Democratic party, in casting its vote for Seymour and Blair, did not vote for negro suffrage is plain enough. That the Republican party last fall in voting for Grant and Colfax cast a vote against universal suffrage is as plain. You took the question away from the people. You said that they should not consider it last summer; and now I understand it to be proposed to submit it to legislatures that are not again responsible to the people, but that were elected before this question is submitted. The second section of the Chicago platform, not yet a year old, declared the doctrine of the Republican party, and I simply ask honorable Senators now to make the pledged and plighted faith of their party to the country good and true, and not in the face of the nation and of humanity to give it the lie. You say:

Not yet a year old is this political faith, declared by the grand council of your party, upon which Grant and Colfax stood before the people; and now you propose, without giving the people a voice or a hearing upon the question, to say that the right to control suffrage in the Northern States does not belong to the people of those States.

"While the question of suffrage in all the loyal States properly belongs to the people of those States."

Circumstances may change in a country so as that the policy of a party must change somewhat. I have heard much said about "the logic of events." I have heard inconsistencies in political action and conduct and faith apologized for upon the general proposition of "the logic of events." But since the 20th day of May last up to the present hour what events have occurred that change this question? The negroes were free then —as free as now; your understanding of the subject was as ample then as now; and you said that in Indiana the right to control suffrage properly of right belonged to the people of that State. Now you propose to take it away from them, and, whatever may be the voice of Indiana, if you can get the concurrence of three-fourths of the State legislatures you propose to say to the people of Indiana, "It is not properly your right to control suffrage; it does not belong to you; our Chicago platform was false upon that subject." Men may be untrue to their political faith elsewhere, where offices are to be obtained, where political power is to be held; but in the Senate of the United States may I not appeal to the representatives of great States to stand by pledged and plighted faith?

My appeal, then, is, that Senators will so amend this proposition as that it shall go to the people. Then, when they decide it, let it stand.

Senator Stewart.—The Constitution does not point out any mode of taking the popular vote. In neither of the modes prescribed by the Constitution do the people act directly. There is no way of amending the Constitution so as to let the people act directly on the amendment. As the Constitution is now, you can submit the question to the legislature or to a convention in the State—to no other body.

Sir, it is very strange that whenever the Constitution of the United States can be construed to deny rights it is sacred with some; but whenever it can be used to secure right and liberty we are complained of for following the Constitution. Does the Senator from Indiana suppose that the Republican party intended in the Chicago convention to change the Constitution or to limit the power of Congress to submit propositions to the several States under the Constitution? No such construction is fair; no such construction can be maintained. The people understood perfectly well that Congress had power to submit amendments to the Constitution and ask for the action of the several States. They did regard that as a pledge against legislation; and that is the embarrassment in the way of legislation; but they did not

regard it as a pledge against submitting propositions to amend the Constitution in the ordinary way.

Discussion was resumed on January 29. James Dixon [Conn.] spoke.

It is not, perhaps, too much to say that this is the most important question in many of its bearings which has ever been presented to Congress in the shape of a proposed constitutional amendment.

What is the question? It is not merely a question of suffrage. That of itself is a subject of vast importance, and is now agitating the public mind of this country to a very great extent. The question whether the female sex should be permitted to participate in the privilege of suffrage, whether other restrictions should be removed, the question of age, the question of property, a multitude of questions are, or may be, raised which are vastly important and interesting in connection with the right of suffrage. But, sir, we are not now dealing merely with the qualification of voters. The question is not what shall be the qualifications of the voter, but who shall create, establish, and prescribe those qualifications; not who shall be the voter, but who shall make the voter.

In considering that question we ought to remember that it is utterly impossible that any State should be an independent republic which does not entirely control its own laws with regard to the right of suffrage. Nor does it make the slightest difference with regard to this that any abdication or abnegation of its power is voluntary. It may be said that it is proposed that the States shall voluntarily relinquish their power to control the subject of suffrage within their respective limits. Sir, suppose a State should voluntarily assume upon itself a foreign yoke, or declare by a majority of its own people, or even by a unanimous vote, that it would prefer a monarchy, would the fact of its being voluntary at all affect the question whether it was still an independent republic?

Now, sir, it may be that the people of this country in their present condition of mind are ready to relinquish the power in the States of regulating their own laws with regard to suffrage; and if it should so prove, and the result should show that your own State (Ohio) and my State (Connecticut), having once or twice voted against extending the right of suffrage to the negro race, should now consent that a contral power should regulate that question, and should do this voluntarily and freely, never-

theless they would by that action lose their character as republican governments. And, sir, that is the reason why it was that in the formation of the Constitution of the United States there was an entire neglect to interfere in the slightest degree with the question of suffrage in the several States. Look through the Constitution as it was formed, and you find no allusion whatever to the question of suffrage, except by reference to existing laws and qualifications in the then existing States. And why was that? We are not left in the dark upon that question. Was it because suffrage was not considered an important question? In No. 59 of "The Federalist," written by Alexander Hamilton, I find the following words:

> "Suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments?"

That was the objection taken by Alexander Hamilton to the interference of the general Government in State elections except so far as was necessary to protect the very existence of the National Government, which required that the National Government should have power to interfere in the choice of Representatives and Senators as to the time, place, and manner of choosing them, leaving the question of the qualifications of the electors wholly to the States. He says:

> "The violation of principle in this case required no comment."

What was the principle that would have been violated? It was the principle that an independent republic must necessarily control the question of suffrage in its own elections. This lies at the very foundation of all government, and it is therefore wholly impossible for any state to be an independent republic or an independent government in which the right of suffrage is controlled by an external power, whether by the consent of that state or against its consent. For that reason when it is proposed to amend the Constitution of the United States in this respect it is very questionable whether it is not an amendment which subverts the whole foundation and principle of the Government. Suppose it were proposed to strike out the clause of the Constitution guaranteeing a republican form of government to each State, and instead of that to insert a guaranty of a monarchy to each State. If a proposition of that kind were made it might be objected "this goes to the foundation of your Government;

this is not amendment; it is revolution, it is subversion." Can that not be said in this instance? Is the proposed amendment any more a fair carrying out of the intendment of the Constitution when it provides for its own amendment than it would be if it proposed directly to subvert the form of government, if it be true that the right of exercising and controlling the power of suffrage must necessarily exist in a state or it ceases to be a republic?

The Senator from Massachusetts [Mr. Wilson] said yesterday that he had no doubt that the Republican party had lost, I think he said, seven hundred and fifty thousand votes by this question of colored suffrage. I will not contend with him as to the number of votes they may have gained or lost, but I cannot but think, as he said, that that possibly was a reason why, under his guidance and control and that of other distinguished Senators, the Chicago Republican national convention not only ignored this question, but actually declared a doctrine utterly in opposition to this proposed amendment. They were compelled to meet this question. It would not do to say that suffrage should be granted in accordance with the letter and spirit of the Constitution, as they said the debt should be paid in accordance with the letter and spirit of the law. They were obliged to say something definite. It was true they could not satisfy my honorable friend from Massachusetts [Charles Sumner], nor the *Anti-Slavery Standard*. In that paper their course was very severely condemned, and I suppose my friend from Massachusetts would condemn it. But what did they say? Their resolution on this subject was read yesterday by the Senator from Indiana [Mr. Hendricks].

The honorable Senator from Nevada [Mr. Stewart] attempted to show that the true intent and meaning of this was that the subject should be left to the people of the States by a constitutional amendment. Why, sir, if he will look at this resolution for a single moment he will see that it makes a distinction which the proposed amendment to the Constitution does not make and cannot make between the several States. There was to be one mode of action as to the Southern States and one mode as to the Northern States. Can you do that by a constitutional amendment? The fact that the two are separated and divided conclusively proves that the convention had in view a different mode as to the two. Congress was to interfere as to the one, the people of the Northern States were to regulate as to the other. The people of all the States? By no means. The people of the States interested—the loyal States—had preserved

their powers and rights inviolate, whereas the Southern States had sacrificed theirs by rebellion, and it was therefore necessary for the general Government to interfere in their case. That was the plain meaning.

How was it understood in point of fact? In the discussions before the people in all the Northern States the ground was taken by all the orators of the Republican party, almost without exception, that the question of suffrage was to be left to the States for their separate action. It was never claimed anywhere, in any newspaper from the New York *Tribune* down to the humblest organ of the party, that the intent and meaning of the resolution to which I have referred was that Congress at this session should propose a constitutional amendment to legislatures chosen in November last. Why, sir, if it had been so your legislatures would have been of a very different character, in my humble judgment.

Therefore I say that, not only from the importance of this question as subverting the character of the Government, but also from the pledged faith of the great Republican party, acting in solemn council, declaring and promulgating its principles, stating to the people what would be its action in case it should receive a renewal of their confidence—in view of all this, I say that this Republican party is bound in solemn honor, at least, to submit this question, in fact, to the people; to give them an opportunity to be heard upon the subject. Your convention, at least, said that it should be left to the people of the States. If you say now that you meant by "people" existing legislatures, or legislatures to be chosen on the day when General Grant was chosen, do you suppose that if this had been so understood the result would have been precisely what it was? I do not speak of party results; but would legislators have been chosen, precisely such as were chosen, if the people had supposed that the great question of the right of the States to continue their existence as independent republics was to be decided—a question far greater than the question whether a negro or a Chinaman shall vote?

Sir, I do not wish to bring railing accusations against the leaders of the Republican party, but I beg leave to suppose a case. I beg leave to suppose that the Democratic party in national convention had pledged itself by a solemn resolution to carry out a certain line of policy; that upon that line of policy it had succeeded in carrying the popular vote, and had elected the honorable candidate for whom its members voted to the office of President of the United States. Suppose, for example, the

pledge had been on the question of the national debt and the Democratic party had resolved in solemn convention that the debt should be paid in gold, and upon that pledge of their faith and honor the confiding people of the country had elected a President and a Congress and State legislatures in accordance with the views of the Democratic party; suppose they had met here to-day in the Senate of the United States, controlling it by more than a two-thirds vote, and controlling also the House of Representatives, and in violation of their pledge had passed a resolution repudiating the public debt. What would be said of them? Does it require a very great stretch of imagination to suppose that the leaders of a party who had thus violated their honor would have been held up to popular scorn and indignation; that they would have been stamped with infamy as violators of faith, as having obtained power by false pretences, and that the leaders who devised and suggested such a palpable breach of faith would have been expelled by the common sentiment of mankind from the association of honest and honorable gentlemen throughout the world? Nor would any quibbling gloss or subtlety of interpretation by the leaders of the Democratic party, by which the words of the pledge were claimed to be complied with while its true spirit and meaning were violated, render the proceeding any the less contemptible, any the less worthy of the detestation of honest men.

Sir, I have supposed the Democratic party to have been guilty of such an outrage. *Mutate nomine, de te fabula narratur.*

> "Change but the name
> Of thee the tale is told."

Or, in another form, more scriptural, "Thou art the man."

Without insisting on this extreme view of the case, I only now say that you are at least under obligations to give the people an opportunity to say whether or not they are willing, by the adoption of this amendment, to subvert their old form of government and become subject provinces to an external power. There is no possible mode by which you can give them this opportunity except by submitting the question of the ratification of the amendment to conventions of the people, as proposed in the amendment which I shall offer.

Samuel C. Pomeroy [Kan.] opposed Senator Wilson's view that the Republican party had sacrificed popularity on the altar of principle. The strength of the party

with the voters of the country, he said, "consists in its adherence to principle, and to that embodiment of its principles, equality of rights among men." This was all that made the party worth substaining.

He proposed an amendment to the amendment providing that no State nor the United States shall make any inequalities which are not equally applicable to all citizens. This would enact woman suffrage throughout the Union.

Gathering lessons from the past, it now becomes a most solemn duty to inquire how to lay the foundations of a government that will stand securely both as against its dissatisfied citizens within and its jealous and opposing enemies from without. To give strength and character to any form of government there must be entire fairness and equality among all its citizens subject to it. Injustice framed into law or put into the Constitution is destined to work its overthrow. You can make an edifice of granite and marble stand upon the drifting sand sooner and better than you can found and maintain a government whose foundations are not laid securely in impartial justice and in an equality of rights, obligations, and duties where the conditions are equal.

If the people are safer to guard the precious trust of government than any mere individuals, why not all the people? Why trust a part sooner than the whole? The safety of a government is secured when it rests near to the hearts of good men and women—the people—whether wise or unwise, whether learned or unlearned, in books or schools. The very instinct of virtue and a love of human kind, binding indissolubly the citizen in the one bond of equality of rights, where liberty is secured in the law and the law made, upheld, and executed by the citizen, now forms and cements to some extent this National Government, which will tower in its magnificence and stand forever, provided that in this work of reconstruction we allow no injustice, no inequality among citizens, no proscription of rights, either civil or political.

The irresistible tendency of modern civilization is in the direction of the extension of the right of suffrage, and not at all toward proscription. Seven hundred thousand colored men were enfranchised in a day, and they have not disappointed the reasonable expectations which were entertained of them. They were unlearned and, for the most part, ignorant men. But in-

stinct is wiser than logic. The negro has blended and is lost sight of in the man. Suffrage is now held to be the native and the inherent right of every male citizen of a prescribed age. But is there no injustice in completing the work of reconstruction upon such a basis? Are not men and women citizens of the Republic alike? And how can there be in a just government an equality of citizens with a proscription of any of their rights?

As the strength of a chain is only equal to the weakest link, so the strength of this Government is tested to failure when any of its links are sundered and alienated. Any man who supposes that you can disfranchise any innocent citizen, with the lights of the past blazing in his face, has become blind, and will not, or cannot, read the lessons of experience. The ballot is its own instructor. It is an educator. It teaches, and it speaks a language, and that for human rights. It is the great vindicator and protector of individual and personal, no less than of national, honor and character. But human nature, claiming its rights, has no sex; the mind and the soul have no gender, and there is no blending of the responsibility of one citizen into that of another. Sir, the criminal for himself or herself goes alone to dungeon or scaffold. To his own master he standeth, falleth; and by no ingenuity or contrivance can the responsibility of one citizen be shifted upon the shoulders of another. In the primary and individual capacity must each speak, vote, pray, believe, love, hate, live, and die for himself or herself alone. Stamped upon every soul are an individual character and individual responsibilities which can neither be laid aside nor transferred to another. In this respect no one can have a representative character. In this ordeal each one stands for himself, and no one for another. These are the duties of this life which cannot be discharged by proxy. You are your own free agent, but you have no power of substitution, and it cannot be delegated. These are duties pertaining to oneself alone, and it is monstrous to talk of one person voting or representing another in the unorganized and primary state. As well may he live another's life, or die another's death.

Now, if this question of suffrage is to be settled, and settled by the law of the Constitution, it is of the highest importance that it be settled upon the right basis and upon one entirely in harmony with the genius and spirit of our Government and institutions. I only claim the logical sequence of our political organization. All other governments save ours have their privileged men or classes and their unprivileged; some are citizens,

others are mere subjects; one class control public affairs, the other bear its burdens with voices silenced. But in this Government, ordained by the people, the citizens, their right to administer it should not be questioned. And how can this Government be administered but by the ballot? Laws are made and executed by the representatives of the ballot. An elective officer is but a consolidated ballot; one person exercising the voice and will of many.

And how did the citizen obtain this power in our Government, or how was it exercised by one class and denied to others? Citizenship was not obtained by colonial charters, for then would their rights have perished with the charters themselves; not by any hereditary right or title, for all such were forbidden in the Constitution; not by successfully wielding the sword in battle, for then would it have been confined to warriors alone. How, then, was it obtained? I answer: it was given in the fundamental law when the Government was ordained for "all men" who are possessed of the "inalienable right to life, liberty, and the pursuit of happiness." And the word "men" is as comprehensive as the word "people"; for they all had the same title to life, liberty, and the pursuit of happiness.

The right of self-government springs from the consent of the governed, and there can be no just mind that will consent that a part shall exercise the will of the whole. Such an act would be a palpable usurpation of power and only one step removed from the right of a king or despot to rule; because if you desert the principle of equality of rights and circumscribe them to a part, that principle would not be violated if you proscribed still more and lodged the power finally in one man. And if by virtue of citizenship all are not entitled to the ballot as the source of power and rights, then none are; for power to deprive one extended would deprive all; and if you admit the existence of the power you must not deny its exercise to any extent.

I now come to this point to say that to deprive any citizen of the right of suffrage is a violation of the principles of our Government as it was ordained, and is a blow direct at the Government itself. I have studied this form of government to no purpose if its logic does not lead me to universal and impartial suffrage. The Constitution places all the powers of the Government in the people who ordained it (and it resided in them in any event); but while they delegated the exercise of certain powers to departments, State and national, still they held the reins of modification of all that was delegated, and provided for the exercise of that right. Hence it is that I can say that this is

not only no "white man's government," but it is no male government; and it is a historical fact that in the early days of our history both colored men and white women were admitted to the ballot upon precisely the same terms as white men. This was done in some instances, but their number being few does not affect the principle. If you admit but one woman to vote or one negro it is a confession that there is no legal bar to all.

Citizenship is of birthright or of choice in our form of Government, and the ballot is one of the rights admitted, ay, conceded, and cannot be conferred. Who gave any class the right to monopolize the elective franchise? If a majority, however large, can strike down one right not forfeited then they can another, and hence, as I have said, all. So that if you admit the doctrine of legal disfranchisement you cannot stop short of admitting that the power exists to strike down all rights. It may be said this will allow not only, but require that, minors and even children should be entitled to vote. To this I reply that a right may exist where the person is not entitled to the exercise of the right until a prescribed period. A child is entitled to the right of walking, marrying, and inheriting property; still it must wait for development to exercise that right. When we become members of society under an organized form we consent to the regulation of the exercise of our rights, but not to their extinction.

I will cheerfully comply with all regulations respecting the time, manner, and place of voting, as well as the age and residence required, when made equally applicable to all citizens; but a man who will not resist a law of disfranchisement has lost the spirit of his manhood. Such a one deserves to have no rights if he dare not maintain them. The citizen who will tamely submit to one robbery will soon be prepared to welcome all. When you have taken away the ballot you have left nothing secure.

Do not tell me that the rights of one class of citizens are safe in the hands of another, that the men will take care of the rights of the women. The rights of individuals allied to you may be or may not be safe, but of a class they never can be.

The property and character of your own wife and child may be safe in the hands of the husband and father; but would you trust the property and character of all other women and children in his hands? There are instances where one man may safely speak, vote, and act for a whole community; but would you organize and administer a government upon such a theory? Anything short of entire disfranchisement is as destructive of the theory of our Government as it is dangerous and destructive

of individual rights. When one right is destroyed the way is prepared to lose all. I would urge all citizens, by all that is valuable in liberty and desirable in the pursuit of happiness, to maintain and demand that equality of rights and those means of their defence which to a free man are better than an army with banners. I urge it by all that is valuable in a republican form of Government and by all that is dear to human life under it. Citizens who will submit to disfranchisement tamely deserve their fate, no matter whether they be men or women; and the men who demand it and deny the ballot are only one step removed from tyrants. As I would not be a slave, so I would not make a slave; and the man who would do or be either under our form of Government does not merit the condition of a freeman.

But I maintain and defend the right of the ballot to be in the hands of the citizen by virtue of his manhood and not of sex. It was man who was created a "little lower than angels," and not males! "In the image of God created He him," "but male and female created He them"; "and He called their name Adam." By men is meant mankind, and of this one blood are all the nations; and these nationalized here have a right to all that inherits to a free American citizen. These rights, I repeat, inhere to his manhood and are as inalienable as his immortality. I care not if he may have come to us from the center of dark, fettered Asia, from the plains of long-abused Africa, from the snows of Siberia, or the heat of the tropics, he is a man, and hence a brother, entitled to all the rights that are inalienable in man and to all he can possess and attain by the honest labor of his hands or by the powers of his mind.

I ask the ballot for woman, not on account of her weakness or on account of her strength; not because she may be above or below a man; that has nothing to do with the question. I ask it because she is a citizen of the Republic, amenable to its laws, taxed for its support, and a sharer in its destiny. There are no reasons for giving the ballot to a man that do not apply to a woman with equal force. She may use it or neglect it, as many men do; still it should be hers whenever she chooses to exercise the right. This would tend to its elevation and purification; for when the sacredness of the ballot is preserved it would not soil a woman's heart, hand, or dress, or the place of voting any more than when she uses the Bible and the prayer-book in the congregation of humble worshipers. In all the walks of life, retired or public, she adds grace, elegance, and purity to every step of her pathway, to every work of her hand, and to every love of her heart. I am for the enfranchisement fully and with-

out restrictions of every man in the land who has the rights and discharges faithfully the duties of a citizen of the Republic, no matter how depressed or oppressed he may have been. The way of his elevation is by the way of the ballot, and that should be as fixed and as settled as the fundamental law itself. But I would put in the form of law precisely the same provision for every woman in the land; for it is as safe in her hands as in his; it will be used with as much intelligence and with as good results. And, besides all that, the distinctive character of our republican Government on the basis of the original design can be perpetuated in no other way. The highest justice is the only safety. Let it come, then, by one comprehensive amendment striking out all inequalities among citizens, and the dream of the fathers of a free and pure Republic shall be realized, and there shall be peace throughout the land and good will among men.

Mr. President, when John Stuart Mill unrolled his petition in the British Parliament a few years since it was found to bear the names of those English men and women whose very thoughts were an inspiration to the civilization of the age. It asked for the enfranchisement of woman, and, upon a vote taken, seventy-three members voted for it. Thousands of our own countrymen and women have passed their petitions to the bar of this Senate, through me, that woman might have the ballot in this Government of the people; and in obedience to their ten thousand voices I ask a vote upon my amendment, and I shall move at a proper time a call for the yeas and nays upon it. I leave the wisdom of this vote to the judgment of history, and will cheerfully meet the verdict of posterity.

At this point other business intervened in the Senate and discussion upon the joint resolution was postponed.

The Fifteenth Amendment

House of Representatives, January 11-30, 1869

Various constitutional amendments providing for equal manhood suffrage were proposed in the House of Representatives in the early days of this session and were referred to the Committee on Judiciary.

On January 11, 1869, George S. Boutwell [Mass.], chairman of the committee, reported a joint resolution

to submit to the States the following constitutional amendment:

ARTICLE XV

Sec. 1. The right of any citizen of the United States to vote shall not be denied or abridged by the United States or any State by reason of the race, color, or previous condition of slavery of any citizen or class of citizens of the United States.

Sec. 2. The Congress shall have power to enforce by proper legislation the provisions of this article.

Mr. Boutwell brought the resolution for discussion on January 23. He showed that the Fifteenth Amendment was necessary to complete and guarantee the right proclaimed in the Fourteenth, which declared that

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside." "There are," said he, "citizens in Kentucky and Maryland eligible to-day to the office of President or Vice-President of the United States, yet who cannot vote for Representatives in Congress, or even for a State, county, or town officer. What is the qualification for the office of President? He must be a native-born citizen of the United States and thirty-five years of age. Nothing more!"

Mr. Boutwell discussed at length the constitutional power of Congress over suffrage in the States, concluding as follows:

What is the conclusion, then, of the whole matter upon the text of the original Constitution in reference to the question of suffrage? Why, first, that the power to make regulations concerning elections is vested in the States, and, secondly, that the power of the general Government upon the subject of the franchise is just as comprehensive as the power of the States, and that we may make regulations, and that we may alter such regulations as the States have made. This view is supported, first, by the necessary theory of the Government that it cannot exist independently of the States if this power in the general Government is denied. It is also supported by the debates in the convention that framed the Constitution itself. It is supported by the debates in the State conventions which ratified the Constitu-

tion, where the issue was distinctly made upon that question between the friends of the Constitution and its opponents. The opponents of the Constitution charged that it contemplated precisely what we now say it means; the supporters of the Constitution did deny that it contemplated precisely what we say it means, and upon that ground they advocated the provision. The opponents of the provision in four of the States sought the submission of an amendment to the people giving a different and more limited construction to the article. The Congress of the United States refused to submit such an amendment. This is conclusive evidence that all the men who participated in framing this Government were of opinion that the power to regulate elections was in the States, subject to the supreme control of the general Government; and this without any inquiry into other provisions of the Constitution which give us ample basis for all the legislation we now propose, such as the provision by which the United States are to guarantee to each State a republican form of Government.

WILLIAM E. NIBLACK [Ind.].—I desire to ask the gentleman this question: will not the position which he assumes require us, in order to make a State government republican in form, to confer suffrage also on females to the same extent that we do upon males?

MR. BOUTWELL.—Well, Mr. Speaker, I have myself been rather broad and generous in times past in maintaining the right of people to vote. I see that there is a party coming which promises to go very far in advance of myself, with more rapid strides than I have been able to take. I am willing, for one, that the gentleman from Indiana [Mr. Niblack] for the present should maintain the doctrine which he suggests in the question he puts to me, because I suppose it carries with it as an incident the result which I seek by this bill. If he will go with me in granting suffrage to all male citizens of this country twenty-one years of age, without regard to race or color, I will listen most attentively to any argument he shall make here, or anywhere else within my reach, in favor of the right of women to vote.

CHARLES A. ELDRIDGE [Wis.].—The question is, will you vote for it? We are doing precisely the same thing for you—listening to your argument; but we do not propose to go with you on this question, and we do not expect you will go with us on the other question.

Mr. Boutwell evaded the question.

James Brooks [N. Y.] ironically moved "in order to carry out the principles of the gentleman from Massachusetts" to amend the amendment so as to read that "the right of any *person* to vote shall not be denied, etc., by reason of his *or her* race, *sex, nativity or age when over twelve years,* etc."

THE GREAT NATIONAL GAME

Our Colored Brother.—"Hi yah! Stan' back dar; it's dis chile's innin's now."

From the collection of the New York Public Library

On January 29 Samuel Shellabarger [O.] supported the constitutional amendment. He declared that it was necessary in order to make logical, impartial, and secure the power of Congress now exercised over the suffrage in ex-rebel States.

By our reconstruction laws—now accepted by the country as permanent—we have required the reconstructed States to submit to equal suffrage. We have done this mainly, I admit, because it was absolutely impossible to organize or guarantee republican governments down there at all unless we enabled the only loyal race there was there to vote. This fact, distinguishing the Northern from the Southern States, might, perhaps, justify us in requiring temporarily of them what we did not accept for ourselves. But, if this be so, it can only be temporarily so; if, indeed, as we all devoutly hope, general loyalty is ultimately to come back to the South. We must, therefore, speedily either let the South disfranchise its colored races if they will, or else enfranchise our own, or else compel a submission by sister States to a rule of elective franchise pronounced by ourselves dangerous and ruinous to us. To so compel them permanently to submit to what we refuse ourselves to accept is dishonor—a dishonor which will soon become revolting to the sense of fair play for which the American people are not undistinguished, and will shock the moral sense of mankind. This consideration has exceeding force in impelling us to at once make the law of enfranchisement national, universal.

But, Mr. Speaker, these reasons for the adoption of the amendment making the citizens equal in the enjoyment of the best right of citizenship, though each important in itself, become so trivial in contrast with the great reason for it that we hesitate at even naming them. The decisive argument for the amendment is that it is right. In determining whether it is right, what we have to consider and to debate and to adjudge are problems like these, and only problems like these: is the right to vote in a government where votes make the government's constitution, laws, and rulers, and unmake them, a right worth having for one's protection or elevation or self-defence? Or is it, on the other hand, better for all these that a privileged and proud and prejudiced class should do all the voting, and make and change and abolish all the constitutions and laws and rulers for me—me unconsulted but subject! The ballot being both the highest franchise and highest defence of a freeman, ought a free citizen who endures all the burdens of his Government be by it denied

its highest means of defence merely because he is dark or light, poor or rich, high or lowly? Sir, I tell you that it is precisely true that only questions as plain, or, rather, absurd, as these are involved in determining the righteousness of this great measure. Others may if they will, but I cannot debate here. It may yet, in this nineteenth century of our Lord's grace, be a question in doubt and darkness whether a government ought to be contrived and made on purpose so as to impose its burdens upon the poor and lowly equally with the high, and then deny to the former the chiefest means to rescue themselves and children from being the poor, lowly, and suffering.

It may be yet, in political science, one of its unsolved problems whether these poor do not need their government's protection as much as do the opulent, the defenceless as much as do the powerful, those ready to perish as much as do the prosperous and mighty. It may be that the moral sciences which go into the structures of our Christian civilization have not yet found out whether it is magnanimous or pusillanimous, honor or dishonor, courage or cowardice, virtue or crime, for the powerful to so contrive their government's structure as to put upon the weak and lowly the common burdens of their government, and then to take from them and their children forever that supremest right of their citizenship which best secures their elevation, defence, and happiness. But, Mr. Speaker, if these be, indeed, yet questions in our moral or social or political or religious or legal science, or in any other science, which are unsolved, then its non-solution turns that science, where such questions are unknown things, into the monstrous, and we turn away from arguing them with the feeling that our very instincts of honor and manhood have been outraged by the invitation to such debate.

Mr. Speaker, it is absolutely plain that for the Republican party of America to-day the path of safety is the path of duty. All the instincts of our common loves of liberty, equality, and fair play; all the memories, histories, and glories of our great party of freedom; all the senses of magnanimity, of chivalry, justice, and merest decency, which make us revolt at robbing the lowly and their children of those rights and franchises of freemen to which they are entitled as much as we, and which they need far more than we, tell us where that path of duty is. Nay, nay, Mr. Speaker—God, who made of one blood all the nations—God who maketh it so that righteousness exalteth a nation—God who careth for his poor as he doth for his sparrow; God hath shown us which way goes the path of this nation's

duty. To go in it is virtue, honor, and success. To go from it is crime, dishonor, and overwhelming disaster and defeat.

The joint resolution was passed on January 30 by 150 yeas to 42 nays. When the House amendment reached the Senate this body, in order to expedite matters, laid aside in its favor its own amendment. Various amendments of the amendment were proposed and referred to the Committee on Judiciary, which was entrusted with the entire subject.

The Fifteenth Amendment—*Concluded*

Senate, February 4-9, 1869

The House amendment was brought before the Senate for discussion on February 4.

Orris S. Ferry [Conn.] declared that every Senator who had opposed the measure did so not upon its principle, but upon its mode of submission to the States, or other technicalities. He replied particularly to the argument of his colleague [Senator Dixon] that the object of the amendment was not to declare who should vote, but who should make voters.

Willard Warner [Ala.] spoke in behalf of woman suffrage.

In this land Government does not make voters, but voters make the Government. To vote, under every principle upon which our Government is based, is a right of man because of his manhood, and it comes to every citizen because of that truth in our fundamental charter which proclaims that "governments derive all their just powers from the consent of the governed." And herein lies the essential distinction between the European and the American social theories. By the former all political functions find their source in the governing authority, and descend from it to the subject. By the latter all political functions originate from the people, in whom alone is inherent sovereignty. The European petitions for franchises; the American asserts rights. This amendment only forbids the denial of these rights.

Sir, I thank God that I have lived long enough to witness the dawning of that day when these caste distinctions shall be oblit-

erated all over this land. The amendment attains the accomplishment of that state of society toward which the nations have been struggling since the beginning of the Christian civilization. To the old pagan system of civilization the only law was the law of force. To the new Christian civilization, ushered in by Divine revelation, the foundation of all law is right. For eighteen centuries that civilization has been struggling through the nations amid insurrections and revolts and wars and overturnings of kingdoms, until here upon this western continent it at last is to attain that accomplishment which has been the hope of philosophers and statesmen and patriots of all ages. One thing only yet remains to restrain its full fruition, the prejudice of race.

Sir, there were two nations of antiquity in which that prejudice exerted a more potent influence than in any others. To the Greek, tracing his lineage back through heroes and demi-gods to the very deities of Olympus, all the world outside of Hellas was but a barbaric chaos. To the Hebrew the family of Abraham were the chosen of God, to whom the very touch of the Gentile was defilement to the Jew. And now, sir, roll back for a moment the curtain of history. On the Athenian Areopagus, in the very center of that brilliant Greek life, Paul the Hebrew is proclaiming "God hath made of one blood all nations of men for to dwell on all the face of the earth." Behold the realization of that which is contained in those Divine words rapidly approaching on these western shores! Three centuries have scarce elapsed since Europe poured forth her children out of all her diverse nationalities upon our Atlantic coast, and Africa in chains was dragged thither to be their servant; while now, in the midst of the growing glory of the nation, the Orient is sending its myriads eastward across the Pacific. Europe, Asia, Africa are blending here into a nationality such as the world has never seen; a nation where equal civil rights and equal political rights, under the benign operation of a Constitution broad in its humanity as the sway of the Republic, shall be the law for every individual; a nationality which shall realize the vision of the statesman, and, may we not hope, the aspiration of the Christian.

Mr. President, I would admit woman, the most beautiful, the purest, and best of God's creations, to an equal voice with us in the Government. As she is now the sharer of all our pleasures, the partner of all our joys, I would have her share with us the powers, the duties, and the responsibilities of government. Suppose, Mr. President, that one of the many sorrow-stricken women made widows by the late war should walk into this Chamber and say, "Senators, my husband and two sons lie in yonder na-

tional cemetery—their graves marked, cared for, cherished gratefully and tenderly by the nation—as the last resting-place of the heroic defenders of its life. I have no husband, no son, no brother, no father, no man left to represent me. I pay taxes; every law you pass affects me and mine, and I demand a voice in this Government." What answer shall you give her?

But I know that woman's suffrage is not now attainable, and I would not, as a practical legislator, jeopardize the good which is attainable by linking with it that which is impossible. Besides, whenever the women of this country ask with anything like unanimity for the ballot they will get it.

The irresistible drift of modern civilization is toward a larger and larger enfranchisement of the people, and our end is a pure democracy. Let us proceed to it with firm and decisive steps. Then we will have no disfranchised, disaffected, clamoring classes always ready and ripe for tumult, rebellion, and revolution. Then the will of the people, legally and peacefully expressed, will have a weight and a power which will command and insure universal acquiescence and obedience.

We are relaying the very corner-stone of our temple of liberty. Let us see that its proportions are broad, true, and ample, and its material indestructible. Our fathers laid the foundation of our Government upon the rock of truth and justice when they proclaimed to the world, in their immortal Declaration, that "all men are created equal"—not made so by laws and constitutions, but by the Creator; but they built badly, though perhaps of necessity, when they countenanced slavery in the provision relating to fugitives. Let us profit by their error, and, enlightened by the experience of eighty years, and warned by that experience of the terrible retribution which surely and inevitably follows compromise of truth and justice, let us follow our principles to their logical conclusion and found this nation on the rock of universal equal human rights, thus settling forever the questions which, never settled aright, have risen again and again to disturb and finally to desolate our beautiful land.

George H. Williams [Ore.] spoke on February 5. He proposed as a substitute for the amendment one giving Congress the power to abolish or modify State laws on suffrage. Then the various States could experiment in the matter under the safe control of the national legislature.

Under this amendment as I propose it, if the State of Kansas, which appears to be the pioneer State upon all questions of this nature, should memorialize Congress to pass a law striking the word "male" from her constitution, and her two Senators here should support that memorial, as I have no doubt they would, Congress could try the experiment of female suffrage in that State, and it could then be determined whether or not it would be advisable to extend the law to every State in this Union. I cannot divest myself of the conviction at this time that the experiment would be an unfortunate one for all concerned. I cannot now persuade myself that even the women, if they were to try this experiment, would be fully satisfied with it and would meet with all that power and happiness which some of them so fondly anticipate from the exercise of such a right. Women, when they have tried this experiment, may come to feel like a romantic boy going to the war, dreaming of greatness and glory, but finding in the sufferings and sacrifices of the march, the camp, and the battle a strong desire to go back again to the quiet and happy home of his boyhood.

Senator Williams then referred to the immigration of Chinese.

Now, if a constitutional amendment is adopted to the effect that all political distinctions as to race and color shall be forever abolished in the United States, of course it will follow that the Chinese, who are coming here by thousands every year, will find no constitutional obstacle to the exercise by them of the elective franchise and to the right to hold office.

SENATOR STEWART.—I ask the Senator if that could be accomplished unless we allowed them to be naturalized? This applies only to citizens.

SENATOR WILLIAMS.—I know that would not follow unless the naturalization laws are changed; but if the Constitution of the United States can be changed so as to abolish all political distinctions on account of race and color, how easy, upon the same principle, will it be to change the naturalization laws. And would not consistency require us to change the naturalization laws and make them comformable upon principle to the provisions of the Constitution?

Now, sir, there are, I suppose, at this time about one hundred thousand Chinese in the Pacific States and Territories, and every ship that comes across the Pacific brings its hundreds and lands them upon our shores. They are a people who do not, or will

not, learn our language; they cannot, or will not, adopt our manners or customs and modes of life; they do not amalgamate with our people; they constitute a distinct and separate nationality, an *imperium in imperio*—China in the United States; and, sir, they are, and continue to be, the ignorant and besotted devotees of absolutism in politics and the blind disciples of paganism in religion.

Sir, conceive the condition of things upon the Pacific coast if the governments of the States there were delivered into the hands of such a people. Suppose that the control of all our educational and religious institutions was transferred to the hands of these people, what would be the consequences to that portion of the Republic? Everybody has heard of the exhaustless populations of China, and if sufficient inducements are held out they may come to this country, not only by thousands, but by millions, and it would be a very easy thing if by coming they could obtain political power for the Chinese to take possession of every State and Territory on the Pacific coast and appropriate the productions of that beautiful, interesting, and valuable region of the Republic to their exclusive benefit and use.

I hope, sir, that this nation will not bind itself hand and foot, for all coming time, and deliver itself up to the political filth and moral pollution that are flowing with a fearfully increasing tide into our country from the shores of Asia.

Charles Sumner [Mass.] said that the old doctrine of State rights was being used to bolster up the doomed and despicable cause of caste as it had been employed to protect the scarcely more abhorrent cause of slavery, of which caste was the direct offspring.

I meet this odious imposture, as I met the earlier measure, with indignation and contempt, naturally excited by anything unworthy of this Chamber and of the Republic. How it can appear here and find Senators willing to assume the stigma of its championship is more than I can comprehend. Nobody ever vindicated slavery who did not lay up a store of regret for himself and his children; and permit me to say now nobody can vindicate caste, whether civil or political, as beyond the reach of national prohibition, without laying up a similar store of regret.

Do not complain if I speak strongly. The occasion requires it. I seek to save the Senate from participation in an irrational and degrading pretension.

It was in the name of State rights that slavery, with all its

brood of wrong, was upheld; and it is now in the name of State rights that caste, fruitful also in wrong, is upheld. The old champions reappear, under other names, and from other States, each crying out that, under the national Constitution, notwithstanding even its supplementary amendments, a State may, if it pleases, deny political rights on account of race or color and thus establish that vilest institution, a caste and an oligarchy of the skin.

This perversity is easily understood when it is considered that the present generation grew up under an interpretation of the national Constitution supplied by the upholders of slavery. State rights were exalted and the nation was humbled, because in this way slavery might be protected. Anything for slavery was constitutional. Vain are all our victories, if this terrible rule is not reversed, so that State rights shall yield to human rights, and the nation be exalted as the bulwark of all. This will be the crowning victory of the war. Beyond all question the true rule under the national Constitution, especially since its additional amendments, is that *anything for human rights is constitutional.* Yes, sir; against the old rule, *anything for slavery,* I put the new rule, *anything for human rights.*

Sir, I do not declare this rule hastily, and I know the presence in which I speak. I am surrounded by lawyers, and now I challenge any one or all to this debate. I invoke the discussion. On an occasion less important, Lord Chatham, after saying that he came not with the statute-book doubled down in dog's ears to defend the cause of liberty; that he relied on a general principle, a constitutional principle, exclaimed, "It is a ground on which I stand firm; a ground on which I dare meet any man." In the same spirit I would speak now. No learning in books, no skill acquired in courts, no sharpness of forensic dialectics, no cunning in splitting hairs, can impair the vigor of the constitutional principle which I announce. Whatever you enact for human rights is constitutional. There can be no State rights against human rights; and this is the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

The State is local in its character, and not universal. Whatever is justly local belongs to its cognizance; whatever is universal belongs to the nation. But what can be more universal than the rights of man? Such they have been declared by our fathers, and this axiom of liberty nobody can dispute.

Listening to the champions of caste and oligarchy, I do not err when I say that this whole terrible and ignominious preten-

sion is traced to a direct and bare-faced perversion of the National Constitution.

By the National Constitution it is provided, that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State legislature," thus seeming to refer the primary determination of what are called "qualifications" to the States; and this is reënforced by the further provision, that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such *regulations.*" This is all. On these simple texts, conferring plain and intelligible powers, the champions insist that "color" may be made a "qualification"; and that, under the guise of "regulations," citizens, whose only offence is a skin not colored like our own, may be shut out from political rights; and that in this way a monopoly of rights, being at once a caste and an oligarchy of the skin, is placed under the safeguard of the National Constitution.

Now, to this perversion I oppose a point-blank denial. These two words are not justly susceptible of any such signification, especially in a national constitution which is to be interpreted always so that human rights shall not suffer. A "qualification" is something that can be acquired. A man is familiarly said "to qualify" for an office. Nothing can be a "qualification" which is not in its nature attainable, as residence, property, education, or character, each of which is within the possible reach of well-directed effort. Color cannot be a "qualification." If the prescribed "qualification" were color of the hair or color of the eyes, all would see its absurdity; but it is none the less absurd, when it is the color of skin. Color is a quality derived from nature. But a "quality" is very different from a "qualification." A quality, inherent in man and a part of himself, can never be a "qualification" in the sense of the National Constitution.

The same judgment must be pronounced on the attempt to found this outrage upon the power to make "regulations," as if this word had not a limited signification, which renders such a pretension impossible. "Regulations" are nothing but rules applicable to a given matter; they concern the manner in which a business shall be conducted, and, when used with regard to elections, are applicable to what may be called incidents, in contradistinction to the principle, which is nothing less than the right to vote. A power to regulate is not a power to destroy or to disfranchise.

It is under the National Constitution that the champions set up their pretension; therefore, to the National Constitution I go. And I begin by appealing to the letter, which from beginning to end does not contain one word recognizing "color." Its letter is blameless and its spirit is not less so. Surely a power to disfranchise for color must find some sanction in the Constitution. There must be some word of clear intent under which this terrible prerogative can be exercised. This conclusion of reason is reinforced by the positive text of our Magna Charta, the Declaration of Independence, where it is expressly announced that all men are equal in rights, and that just government stands only on the consent of the governed. In the face of the National Constitution interpreted, first, by itself, and then by the Declaration of Independence, how can this pretension prevail?

But there are positive texts of the National Constitution, refulgent as the Capitol itself, which forbid it with sovereign irresistible power, and invest Congress with all needful authority to maintain the prohibition.

There is that key-stone clause, by which it is expressly declared that "the United States shall guarantee to every State in this Union a republican form of Government," and Congress is empowered to enforce this guaranty. The definition of a republican government was solemnly announced by our fathers, first, in that great battle-cry which preceded the Revolution, "taxation without representation is tyranny," and, secondly, in the great Declaration at the birth of the Republic, that all men are equal in rights and that just government stands only on the consent of the governed. A republic is where taxation and representation go hand in hand; where all are equal in rights and no man is excluded from participation in the government. Such is the definition of a republican government, which it is the duty of Congress to maintain. Here is a bountiful source of power, which cannot be called in question. In the execution of the guaranty Congress may—nay, must—require that there shall be no caste or oligarchy of the skin.

If in the original text of the Constitution there could be any doubt, it was all relieved by the amendment abolishing slavery and empowering Congress to enforce this provision. Already Congress, in the exercise of this power, has passed a *civil rights act*. It only remains that it should now pass a *political rights act*, which, like the former, shall help consummate the abolition of slavery. According to a familiar rule of interpretation, expounded by Chief Justice Marshall in his most masterly judgment, Congress, when intrusted with any power, is at liberty to

select the "means" for its execution. The civil rights act came under the head of "means" selected by Congress, and a political rights act will have the same authority. You may as well deny the constitutionality of the one as the other.

The amendment abolishing slavery has been reënforced by another, known as Article XIV, which declares peremptorily that "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States," and again Congress is empowered to enforce this provision. What can be broader? Colored persons are citizens of the United States, and no State can abridge their privileges and immunities. It is a mockery to say that, under these explicit words, Congress is powerless to forbid any discrimination of color at the ballot-box. Why, then, were they inscribed in the Constitution? To what end? There they stand, supplying an additional and supernumerary power, ample for safeguard against caste or oligarchy of the skin, no matter how strongly sanctioned by any State government.

But the champions anxious for State rights against human rights strive to parry this positive text by insisting that, in another provision of this same amendment, the power over the right to vote is conceded to the States. Mark, now, the audacity and fragility of this pretext. It is true that "where the right to vote is denied to the male inhabitants of a State, or in any way abridged, except for participation in rebellion or crime," the basis of representation is reduced in corresponding proportion. Such is the penalty imposed by the Constitution on a State which denies the right to vote, except in a specific case. But this penalty on the State does not in any way, by the most distant implication, impair the plenary powers of Congress to enforce the guaranty of a republican government, the abolition of slavery, and that final clause guarding the rights of citizens, three specific powers which are left undisturbed, unless the old spirit of slavery is once more revived and Congress is compelled again to wear those degrading chains which for so long a time rendered it powerless for human rights.

I am now brought directly to the proposed amendment of the Constitution. Of course, the question stares us in the face, why amend what is already sufficient? Why erect a supernumerary column?

So far as I know, two reasons are assigned. The first is that the power of Congress is doubtful. It is natural that those who do not sympathize strongly with the equal rights of all should doubt. Men ordinarily find in the Constitution what is in them-

selves, so that the Constitution in its meaning is little more than a reflection of their own inner nature.

Another reason assigned for a constitutional amendment is its permanent character in comparison with an act of Congress which may be repealed. On this head I have no anxiety. Let this beneficent prohibition once find a place in our statute-book, and it will be as lasting as the National Constitution itself, to which it will be only a legitimate corollary. In harmony with the Declaration of Independence and in harmony with the National Constitution, it will become of equal significance, and no profane hand will touch its sacred text. It will never be repealed. The elective franchise once recognized can never be denied; once conferred can never be resumed. The rule of equal rights once applied by Congress under the National Constitution will be a permanent institution as long as the Republic endures; for it will be a vital part of that republican government to which the nation is pledged.

GEORGE VICKERS [Md.].—I would ask the Senator from Massachusetts if the color of the hair added to the disqualification of the voter intellectually is not a power resident in the legislature? I would ask the honorable Senator if public virtue and public intelligence are not the very foundations of our Republic?

SENATOR SUMNER.—The point is not whether public intelligence and public virtue are essential to a republic, for there we are agreed; not whether they may not be recognized as qualifications, but the point is whether any inherent quality under Providence planted in the human form by God can be made by any vote of man a qualification for an elector?

SENATOR VICKERS.—There are five races of men, the red man, the yellow man, the white man, the black man, and the brown man. Now, I ask if it is not competent for a legislature to disfranchise or to withhold the elective franchise from any one of these races? Is not color the distinctive mark of the race? And because here is a distinct race, an inferior race, and, because this race has color, the race is disqualified. It is not altogether on account of the color of the skin. That is only one of the indications and marks by which you distinguish the race. Have we not a right to withhold the elective franchise from the Chinese, who are of a different color from us and from the negro? Would the Senator say that because the Chinese have a certain complexion therefore we have no right to disfranchise them because of that complexion? If they are a different race, if they are pagans, according to the speech of the Senator from Oregon

[Mr. Williams], have we not a right to disqualify them and withhold from them the elective franchise?

SENATOR SUMNER.—That is not the question. I do not say that they may not be disqualified for their paganism. That is a question of character. A man may cease to be a pagan; he may change; he may become a Christian; but a man cannot cease to be a colored man if he is so made by Providence. The Ethiopian cannot change his skin.

SENATOR VICKERS.—If the color of the skin, the color of the hair, or the color of the eye distinguishes one race from another, then I say color of skin, of hair, or of eye can make the disqualification, and the legislature has a right so to decree.

SENATOR SUMNER.—I see my honorable friend does not flinch from the conclusion.

SENATOR VICKERS.—Mr. President, I had never heard, until the honorable Senator from Massachusetts asserted it to-day, that when human rights and the Constitution came into conflict the Constitution was to yield to human rights. Why, sir, if that doctrine is to prevail, how many differences of opinion are there in reference to human rights? We should have no Constitution; it would be undefined, and there would be nothing tangible in reference to the fundamental law. But if the doctrine of the Senator from Massachusetts prevails, if human rights are to override the Constitution of the country, then does not the doctrine of human rights asserted by the Senator apply as well to females as to males? The Senator from Kansas would say it did; and I ask if human rights are not as applicable to woman as to man? And, if the doctrine of human rights is to be the rule by which the Constitution is to be construed, then it must be so construed as to admit female suffrage; and yet I suppose the Senator from Massachusetts would not support a measure of this kind. It is not unusual for Senators to lay down a general principle and argue upon that principle, and then in the practical application of it to come short of its results. It has been beautifully said that "we go to man for philosophy and to woman for consolation"; and, although I am no advocate for woman suffrage, I believe that if the Congress of the United States had been composed exclusively of women we should have had no civil war. We might have had a war of words, but that would have been all. [Laughter.]

I would rather concede the ascendency of any party for twenty years or more if the country could thereby be shielded from any infraction or change of the Constitution, and its wonted prestige be preserved and continued. The success of

party is a paltry consideration when weighed against the principles of the Constitution, of public tranquillity, and happiness. Parties are changing; they have changed. Mutability is stamped upon human productions, and disappointment to human plans and hopes; new generations are to succeed us, and the passions and prejudices of to-day cannot impress their minds and regulate their conduct. It is only by adhering to constitutional rules; to the principles of our fathers, whose purposes were single and patriotism undoubted; by a conformity to right, to justice, and by doing to others as we would have others do unto us that we can expect to establish a party which shall "stand the test of human scrutiny, of talents, and of time." No legislation of Congress can elevate or improve the physical, moral, or intellectual condition of the negro; we cannot legislate into them any fitness or qualification which they do not now possess. We may descend from the high position in which the framers of the Constitution left us and place ourselves upon the common and degrading platform of negro suffrage and political equality.

Public virtue and intelligence are the foundations of a republic. It is a government of opinion, of principle; its officers and agents must be wise, capable, and patriotic. The people who select them must, to a great extent, possess the same elements; they must have some knowledge of statesmanship, of political economy, of trade, commerce, manufactures, agriculture, and mechanic arts, and of the resources and wealth of the country, and withal a fund of experience and common sense. Will the introduction of the negro into our political affairs add to the intelligence, statesmanship, wisdom, and judgment of the country? Will it not weaken our institutions and the confidence we have had in their stability and lay another and different foundation than that which was laid by our fathers? The negro as a class, as a race, is unfortunately ignorant and superstitious; with some exceptions, he cannot read nor understand your Constitution, is unacquainted with your laws, institutions, history, and policy; he at present lacks independence and that high sense of honor and integrity which every voter should possess to shield him from sinister or unworthy influences. If you had a house to build would you procure ignorant and unskillful hands to erect it? And yet, in so grave a matter as legislation, statesmanship, and the affairs, internal and external, of a great country, and in choosing Representatives and officers to discharge the most difficult and momentous duties, we are to call to our aid the power of numbers only, which possess not the moral or intellectual strength to render the slightest assistance. They may

be made the dupes and instruments of interested persons, but it should be recollected that, like the elephants in battle, they will be as likely to trample upon friends as upon foes. No one political organization can long hold them, and they will become a *tertium quid* which will enervate rather than strengthen the body-politic.

Waitman T. Willey [W. Va.] summed up his reasons for voting for the amendment as follows:

1. All just government must rest on the consent of the governed.
2. Taxation without representation is tyranny. If negroes are to be taxed or compelled to bear arms justice requires that they should vote.
3. The welfare of the white race requires that the intellectual development of the negro and the improvement of his physical condition be accomplished as speedily as practicable. The vote will be the best incentive for the negro so to develop and improve himself.
4. The amendment will definitely settle the vexatious question of suffrage in the ex-rebel States.
5. It will prevent the negro from sinking into a state of hopeless despondency, and becoming a pest to society and a burden to the State.
6. It will remove the troublesome negro issue from politics.
7. The ballot will be a broader and safer shield to the negro than specific legislation.
8. The amendment will place all the States on an equality with respect to suffrage, and so remove the just indignation that prevails in the ex-rebel States because of present discrimination in the matter.
9. The spirit of justice, human liberty, and Christian civilization demands the amendment.
10. The amendment leaves the question to the people of the country, whose will is of right supreme.

On February 6 Henry W. Corbett [Ore.] offered an amendment to the amendment which specifically excluded the Chinese from suffrage.

With the experience of the past few years on the Pacific coast we have found that this class of people are not beneficial to the advancement of those Christian institutions that lie at the foun-

dation of our Government. The presence of large numbers of them in our midst is not beneficial to the observance of the Sabbath day. It is not encouraging to the Sabbath-school, which is the nursery of our children, and which is to fit them for enlightened and powerful and good statesmen. The question now is whether for our own race, whether for the benefit of our posterity, we shall not make this exception as against the Chinese.

This question reaches beyond the common rights of man under a Christian nation such as was founded upon Plymouth Rock. It reaches the very foundation of our Christian institutions. Allow Chinese suffrage, and you may soon find established pagan institutions in our midst which may eventually supersede those Christian influences which have so long been the pride of our country.

Those nations that have worshiped heathen gods have been overthrown and superseded by Christian nations, and I think it is very fair to presume that the overruling providence of God may curse us in the same way, and that we may eventually be overthrown by that class of people who come to our Pacific shores if we do not guard the priceless legacy which has been intrusted to us.

James A. Bayard, Jr. [Del.] opposed the argument that suffrage was a natural right.

I have never been able to accede to the dogma that suffrage is a natural right, or that universal suffrage is essential or even conducive to permanent free government. It cannot exist in a state of nature; and when men form themselves into communities the governments they adopt must of necessity depend upon the condition and capacity of those over whom they are to be organized. I concede fully the soundness of the maxim that the just basis of all government is "the consent of the governed"; but in fact there never has been such specific consent given by each individual in the organization of any government, and there is no natural right violated when it is denied. A government may be organized on this maxim, and yet numbers subject to its control have no part and no voice in its organization.

The frailty of humanity and the tendency of power to corruption forbid its deposit in the hands of a single individual and his posterity, or in the hands of a few, for in either case this corrupting tendency of power would end in tyranny and be used at the expense of the happiness and welfare of the community. The powers of government, therefore, are most safely

for the benefit of all intrusted to the people at large. But this general truth, like all other general propositions, must be modified in practice, and is subject to exceptions. As to the exercise of the franchise and trust of suffrage there are many exceptions; they vary in the different States of this Union. Idiots and lunatics in all States are excepted from incapacity; felons as a punishment for their crime. There is residence also required, for the obvious reason that to vote with an approximation to intelligence the voter must have had an opportunity to become acquainted with the condition and habits of the community in which the franchise is to be exercised, and also to acquire some knowledge of the character and general standing of those who may be candidates for office. The length of residence required varies in different States, and the people of each State can best determine that for themselves. In some the prepayment of taxes is requisite. Although that exists in my own State I have always been opposed to such a qualification, and have endeavored to have it modified, because the prepayment of taxes has a tendency toward corruption, which is the growing vice of our country. But that, also, is a question for the people of the States, and not a question for the general Government.

In a few States there is what is called an educational franchise. It is made a prerequisite to the exercise of the franchise that the voter shall be able to read the Constitution of the United States or of the State, or some other paper, and to write his name. I should never object to any State adopting such a franchise if such is the will of her people, for the right properly belongs to them to regulate suffrage within their own State, though I should be entirely opposed to the adoption of such a qualification of the franchise in the State of Delaware; because, though I have no doubt that the training of the people is necessary to enable them to sustain self-government, I do not believe that merely teaching a man to read and write is such a training as specially fits him for the exercise of the elective franchise. Moral culture, which depends mainly upon the mother, is far more effective and far more important in securing an intelligent performance of this trust of suffrage. The institutions of the common law requiring that all local business shall be transacted by the inhabitants of the locality all aid in training and instructing the people in habits of self-government. It was such training that formed the habits of the people of this country, implanted in them the love and the appreciation of civil liberty, and enabled them to sustain self-government and maintain a government of laws, in contradistinction to a government of

will, when they threw off their political allegiance to Great Britain and declared their independence. Centralize the powers of Government now and degrade the suffrage, and the people will lose their capacity for self-government, and one or more despotisms will establish their ascendency, and thus all security of the citizen against the aggressions of power, essential for the preservation of free government, will cease beyond recovery.

Beyond the minor exceptions which I have stated to the maxim that the just basis of all government is "the consent of the governed" there are three general exceptions—age, sex, and race.

First, as to age. If suffrage were a natural right you would find it very difficult to justify the exclusion of boys of sixteen or eighteen, for in general they have quite sufficient mental capacity for its exercise. Indeed, were it a natural right any child old enough to be sworn and give evidence in a court of justice might claim it.

But the right is restrained universally throughout this country. Nay, the age is fixed arbitrarily at twenty-one, founded no doubt upon the principle that the human passions develop more rapidly than the intellectual and the reflecting powers, and that the control over the passions is not sufficient under the age of twenty-one to trust men with the exercise of the franchise. The result would be personal conflicts and riots at elections becoming so general that to avoid anarchy the people would accept despotism. There are boys of eighteen who might be safely intrusted with suffrage, but no tribunal could be possibly organized to determine fairly on the individual exceptions. The question of boyhood suffrage has not, however, yet become a hobby, and it is useless to discuss this exception further. To use the slang of the day, the community has not yet been educated up to the idea because some boys of eighteen may have more intellect and self-control than the average man of forty, and be quite competent to exercise the franchise of voting, that therefore all boys of eighteen ought to enjoy the franchise. But in this age of progress, according to the ideas of the honorable Senator from Indiana [Mr. Morton], no prediction can be made as to when this question will seriously arise. He has told you that the Democratic party is not a party of progress. That honorable Senator should recollect that there are two kinds of progress, and that progress down hill is much more easy and rapid than progress upward. To the *"facilis decensus averni,"*[1]

[1] "Easy is the descent of hell."

exemplified in the headlong career of the Republican party, the Democratic party has been opposed. Whether that opposition can yet save the country and preserve civil liberty rests with the people to determine.

The next exception is that of sex. I will not argue this question either with communists or socialists, nor with the woman's rights party, because the folly of this species of fanaticism, though it has made great progress lately, is not sufficiently widespread to need an elaborate refutation. The general objections may, however, be stated. Inordinate vanity and the love of notoriety may have tempted some women to unsex themselves, both in their dress and their pursuits; but woman's heart and the instincts of maternity will keep her true to the greatest of her duties in life, the culture and formation of the character of her offspring, the implanting of that second nature, which can only be done early in life, which influences and controls the happiness and welfare not only of her own generation, but that of her posterity. No higher or holier duty could be imposed upon humanity; and this duty rightfully performed is enough to occupy the head and the heart of any human being. There may be exceptional cases of individual women resembling men more than their own sex in their mental and moral organization, who thirst after direct power and revel in notoriety. They must be *great* women. My answer to them is: I have seen it somewhere written that there are three orders of *great* men, the worshippers of power, the worshippers of fame, but, for the last and greatest, those who are content with happiness in the performance of duty, history inscribes no tablet. Surely, a wise woman should be content to be enrolled in this last and greatest order. Let it not be supposed, Mr. President, in stating these objections to female suffrage, that I mean to characterize the sex as inferior to man. In their combined mental and moral organization I hold them to be quite our equals, if not our superiors. But there is a difference in the physical, mental, and moral structure of the sexes which fits them for the performance of different duties, and the pursuit of different avocations. Sir, it would perhaps be well for the country if duties were a little more considered, as well as so-called rights.

If I desired an illustration of the fallacy of the idea that the ballot, as it is called, is essential for the purpose of protection, I should select the condition of woman in this country. I feel proud and gratified that in this, our own America, there is a chivalrous devotion to the sex which has been equaled in no other age or country. I yield to none in my deference to the

sex, and desire to secure and protect woman in all her rights; but suffrage is not a right, but a trust and a franchise.

Can there, Mr. President, be a doubt that the possession of the franchise of suffrage is entirely unnecessary for the protection of woman in all her rights? Has not the observation and memory of every Senator satisfied him that, in controversies between man and woman in this country, whether in courts of justice or elsewhere, the general sympathy and the bias are always, though she has no vote, with the woman, and not infrequently even at the expense of justice, such and so great is her influence? Sir, with all my deference for the sex, I believe there is truth in the advice supposed in one of the "imaginary conversations" to have been given by Roger Ascham to Lady Jane Grey, that "women, like the plants of the woods, derive their sweetness and tenderness from the shade." In my belief, if the sex is dragged down into the political arena, the coarse and selfish, and too often brutal, struggle for place and power and spoils will impair its influence and demoralize woman's nature, and that deference which now exists, and her real influence over man will gradually but certainly fade and be lost, and with that loss we shall, as a people, retrograde in civilization.

The third exception, Mr. President, to the general proposition that the consent of the governed is the just basis of government is that of race. I hold it to be a truth and a fact uncontradicted by history that where two races of men exist in the same country in large relative numbers so dissimilar in organization as to prevent the fusion of races, equality of political power can only end in the conflict of races. Look at the condition of Mexico with her sixteen different crosses of the Indian, negro, and European. The experiment of self-government with such a population has been tried there, and what has been the result? One revolution has followed another, and one military despotism another, until a country with high natural advantages and great sources of wealth has sunk into a state of insignificance and chronic anarchy, and advancement in civilization has become impossible from the insecurity of protection for either life, person, or property. Elevated as the people of this country now are, social fusion with an inferior race will be followed by the same results to our posterity.

Our own Indians afford another illustration. Numerous as they were at the first landing of the white man, they have perished before his onward pathway, and, though humanity may earnestly desire to prevent their ultimate destruction, it cannot be doubtful that to confer upon them political power

would only hasten that destruction, and it is at least questionable whether they can be preserved under any circumstances from extinction in contact with so dissimilar and so superior a race.

Senators are aware that we have in one portion of the country—in California and may have in Oregon—the *effête* civilization of the Chinese. They are not yet citizens of the United States, but the professed principle of this amendment authorizes, sanctions, and demands their admission to political power, and when that power is granted to them the conflict of races on your Pacific coast becomes inevitable. The Senator from Oregon desires to avoid this. The Senators from California solace themselves under the delusion that the Chinese are not and will not become citizens. They will yet find that the injury they are so willing to inflict upon the people of other States in regard to a different race will recoil upon their own constituents, for, by the operation of this amendment, if adopted, and on its principle, the Chinese will be entitled to become, and will become, citizens and voters. They have a higher grade of intelligence than the negro. They have more capacity for persistent labor than the negro, and, when they exist in sufficiently large numbers to aspire to political power, you will have the conflict of the Asiatic and Caucasian races in California, and perhaps in Oregon.

The relations between the Chinese and the Americans in California is but another instance of the antagonism of race in the struggle for power. If I am correctly informed, in California the Chinaman is not even admitted as a witness in their courts of justice, except, perhaps, in special cases, and much less will the people of that State suffer political power to be conferred upon such a population against their consent without resistance.

The discussion was resumed on the next morning (February 8). It lasted until 11:35 a. m. the following day (the 9th).

Frederick T. Freylinghuysen [N. J.] spoke. He said that if negro suffrage were not adopted, ex-rebel States such as Kentucky and Missouri would increase that unjust advantage in national representation which the Southern States held over the Northern States in the days of slavery, when only three-fifths of the negro population were counted in apportioning such representation.

Edmund G. Ross [Kan.] demanded the amendment as the final blow to slavery.

The disqualification of the free negroes of the country before the war was one of the strong adjuncts of slavery, without the aid of which it could not have lived a day. It is now the last prop upon which its friends depend for its future reëstablishment. Remove that and all hope for them is forever gone. Slavery is not dead, however, until all its supports are removed. It will never die until the negro is placed in a position of political equality from which he can successfully bid defiance to all future machinations for his enslavement. Until he is clothed with the ballot he is without that power, and is in constant danger from the cupidity of men who have been and expect again to be his masters. Without the ballot he is the slave of public prejudice and public caprice—the football of public scorn. He is powerless to secure the redress of any grievance which society may put upon him. There is not a single argument in favor of his liberation from physical servitude which does not apply with equal force in favor of his enfranchisement. In no other way can he be disenthralled from the meshes of impotency and public contempt in which he is now cast and made a respectable and useful citizen than by his investiture with the rights of manhood, which will make him, as he was designed by his Maker to be, our peer in the State.

There are many races of people in the world quite as distinctive in their characteristics as the negro and quite as dissimilar from each other, yet none of them are excluded from the ballot on account of those dissimilarities. The wild Indian of the plains, whose hands are red with the blood of murdered women and children, may become a citizen and cast a vote which shall affect the public weal equally with that of the most enlightened and humane among us; yet the negro, who is vastly his superior in intelligence, in humanity, in industry, and in all that pertains to good citizenship, is deemed unworthy to have a voice in affairs of the State in which he was born and reared and which concern him as nearly as any of us. What democracy is there in that?

It is objected that the passage of this resolution would be an act of bad faith toward the States; that the issue of negro suffrage was not made in the election of the members of the several legislatures which will be called to act upon it, and, therefore, that it should be postponed until that issue can be tried before the people in some future election of their State legislatures.

Gentlemen forget that this has been a standing issue in every State of the Union for the past three years; that it has been actively and everywhere discussed during that time. It has been voted upon in several States, and already adopted in two.

There is another point, Mr. President, which gentlemen forget, in speaking of the observance of good faith. It may be a pertinent inquiry whether we have kept faith with the negro in this matter. Has he not, after all, more to complain of than anybody else, in the continued deprivation by the States of a right, privilege, or immunity, whichever you choose to call it, guaranteed to him in the most solemn and binding form by the Constitution itself? Personal liberty is of little moment to him without the power to maintain it by the ballot. In ten States, in the District of Columbia, and in the Territories we have decreed to him the ballot. Are not his rights as sacred in all the other States as in these ten? Is he any less a man in those ten States than in the others whose representatives here have enacted him a voter there? Every man who voted for the enactment of negro suffrage in those ten States and the Territories stultifies himself unless he also votes to enact it in his own State. His enfranchisement in the South was an implied pledge, at least so regarded by me at the time, given in the name and with the approbation of the people we represent, that the same thing should be done everywhere under the jurisdiction of the Federal Government. That pledge yet stands unredeemed, and the people of the States now withholding this right should be the last to complain of bad faith in the adoption of the pending proposition.

Senator Davis, on February 8, made a long speech in opposition to the amendment in which he repeated the familiar constitutional objections to the measure and told the movers of it that they were fighting against nature as well as the Constitution—that their hope to educate the Southerner out of what they called race prejudice was an idle dream, and the attempt to fulfill it by force would result in fearful disaster. Closing, he referred to woman suffrage. He called this one of "those evidences of derangement and disordered intellect and morals" which New England furnished to every generation. He repeated the familiar sentiments about woman being "the priestess of the altar of the household" and the degradation of her sex and the deterioration of the race which would ensue were she

"dragged" to the polls "amid the influences of passion and liquor, vulgarity," etc.

No, Mr. President; a good and a pure woman would turn with loathing and disgust from any such contact, and bad women ought never to be allowed to have a vote. It will be a day of woe, of incomparable woe, when the ballot is forced upon American women.

Joseph S. Fowler [Tenn.] replied to Senator Davis upon the subject of woman suffrage.

In a time like the present, when it is thought best to make an amendment to the Constitution, let it not be said the American Congress has been influenced to such a step, not by the universal love of mankind, not by an enlarged patriotism, but from suspicion and distrust of our own race and fellow-citizens. Let it embrace all, not a part. Let it protect the white man as well as the colored. I would go still further, and embrace all who are the subjects of law. I would found it on the spiritual worth and inviolability of the individual. It should embrace women as well as men. There is no argument in favor of the suffrage of men that will not apply equally as well to women. She is equally well fitted to decide what measures are calculated to promote her own interests. If any man were asked whose advice was the wisest and truest on all matters of business and politics he would unhesitatingly answer his wife's, his mother's, or his sister's. It is all a delusion and a sham to talk of excluding women from the ballot and admitting all the civilized and uncivilized men of the world.

When men base their support of suffrage upon the natural rights of man, upon the worth of the individual, and then exclude woman, they do not believe the doctrine they assert. It is a direct contradiction of terms. When they admit the African and the Indian, and exclude their mothers and sisters, it is a startling exhibition of prejudice and the force of custom.

If elections are conducted improperly and rudely it is because the refining and humanizing influence of woman has not been brought to purify them. Let the husband and father go with his wife and daughters to the polls as he does to church, and the rudest men will be taught self-respect and integrity of purpose. It will make the polls as refined and solemn as the lecture or the school.

Willard Saulsbury [Del.] opposed the amendment in an extended speech at the close of which he summed up as follows:

To justify any amendment of the Constitution these facts must be made to appear:

1. Authority to make it.
2. Necessity of its being made, arising from evils suffered from its not having been made.
3. That these evils would not exist if the amendment should be made, and that those evils are greater than would result from the making of the amendment.
4. That society and government would be improved by its being made.

Apply these four tests to the resolution under consideration and what honest man can give it his support?

Mr. President, this proposition has its origin in the supposed necessity of party, not in the necessity of good or wise government. This is so manifest from the uniform action of Congress in relation to kindred subjects, as well as to the proposition itself, that no artifice can conceal the fact and no denial of it is worthy of credit.

Sir, I protest against the passage of this resolution. I protest against it in the name of the Constitution of the United States of America. I protest against it in the name of the constitution of my State. I protest against it in the name of civil liberty, which is dear and should be dear to the heart of every American citizen. I protest against it in the names of our departed heroes and sages. Pause, Mr. President. Pause, Senators. The destruction of the Federal Union, the destruction of the State governments, the destruction of civil liberty are to be the consequences of your inconsiderate action.

Adonijah S. Welch [Fla.] addressed himself to refuting the charge that "the African race in this country is inferior in respect to intelligence and virtue," and so should not have the right to vote.

Intelligence and virtue are not the distinctive characteristics of races; they are not peculiar to any race; they are not monopolized by nor wholly excluded from any people on the round earth. Intelligence and virtue are individual possessions, inconstant qualities, varying *ad infinitum* among the individuals of every people. Those constant qualities which mark the dif-

ferent races are mainly physical, consisting of peculiarities of color, feature, figure, and the like; but, as these peculiarities are not the qualifications for the voter, nor indicate the presence or absence of such qualifications, they cannot, without absurdity, be assumed as the ground for withholding or bestowing the right of suffrage. I do not share the prejudice of Senators against race; my prejudices are for or against individuals according to their merits or demerits.

But suppose the question of the inferiority or superiority of races be admitted as possible or pertinent to this discussion, we need not shrink from such conclusions as can be reached. In what respects, let us ask, are the Southern negroes, for example, inferior to the Southern whites? They are certainly in social position far below a large class of white citizens, but they are, on the other hand, the social peers of another class found everywhere throughout the South. But social distinctions, whatever they are, do not confer political privileges in this free land; otherwise American women, who are our social superiors, would outrank us all. Then, again, as to intelligence the freedman holds the same relative position as in regard to social standing. We grant that he is inferior intellectually to the educated whites. It is the legitimate fruit of slavery and not a defect of race. But, if he be inferior to one class, he is most assuredly equal or even superior to that other class known as the poor whites; and, if his intelligence in general be limited, it is encouraging to know that there are many exceptions, instances of learning and culture, which indicate capacity. The present Secretary of State of Florida is a gentleman of talent and learning, and yet he is an African pure and simple. The important question, however, is not as to the comparative, intellectual, or social status of the negro, for intelligence and refinement and social elevation alone do not avail to make the genuine American citizen. The crowning virtue of American citizenship is patriotism. Nothing is more clearly written in the history of the immediate past than that intellect becomes the instrument of treason when patriotism is wanting. Just here the Southern negro appears to decided advantage. He possesses this indispensable virtue. Intellectually and socially below the dominant class, but equal, at least, to the poorer class of Southern whites, he is, if we except the Southern loyalists, who are limited in number, infinitely superior to them all as a patriot; and I weigh my words well when I say that, if his ignorance were as rayless as the darkest midnight, if he never had a dozen thoughts in all his life and never changed their course, his steady, unflinching love of this Union would render him a far safer depositary of the right of suffrage than he who has compassed all knowledge and all science and hates his country.

Senator Hendricks replied to Senator Welch.

The Senator said that intelligence and virtue were essential to the safe exercise of the suffrage. I think the negro does not now bring to the mass of the intelligence of this country an addition. I do not think he ever will. That race in its whole history has furnished no evidence of its capacity to lift itself up. It has never laid the foundation for its own civilization. Any elevation that we find in that race is when we find it coming in contact with the white race. While the tendency of the white race is upward, the tendency of the colored race is downward; and I have always supposed it is because in that race the physical predominates over the moral and intellectual qualities.

Senator Welch.—May I ask the Senator, are the qualities of the voter—which are qualifications—in the individual or in the race? Is the white villain, if there is such a character, qualified to vote, while the intelligent negro—for there are intelligent negroes—is unqualified to vote?

Senator Hendricks.—The amendment that is pending before the Senate is not considering the race in regard to the individuals that make it. This is a proposition to extend the suffrage to an entire race. I am speaking of that race, whether it is a wise thing to bring into the political government of this country this race, which has shown in its history an incapacity to elevate itself or to establish a civilization for itself.

Can you tell me of any useful invention by the race, one single invention of greater importance to the world than the club with which the warrior beats to death his neighbor? Not one.

There are some Senators here who do not want the Chinese to vote. The Senators from Oregon and California, I think, are all opposed to the Chinese voting; and I think the Senator from Nevada [Mr. Stewart] is; and why? I believe they said they were pagans; but they are not such pagans as we find in Africa. China is the original home of a civilization that the world honors to this day. Why, sir, in China they had many of the rare and useful inventions long before they were known in Europe, and one of their great writers is as immortal as the classics of Athens, with a morality that comes nearer the morality of Jesus Christ than that of any ancient writer. But these Chinese, who

are capable of a very high civilization, who have sustained their own civilization, to some extent at least, if they come to our country are not to be voters. They are in the way, I suppose, of the State of Nevada and of party hopes in California! I do not know why. Are they not prepared to give as intelligent a vote as the negro? Do they not understand our form of government as well as the negro? Are they not likely to become as well informed?

But it is said that they are pagans. Is it the business of this Government to prescribe what God or in what form men shall worship? He says that we are a Christian people. Not altogether, sir. We have no such test as that. It is not a test that obtains in any of the States now that a man shall be a Christian in order to be a voter. The Jew, a man who is not a Christian, is a voter. You do not exclude the infidel, who recognizes no God at all.

Senator Stewart.—I should like to ask the Senator if he is in favor of naturalizing Chinese and pagans who acknowledge no allegiance to the Government of the United States?

Senator Hendricks.—Of course I am in favor of naturalizing no such man as that. But that, I take it, is the pretext and not the reason for excluding the Chinese. It does not suit the Senators from the Pacific coast to have the Chinese vote, for some reason or other. I guess it is not popular out there to have the Chinese vote, and they are opposed to it. I would not wish to force the Chinese vote upon the people of the Pacific coast unless they wanted it themselves; and, if I desired to amend the Constitution so as to force the Chinaman to vote in California, I would say: "Let the people of California have a chance to express their wish on that subject"; and if they voted it down I would not attempt to force it upon them. They are the best judges of the interests of their society and that which will contribute to the strength and purity of their State government. And the same is true in Indiana.

Oliver P. Morton [Ind.].—Mr. President, we have just heard from my distinguished colleague, we heard it this evening from the Senator from Kentucky [Mr. Davis], and this afternoon from the Senator from Delaware [Mr. Saulsbury], the argument against this constitutional amendment that the African is an inferior race, incapable of development, and a race that never invented anything. Suppose we admit this statement to be true; suppose we confess this argument in its length and breadth; I ask if it is an argument against this amendment or in its favor?

It is admitted by all these Senators at the same time that the negro is a kindly race; it is not a savage race; and it is a Christian race in this country, as much so as the white people; but they say that they are of inferior intellectual power, not capable of the same development and progress as the whites. Suppose we grant all this; I ask if it is not a reason why these men should have the ballot put into their hands by which they may protect and take care of themselves? The strong can protect themselves; the weak require to be furnished with the means of protection. In this country there is no protection for political and civil rights outside of the ballot. If men have a natural right to life, liberty, and the pursuit of happiness, they have a natural right to the use of the means by which life, liberty, and the pursuit of happiness can be enjoyed.

We are told, as an evidence of the inferiority of the race, that they have never invented anything. My colleague would seem to wish to establish a new test or qualification of suffrage, that no man shall be allowed to vote who has not invented something. I wonder how many inventors there are here in this body to-night.

Senator Saulsbury.—I ask whether the historical references that I made were not true references; and whether the facts in relation to the formation of the Federal Constitution are not evidenced by the records of the convention which framed it?

Senator Morton.—Mr. President, I might admit the Senator's references, but I should deny his deductions. The Senator told us to-day frankly that we were not one people. He said in the Senate of the United States, after the culmination of a war that cost this nation six hundred thousand lives, that we were not a nation. He gave us to understand that we were as many separate nationalities as we have States; that one State is different from another as one nation in Europe is different from another. He denied expressly that we were a nation. He gave us to understand that he belonged to the tribe of the Delawares, an independent and sovereign tribe living on a reservation up here near the city of Philadelphia [laughter], but he denied his American nationality. The whole argument from first to last has proceeded upon that idea, that this is a mere confederacy of States; to use the language of the Senator to-day, a partnership of States. What is the deduction? If that is true there was the right of secession; the South was right and we were wrong. He did not draw that deduction, but it is one that springs inevitably from his premises.

Sir, the heresy of secession is not dead; it lives. It lives after

this war, although it ought to have been settled by the war. It exists even as snow sometimes exists in the lap of summer when it is concealed behind the cliffs and the hedges and in the clefts of the rocks. It has come forth during this debate. We have heard the very premises, the very arguments, the very historical references upon which the right of secession was urged for thirty years. The whole fallacy lies in denying our nationality. I assert that we are one people and not thirty-seven different peoples; that we are one nation, and as such we have provided for ourselves a national Constitution, and that Constitution has provided the way by which it may be amended.

Mr. President, much has been said in regard to the inconsistent position of the Republican party, and a clause has been read from the Chicago platform in support of that charge. That clause was put into the platform not with reference to an amendment of the Constitution, not estopping the party from amending the Constitution; but with reference to an understanding throughout the country that Congress might attempt to regulate the subject of suffrage in the States. It was with reference to congressional regulation that that clause was put in the platform, but it was not declared directly or by implication that we should not amend the Constitution so as to limit the States in the exercise of that power.

Mr. President, the Republican party has its errors; it has committed its faults; and yet but for that party this Capitol would now be the Capitol of a hostile slaveholding confederacy.

One word in regard to the so-called Democratic party. The Democratic party for more than twenty years has lived upon the negro question. It has been its daily food, and, if the negro question shall now be withdrawn from politics, the Democracy, as a party, will literally starve to death. We need not, therefore, be surprised to find them resisting this constitutional amendment which will forever withdraw the subject from politics, and will strike down that prejudice to which the Democratic party has appealed for years. The Democratic party has not for years appealed to the reason of the people, but it has appealed to their prejudices upon the subject of race. It has sought, and, to some extent obtained, power upon that subject. It is still following the fortunes of slavery after slavery is dead. It cherished slavery while it lived, and now that slavery is dead it has taken to its embrace its odious and putrescent corpse. The Democratic party is now performing the office of Old Mortality by trying to revive inscriptions upon the moldering and dishonored tomb of slavery.

James R. Doolittle [Wisc.].—The Senator from Indiana seems to think that no statesman can bear in mind two ideas at the same time; that there can be no such thing as State rights maintained by anybody under the Constitution unless that person is a secessionist; and that, on the other hand, no man can maintain that there is any such thing as rights in the Federal Government under the Constitution without being in favor of an absolute concentrated government at Washington. Sir, these two ideas must go together in our system of government, and the time is coming when they must be discussed, when the rights of the States under the Constitution must be acknowledged. It is just as much a war on the Constitution to deny the States the rights which belong to them as it is a war on the Constitution to maintain the doctrine of secession.

Senator Morton.—I have always denied State sovereignty; and I do now. I deny the doctrine that the States are separate and independent nations. We are one people. But, sir, the States have certain rights, rights that are guaranteed to them by the Constitution of the United States, just as we have rights secured to us both by the Federal and State Constitutions. We have State rights, but have no State sovereignty, and never had.

Senator Doolittle.—Mr. President, the honorable Senator says there is no State sovereignty. I contend that by every decision of the Supreme Court of the United States, by every declaration made by every writer upon our system of government in the beginning, whether a Federalist or Republican, it was always maintained that the States had an attribute of sovereignty, not absolute, but under the Constitution, because under the Constitution they have parted with their absolute sovereignty; nor has the United States Government any sovereignty under the Constitution which is absolute. All the power which the United States Government has under the Constitution is limited. Sovereignty is limited by the Constitution. State sovereignty is limited by the Constitution; the United States sovereignty is limited by the Constitution; and the great difficulty of our times is that men cannot think or will not think that the two sovereignties exist at the same time under our government, the one limited by the other.

Why, Mr. President, from earliest childhood every man in this body has been taught that we live in the solar system where the planets that revolve around the sun are controlled by two forces: one a force tending toward the center by the force of gravitation—the centripetal force; and the other is the centrifugal force, by which they are driven in their orbits around

the center. Mr. President, if either one of these forces were taken away it would absolutely destroy the system. In our solar system, if the centrifugal force were taken away and nothing but the centripetal force left to act, every planet would be drawn to the center, to the sun. On the other hand, if the centripetal force were destroyed in our solar system, and no force permitted to operate but the centrifugal force, all the planets would be driven in a tangent away from our system into illimitable space. Sir, it is the operation of these two forces, the one which tends to the center, the other which tends to the circumference, which keeps these planets moving in their orbits, which maintains our system, which keeps it from destruction; and the destruction of either of these forces is the destruction of the solar system.

Now, sir, come to our system of government; these two forces are planted in it of necessity. These two ideas have been here from the beginning. There have been men who represented the one and represented the other from the beginning. There have been men who have contended always for the absolute sovereignty of this central Government, and other men who have contended always for the absolute sovereignty of the States; and both of them have contended for a falsehood from the beginning. There is no absolute sovereignty in this Government; nor is there any absolute sovereignty in the States; but, under the operation of our system, devised by our fathers, wise as if they had been inspired from on high and had wisdom almost like Him who created the solar system under which we live, these two grand ideas, two great forces in government, were put in operation at one and the same time, each limiting the other, each operating upon the other, both working together, and working out that harmonious system in which alone we live and move and have our being; and that man or statesman, call himself what he may, whether a fire-eating secessionist of the South who comes into this body or elsewhere and maintains the absolute sovereignty of the State, with its right to withdraw from the Union, to retire from the system, to overturn the Government; or that other statesman, Republican though he may call himself, who comes into this body or elsewhere and maintains that this Government only has absolute sovereignty, and that it has the power to seize to itself all the powers of the Government—whichever one of these men undertakes to do this is making war on the Government and war on the system under which we live.

Mr. President, without going into a detailed history, what

has occurred since the close of the war? In my judgment, in many of the acts which have been entered upon, the Constitution of the United States has itself been violated. I believe, as much as I believe in my existence here, that in the law which was passed establishing military tribunals and military government in the States of the South, abolishing all civil government, denying all right of trial by jury, this party in power in the Congress of the United States have just as much violated the Constitution in that regard as it ever was violated by any party in the history of the Government.

Charles D. Drake [Mo.].—Mr. President, the whole argument of the gentleman and of all the other Senators on the other side who have spoken on this subject proceeds upon the doctrine that George H. Pendleton laid down in 1864, that, if every State in this Union should unite in ratifying the constitutional amendment abolishing slavery except one, slavery would not be abolished in that one State. They limit the power of amendment in the Constitution in that way.

Senator Doolittle.—The Senator will allow me to interrupt him. I hope the honorable Senator does not mean to include me in that category from anything I have said. I believe that I made the first speech in this body in favor of the amendment abolishing slavery.

Senator Drake.—I say, Mr. President, that the whole doctrine of the opponents of this measure in this debate has been to the purport that, let any number of States ratify this amendment, it would have no binding force upon the other States, but only upon those States that ratify it. I say to the gentlemen who talk so about the rights of States, that there is not a State in this Union that has one single right but that which it derives from the Constitution, and there is not one right except that of equal senatorial representation which cannot be taken away from any State by a constitutional amendment passed by two-thirds of Congress and ratified by three-fourths of the States.

Frederick A. Sawyer [S. C.] replied to the charge that the negro was incapable of becoming an intelligent citizen. Were the Senators who made this charge to go to a reconstructed State they would, in spite of their prejudices, find evidences that the negro, although not the political equal of the white man, although not the intellectual equal of the Anglo-Saxon race, yet has in him that germ of development of character which in

due process of time and with the genial sun of American institutions may make him a good citizen and an equal before the law with any other citizen.

We have, thank God, in South Carolina, in Alabama, in North Carolina, no class of men who propose at this time to deprive the negro of the right of suffrage, or to deny that he has a claim to it. During the late political campaign, when the late rebels of the Southern States expected the election of the Democratic candidates for President and Vice-President, they did not go before their people with a proposition to take away from the negro the right of suffrage. On the contrary, some of the most distinguished advocates of the platform of the Democratic party as laid down in the national convention expressed their entire willingness to grant suffrage to the negro.

Senator Davis.—Will the honorable Senator permit me to make a single remark? There was just a race between the parties which should secure the negro suffrage that had been forced upon the country.

Senator Sawyer.—Then I understand the doctrine of the Senator to be that, if the negro can be made to vote the Democratic ticket, he is an intelligent man and entitled to become a citizen.

Senator Davis.—Not at all. It is only because the suffrage of the negro has been enforced by power and by fraud and violence, and at the cannon's mouth, upon the people of the Southern States that any considerable portion of them consent to accept it.

Senator Sawyer.—Mr. President, I hold it to be a fact which cannot be disputed that to-day, were the question put to the white men of the lately reconstructed States whether the ballot should be taken out of the hands of the negro, the answer would be an almost universal negative; and, if the Government of the United States had not, as he says, at the point of the bayonet and by violent assumption of unconstitutional authority put that ballot into the hands of the negro, there would, to-day, yes, there would two years ago, have been a strong negro suffrage party in every one of those States. More, I believe that in his own State of Kentucky, while the honorable Senator himself, maintaining his peculiar views, might hesitate to put the ballot in the hands of the negro, the majority of his party would not hesitate one moment to do it if they believed he would throw his ballot in favor of the doctrines of the Democratic party.

Mr. President, it has been distinctly asserted by several Sen-

ators that the negro in contact with the white race has gained a great degree of civilization since he was brought from his native barbarism in Africa. If he has shown himself competent to a certain degree of development, if, in the process of time, he has come to that condition whereby he can be rendered a freeman with safety to the State, I ask if that does not lead logically and naturally to the inference that his development may be still further carried on, and that he may be capable of making a good citizen, carrying intelligently a ballot? I ask if that citizen who has been able to carry a bayonet in defence of his Government is not likely to be competent to carry a ballot to protect the liberties which his rifle has helped to win?

Senator Davis.—Will the Senator permit me to ask him a question? Does he believe that there could be found in the State of South Carolina enough capable negroes to take charge of the government of that State and of its polity, and of all its interests and of all the city and town governments and of all the corporations in the State, and manage them with any skill, judgment, or success?

Senator Sawyer.—I will answer the question of the honorable Senator by asking another. I will ask him if he believes that, if the white race of South Carolina had for two centuries been the slaves of the black race, had been by statute and by usage deprived of every means of cultivation and self-development, if they had been shut out of all the relations of the citizen, if they had been the hewers of wood and the drawers of water for two centuries, there could be found upon a sudden emancipation of that white race probably men enough to assume and perform all the duties which belong to civilized society in the highest and most statesmanlike manner?

Senator Davis.—The answer of the honorable Senator I regard as equivalent to an answer in the negative. He puts to me a question that involves an impossibility that the white race should have been subjected for two centuries to the negro race. The negro race has never enslaved any other race itself. It has been, in all of its phases of existence, incapable of acquiring a mastery over the other races, much less maintaining a mastery.

Senator Sawyer.—Mr. President, the danger of admitting the negro vote because a portion of the negroes are ignorant, the danger of admitting the votes of any class of men because some of that class of men are ignorant, is a danger which is incident to the possession of the ballot by all men. I suppose it will not be claimed by any Senator that one-half of the white men in any country exercise the vote on all occasions intelli-

gently; but on that account, because a man happens to be weaker in intellect than his neighbor; because he happens not to have the capacity for administration, the capacity for filling the offices of the counties and towns and of the State, does anybody propose to deprive him of the ballot? No; but, when we get to a man whose skin is a little darker than ours, whom we can mark out as belonging to a class, we can assume that his color is a badge of inferiority, notwithstanding the numerous exceptions which we see even under the adverse circumstances under which these people labor. Then, when we can establish that mark of color as the mark of a class, men wish to discriminate against them and deprive them of the rights of other citizens.

Now, Mr. President, the war has made all the slaves citizens. Now, whatever class of men we make citizens of the United States, it is, in my opinion, a public danger to keep from participation in the active powers of government.

Senator Davis.—Are not women citizens?

Senator Sawyer.—Women are represented through their husbands or brothers.

Senator Davis.—Are not our negroes represented?

Senator Sawyer.—Through their masters. I know that the theory is that the negroes should be represented by those who have so long represented them in providing for their animal wants and taking the proceeds of the labor of their muscle.

I do not propose to continue these remarks. I should not have said anything on this question but for the strangeness of the doctrines which have been announced here. Those doctrines, it seems to me, are precisely the doctrines which led to the rebellion itself. More than that, they will, in my opinion, produce another revolution.

Senator Davis.—The Senator from South Carolina charges myself and the Senators who occupy my position with discriminating against the negro from prejudice. I retort the charge upon the honorable Senator and his friends and his supporters in this chamber and elsewhere. I ask the honorable Senator to tell me if he, or a single one of them, has ever taken a sable Dinah to his bosom as a wife; and I ask if that is not a discrimination as distinct and quite as comprehensible as the distinction we make that the negro is incapable of self-government?

Senator Sawyer.—Mr. President, I did not mean to cast any reflection upon the gentleman in speaking of his prejudice. I know my own observation has justified me in believing, that it is almost an impossibility or next to an impossibility for a man to have been born and brought in contact with the institution of

African slavery and look at the question with a fair, unbiased judgment. I have lived for ten years in a State where the system of slavery existed. I have seen the negro as a slave; I have seen him as a freeman; I have seen him as a voter. I have never had the taste to select any colored Dinah, to quote his language, as the companion of my social hours. I leave that to those who are "to the manner born" [laughter]; and I have the satisfaction of knowing that even that has become disreputable in re-

KU-KLUX WARNING TO A "SCALAWAG" AND A "CARPET-BAGGER"

From the "Independent Monitor," Tuscaloosa, Ala., Sept. 1, 1868

constructed communities, and that it is only those people who, though they do not bear in the popular acceptation down there the name of scalawags, deserve eminently to have it.[1]

Senator Doolittle declared that, if political equality of blacks and whites were to be forced on States containing a majority of negroes, the end would be social equality.

If negroes can vote they can be voted for; if they can be voted for they can be elected members of the legislature, as

[1] "Scalawag" was a term applied to a native-born white man in the South who acted with the Republican party in order to gain political preferment. A "Carpet-bagger" was a Northern born man who so acted.

they are members of State conventions and legislatures, as they may be members of Congress, and I believe one was said to be elected to the other House; members of the Senate of the United States; generals in your army; and, if by possibility they could hold the balance of power and get our Republican brethren of the North, in their zeal to demonstrate that there is no distinction between the races, to nominate for the President of the United States a negro, they might perhaps in the end elect some negro as President of the United States, and live on social equality here in Washington, as well as in the States of the South. If negroes are to be elected Senators to this body you cannot refuse to meet them at your receptions, at your inauguration balls, at the President's table, and their wives with them, and their children also; and your children must meet them side by side, upon a footing of equality. Face the music, gentlemen; acknowledge the truth that this is the necessary, direct tendency, and the inevitable result which must come, in States where a majority of the population are colored, if you force upon the States unrestricted and unqualified negro suffrage.

While I admit that there are some white men who are utterly incapacitated to perform the high office of taking part in the government of the country, they are exceptions to the general rule, whereas with the African it is directly the contrary. There are but a few of them that are capable of taking part in the Government, and they are exceptions to the general rule. A few among them, if by any legislation you could select those few, might take part without danger in the government of the country.

But, sir, to give that power to the race, to give it to them as a mass, is to demoralize your Government; it is to sap it at the foundations; it is to strike down the bulwark upon which liberty rests; it is to do what has been done in other ages and countries of the world—to demoralize the ballot by making it so universal among the weak, the degraded, the ignorant, the demoralized, that a designing and ambitious man comes at last and rules the empire with a rod of iron. It is so in France; it was so in Greece; it was so in Rome. Are we to follow their example? Are we to cherish it, and to shout at the top of our voices, "Universal suffrage without distinction of race or color, to the negro, to the Indian, and to the Asiatic"? Sir, extend your suffrage among such a number of ignorant, demoralized masses of men and your whole liberties, Constitution, and Government will go down together.

On February 9 Senator Sumner proposed to strike the words "of citizens of the United States" from the amendment. Senator Morton objected, saying that this would admit to the suffrage the Chinese, who were debarred because of the word "white" in the naturalization requirements, a test case in the courts of California having resulted in the decision that a Chinaman was not of the white race and so could not become a citizen. Senator Sumner then declared that, following the principles of the Declaration of Independence, the word "white" should be stricken from the statute book.

Senator Williams said that the Chinaman had no more regard for the obligation of a Christian oath than he had "for the whistling of the idle wind."

Hundreds and thousands of them might come under such circumstances to be naturalized and take the oaths prescribed by law, and at the same time to all intents and purposes be foreigners. While I will go as far as any reasonable man in this country to give to the citizens of the United States, naturalized and native born, equal political rights, I say that this country has the absolute power to protect itself from Chinamen or any other sort of foreigners by such legislation as in its judgment is necessary for the purposes of protection. And in protecting itself from these hordes of foreigners, who may come here either from selfish or hostile motives; in protecting itself from these people living on the other side of the ocean, it does not in any respect violate the Declaration of Independence.

Senator Sumner withdrew his amendment. Senator Wilson then proposed the following substitute for section 1 of the amendment:

No discrimination shall be made in any State among the citizens of the United States in the exercise of the elective franchise or in the right to hold office in any State on account of race, color, nativity, property, education, or religious creed.

Senator Corbett wished that it might specifically exclude foreigners not of the white race, because he feared that Senator Sumner might succeed later in securing the

excision of the word "white" from the naturalization laws.

Senator Cameron supported Senator Wilson's substitute.

I am in favor of the proposition of the Senator from Massachusetts because it invites into our country everybody; the negro, the Irishman, the German, the Frenchman, the Scotchman, the Englishman, and the Chinaman. I will welcome every man, whatever may be the country from which he comes, who by his industry can add to our national wealth. Our friends from the Pacific coast are afraid of that simple, frugal people, lest they should destroy their liberties. I have no such fears. These Senators tell us, at the same time, that Chinamen will never become citizens. If they will not become citizens, what harm will they do us under this amendment to the Constitution? We are told that they come here and labor and send all the result of their toil to their own country. They do send a great deal; but what they send is not a tithe of the wealth which they give to us by their industry and their frugal habits.

Mr. President, I must express my surprise at this talk about the poor Chinaman. I never heard of his doing any harm to anybody in America. He has enriched the Pacific slope by his toil. He has made that great railroad which is the miracle of the world by his patient industry. Whoever heard before of a people doing so much work in so short a space of time and getting so little reward for it as they have done? We might just as well say that the Irishmen who came into Pennsylvania and New York and Indiana and Illinois and Iowa, and gave their labor to make the canals and the railroads which have enriched those States, should be prevented from becoming citizens. The Chinese who are now here will probably return to their own country; most of them, however, in their coffins, for their bodies are always carried away after their dissolution; but their children, who remain here, will after a while imitate our people, adopt our institutions, and become citizens of our country, and by their toil add to the wealth of the country.

Lyman Trumbull [Ill.] opposed Senator Wilson's substitute. It would, he said, overturn, ruthlessly and without cause, the constitutions of perhaps all the States in the Union, since these contained such requirements as that the governor should be a natural-born citizen, which

the people of each State, following the example of the Constitution as well as its permission, had an unimpeachable right to impose.

Senator Morton defended the substitute.

Mr. President, we are now about to amend the fundamental law in regard to suffrage. The amendment, as it is proposed by the House of Representatives and as it is reported by the committee on the judiciary of the Senate, confines the limitation upon State power to the single subject of race or color, just as if that was the only subject upon which there could be an abusè. Now, sir, that we are at work on this subject, can we stand justified before the people of this nation if we do not make this limitation apply to other possible abuses? I think there is no more principle, there is no more justice, in requiring a man to have a certain amount of property before he shall be allowed to exercise this right that is indispensable to the protection of his life, liberty, and happiness than there is in requiring him to have a white skin. If the right of suffrage is a natural right, if it belongs to all men because they have a right to have a voice in the government that controls their action, if it is necessary to all men as a means of protecting other acknowledged natural rights, how can you make it depend upon property?

The same may be said in regard to educational tests. I believe all educational tests in this country are humbugs. When you come to consider the question of voting as a natural right, what right have you to take it from a man because he cannot read and write? He may be, nevertheless, a very intelligent man, and he has his rights to defend and preserve just like other men, and the right of suffrage is just as important to him as it is to anybody else. What right have you to say that he shall not have it because he cannot read and write?

The same is true in regard to the qualification of religious faith. The State of New Hampshire now excludes any man from her House of Representatives unless he belongs to the Protestant faith. That exclusion is contrary to the whole spirit of our institutions; and, now that we are at work on this subject, and the question is brought before us, are we at liberty to reject this amendment, and thus say to New Hampshire, in substance and by implication, that she may continue to exclude men from office on account of their faith?

In regard to nativity, if we reject this amendment we say to the States, "You cannot exclude men because of their color, but

you are still left at liberty to exclude them because of their nativity." Are we prepared to say that?

James W. Patterson [N. H.] said that the religious qualification demanded of a Representative in his State was a dead letter, and that he thought the citizens would be willing to have it set aside. However, he believed in an educational qualification for voters, such as was in force in Massachusetts.

Self-government is not possible until a people have advanced somewhat in civilization; and it presupposes the maintenance of that intelligence by commerce and schools, by the press, and restrictions of law upon the influx of barbarism and arbitrary power from abroad. A restriction of that kind is no wrong done to the voter, for it simply protects the purity and integrity of the Government under which all his rights are secured. The consumer has just as much right to complain of a protective tariff which guards national industry and capital against the serf labor of Europe as an ignorant population have to complain of the restriction of intelligence which guards the political institutions under which they live. Why, sir, the voter discharging the obligation of an elector fulfills an official duty as truly as the judge exercises the functions of an office when he administers justice between man and man; and, as some knowledge of law is a prerequisite in the judge to the proper discharge of his duties, so it would seem that some intelligence, some mental discipline, some little knowledge of the laws and spirit of a country are necessary to a safe participation in its government.

Suffrage is the most sacred of all our rights; and why should we throw open this portal of political power and let into the strongholds of our Government the emissaries of arbitrary power, the minions of despotism? Why should we let barbarism come in like a flood? If you do that the period may not be far distant when you will have so degraded the intelligence of your people that they will be unequal to self-government, and then, like the early republics, you will roll down the bloody grade of revolution into the most abject and absolute despotism.

I know that, as we stand to-day, an educational test may not be necessary; but it will do no harm. If the people have the intelligence prerequisite to self-government, an educational test will not limit very much the extent of suffrage. There will be about as many votes cast with it as without it. It is simply a

safeguard against a possible evil. I would have the intelligence prerequisite to the exercise of suffrage very low, so that it may be easily reached by our foreign population or by any of our native population who may lack the means of education. I desire it, among other things, as an encouragement to popular intelligence. I say simply this, that the way to suffrage should be open to all. To deny it on account of race or color or want of property is doing violence to the civilization of our age, and insults Christianity; but to protect and guard it against the incoming floods of ignorance and barbarism is simply to preserve the jewel of liberty. This is my view of this subject, both as an abstract and practical question. For this and for no other reason am I opposed to the amendment of the gentleman from Massachusetts.

Senator Wilson stated that the educational qualification in Massachusetts which had been praised by Senator Patterson was "practically of no value whatever." It did not keep five hundred men from voting. He had opposed it when it was proposed, and had refused to take advantage of it in an election where it would have been helpful to his party to do so.

"I would be ashamed to look a man in the face when I put such a test to him. I believe in manhood, and I believe the ballot is an educator."

Roscoe Conkling [N. Y.] objected to the substitute, in particular the provision regarding office holding. What, prevent a State requiring educational qualifications in a legal or medical office?

John Sherman [O.] replied that the amendment guaranteed only the right to hold office, but not a particular office nor class of offices.

The amendment applies one general, universal rule, that, whenever the laws of the United States make a man a citizen, the laws of the United States and the State must recognize his right to hold office and to vote at all elections. That is all there is to it; and we should not be safe, in my judgment, in stopping short of this general provision.

I believe that there is scarcely an example in the history of this country where these limitations upon the elective franchise

and upon the right to hold office have been enforced. In the early history of the Government all remember the case of John Randolph, where the question was made upon him that he was not old enough to hold the office of Representative in Congress. His reply was given, "ask my constituents," and he was sworn in although he was but twenty-four years of age. So Albert Gallatin by a strict party vote was excluded from the office of Senator of the United States for want of residence in this country after he became a citizen; but everybody who participated in the act was ashamed of it.[1] Now, I doubt whether in any State of the Union these provisions which make discriminations between citizens can be or would be enforced.

SENATOR SUMNER.—James Shields [Illinois] was excluded from the Senate.

SENATOR SHERMAN.—General Shields was kept out for a time; and afterward reëlected and sent back. There is no case, so far as I can now recall, in the history of this country where these exceptional exclusions and discriminations against particular citizens have been enforced, or where public sentiment would allow them to be enforced.

We ought to deny to States the right to discriminate between citizens on account of anything except age, residence, and sex. In all other respects citizens should have an equal right to vote. We ought to regard it as a fundamental principle of our Government that all persons arriving at a certain age are entitled to equal rights. We can fairly base our action upon that fundamental principle and submit that action to the people with a certainty that it will be adopted. But, sir, if I go before the people of Ohio with a constitutional amendment such as that which is sent to us by the House of Representatives, or that which is proposed by the Judiciary Committee, how shall I be met? I shall be told, "Here are white citizens excluded from voting in Massachusetts because they cannot read and write; here are people excluded from office in New Hampshire because they are not Protestants. Why do you not correct these evils at your own door, evils brought upon the country by your own friends, and why should you protect only and seek to extend only the right of suffrage to the colored race, who are just emancipated from bondage, who are ignorant, who are without the capacity, probably, for self-government unless they become enlightened?" How can you answer it? It is impossible to answer, especially when you meet a prejudiced people who have got to vote on this question.

[1] Mr. Gallatin had taken the oath of allegiance eight years before, and nine years of citizenship is required of a Senator.

The people of Ohio come from all the old States, many of them from Virginia and Maryland and other of the old slave States. They are full of prejudices. Unless you show that you are willing to adopt a universal rule which tramples down their prejudices, and the prejudices of the people of other portions of the old States where they have not adopted, probably, the more advanced rules on this subject—unless you can show that you have dealt with this question in an enlightened spirit of statesmanship, you will be borne down by popular clamor. It will be said this is a mere party expedient to accomplish party ends, and not a great fundamental proposition upon which you should base your superstructure.

Senator Wilson's amendment was carried by 31 yeas to 27 nays.

A proposition was now introduced and supported with equal zeal by Senators Morton and Charles R. Buckalew [Pa.] proposing an amendment to the pending resolution, which should in effect be a sixteenth amendment to the Constitution. Its aim was to take from the States the power now confided to them by the Constitution, to direct the manner in which electors of President and Vice-President shall be chosen. The declared motive for the change was to prevent the possibility of the electors being chosen by State legislatures as had been done in some cases, and to guarantee the certainty of a popular vote in their selection in every State of the Union. To insure this result it was proposed in the amendment that the entire power over the choice of electors should be transferred to Congress. After brief debate the amendment was agreed to, and the two proposed articles included under one resolution were adopted by the required two-thirds majority of 39 yeas and 16 nays, and sent to the House for concurrence.

The House, not being willing to accept the Senate's amendments, refused by formal vote to concur, and asked for a conference. The Senate took the unusual step of declining a conference, promptly receded from its own amendments, and sent to the House the original proposition of that body. The House, not to be outdone by the Senate in capricious change of opinion, now refused to agree to the form of amendment it had before adopted,

and returned it to the Senate with the added requirement of nativity, property, and creed, which the Senate had originally proposed. The Senate in turn rejected all it had before proposed. The strange controversy was finally ended and the subject brought into intelligible shape by a conference committee, which reported the Fifteenth Amendment in the precise form in which it became incorporated in the Constitution. It received the sanction of the House by a vote far beyond the two-thirds required to adopt it, the ayes being 145, the nays 44. In the Senate the ayes were 39, the nays were 13. The action of Congress on the amendment was completed on the 26th of February, six days before General Grant was installed in the presidency.

The bill went to President Johnson on February 27. He did not sign it, but as it had been passed by a two-thirds majority it became effective without his signature.

When it had been ratified by three-fourths of the States the amendment was proclaimed a part of the Constitution on March 30, 1870.

CHAPTER IV

Federal Power to Suppress Abuses Against Civil Rights

[THE KU-KLUX OUTRAGES]

President Grant Reports Progress of Reconstruction—Admission of Hiram R. Revels [Miss.], a Negro, to the Senate—Congress Completes Reconstruction—Ku-Klux Outrages in the South—Oliver P. Morton [Ind.] Moves Appointment of Senate Committee to Investigate Them—Debate: in Favor, Willard Warner [Ala.], James W. Nye [Nev.], Zachariah Chandler [Mich.]; Opposed, Eugene Casserly [Cal.], Thomas F. Bayard [Del.], Allen G. Thurman [O.]; Committee Appointed—Majority and Minority Reports—John Sherman [O.] Moves That the Committee Bring in a Bill to Suppress the Outrages—Debate: in Favor, Sen. Sherman, John Scott [Pa.], John Pool [N. C.], Sen. Morton; Opposed, Sen. Bayard, Gen. Francis P. Blair [Mo.]; Resolution Is Passed, and Bill Is Enacted.

IN his first annual message of December 6, 1869, President Grant reported the status of reconstruction in the States which were excluded from representation in Congress.

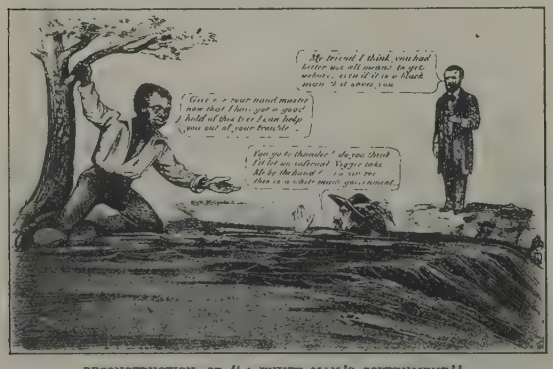
Georgia had qualified for this representation, save that the legislature had, as subsequently decided by the Supreme Court of the State, violated its new constitution by unseating negro legislators and seating white men who were disqualified by the Fourteenth Amendment. The President recommended Congress to require the Governor of Georgia to convene the rightfully elected members and exclude those unlawfully seated, requiring all the legislators to take the oath prescribed by the reconstruction acts; when this had been done the State should be admitted to representation in Congress.

Virginia had qualified for readmission to the Union, and he recommended that she be admitted.

Elections to the legislature had taken place in Mississippi and Texas; the results were not yet known.

> It is to be hoped that the acts of the legislatures of these States when they meet will be such as to receive your approval and thus close the work of reconstruction.

Congress followed the recommendation of the President in regard to Georgia in an act which he approved


My friend I think you had
Take a your hand master
now that I have got a good
hold of the tree I can help
you out of your trouble
You go to thunder! do you think
I'll let an infernal Nigger take
Me by the hand?

RECONSTRUCTION, OR "A WHITE MAN'S GOVERNMENT"

From the collection of the New York Historical Society

on December 22, 1869. In accordance with this act the legislature of the State was reconvened and the lawful members reseated. It ratified the Fifteenth Amendment on February 2, 1870, this being one of the conditions of the act. On July 15, 1870, the State was admitted to representation in Congress, completing the work of reconstruction.

On January 26, 1870, the President approved an act of Congress admitting Virginia to representation in the national legislature. On February 23 Mississippi was similarly admitted to such representation. Already, in anticipation of such admission, Senators from the State had been admitted, one of them, Hiram R. Revels, being

a negro. Though Senator Revels was a man of intelligence and good character, this seating in the national legislature for the first time of a person of African descent greatly embittered the South and the Democrats of the North who remained consistent in opposition to exalting the black man to the level of the white. The Republicans, on the other hand, were gratified that the admission of a negro to the highest rank in the Government save that of President and Vice-President, and, possibly, that of the Supreme Court, completed their work for his race in such a significant manner. Says Mr. Blaine of Senator Revels' admission:

> "He sat in the seat which Jefferson Davis had wrathfully deserted to take up arms against the Republic and become the ruler of a hostile government. Poetic justice, historic revenge, personal retribution were all complete when Mr. Revels' name was called on the roll of the Senate."

One of the Senators from Virginia and one from Georgia were Democrats. All the other Senators from the ex-rebel States were Republicans.

As each State was reconstructed Federal military government was withdrawn from it and civil government was completely restored.

Upon the establishment of civil government in the ex-rebel States and the consequent withdrawal of Federal troops therefrom reports began to appear of outrages upon negroes, white Republicans, and Northern men and women who had gone South to educate the negroes. The chief cause of these assaults seemed to be the grant of suffrage to the negroes with the result of the elevation to office of some of their number and more white Republicans, both carpet-baggers and scalawags [see page 152]. Most of the outrages were committed by bands of midnight marauders, which were parts of a secret order called the Ku-Klux Klan. The name (derived from the Greek word *kuklos*, meaning circle) and the form of organization of this order were adapted in a spirit of burlesque from the Greek-letter fraternity system of American colleges, thereby indi-

cating that the originators of the "Klan" were well-educated young men who in their high spirits began by masking themselves as for a fraternity initiation, and frightening negroes as a more or less innocent prank, and then, seeing the power they exercised over their superstitious victims, employed this for political purposes, in which work they were joined by less educated and, possibly, more unprincipled persons. Negroes who were leaders of their race were frightened into political inaction or else driven from the community, and the same treatment was extended to white Republicans and to Northern settlers whose friendliness to the negroes, if not, indeed, whose very presence in the South, holding as they did alien social, political, and even religious sentiments, was obnoxious to their white neighbors.

Investigation of Southern Outrages

Senate, January 18–April 5, 1871

On January 18, 1871, Oliver P. Morton [Ind.] introduced in the Senate a resolution to appoint five Senators as a committee to investigate the truth or falsity of the reports of these outrages.

Eugene Casserly [Dem.], of California, opposed the resolution, the effect of which (he would not say purpose) was to "fan into new life the embers of a great civil war, the embers of sectional conflict and hate."

It was, he charged, a desperate attempt of a perishing party to stay its doom. There is no party, and never was, "which is worth so much to the country as to compensate in the smallest degree for renewing the sectional and fratricidal animosities of the last ten years."

I care not how great any party may be in its pretensions or its power, I care not how distinguished a leader in that party a man may be, I say that party is an evil, and that man is mischievous, when he or it seeks to revive in the country the bloody memories of the past, or to fix upon a great portion of our people a brand of disgrace before the world as savages scarcely fit to exist, and to put upon them at home the badge of a galling inferiority.

I do not believe either in the accusations or in the policy that prompts them. I can well understand that there are in the South disorderly and violent men. They are the natural fruits of the war and of your own misgovernment. They are but a handful, easily dealt with by any government dealing with them in the right spirit. But what I do not believe is that the mass of the Southern people are the barbarians they have been represented to be, over and over on this floor, by prominent Senators of the majority. It would be a great deal better for the dignity of this body, for the peace of this country, for the good standing of the American people before the enlightened judgment of Christendom, to say at once what is the object of all this exaggerated outcry of outrages in the South; of all this hollow parade of investigations—far better to come directly to the point like men, and let it be understood that no one of the States lately in insurrection will be permitted to come back here until she sends to the Senate and to the House of Representatives men whose party politics shall be acceptable to the accidental party majority in each.

Let that be understood; then will there be no need any more for the periodical performances here, for the demonstrations of passion or the torrent of studied vituperation poured out against the people of the South. If I thought the tenth part of such vituperation could be true, I should mourn over the land that had nursed such children as inevitably lost. Nobody knows better than the members of this Senate who have been longest here how easy it is anywhere throughout that Southern land, upon which, from this Capitol, Congress frowns with aspect so malign—with its whole system of labor disorganized, with its social system broken up from the very foundations, filled with ruined men, with all the rankling animosities left by a great civil war, as well in the victor as in his victim—to obtain from idle, ignorant, malignant, or suborned witnesses just as much testimony as is wanted here for the purpose of blackening the character of the people of the Southern States, exasperating the dominant party, and preparing the way for fresh operations in the line of "reconstruction."

Sir, we ought to have some patience with the people of the South. The terrible evils of such a civil war as we have gone through, its disorders and its rancors, are not to be allayed in a day. For the sake of those people and of the country, I regret that the question has been turned into one of party ascendency in the Government, but especially in Congress. But for that Senators would have patience. But for that we might

safely trust to the natural goodness of men, here and elsewhere, to be a little patient with a people so sorely tried, to give time for bitterness to depart, for disorders to subside, for society to recover its healthful and normal action.

If the elections which have been held in the South and which resulted unfavorably to the dominant party are to be set aside as a party necessity, let it be done manfully and above board; but let not the Senate, in addition, go into the business of defaming the country. You do defame the country when you blast the character of any considerable portion of its people before the world. It is idle for the rest of the country to hope to escape. The judgment of history is a judgment in general, and justly so. When the most prominent men of the dominant party of the United States for the last ten years announce to the world over and over, as their deliberate judgment, that a large portion of the territory of the United States and a large portion of the people of the United States are in a condition little better than barbarous by reason of the disorders there, the want of security for life, limb, property, or rights of any kind, they inflict a wound upon the character of the whole American people.

Willard Warner [Rep.], of Alabama, replied to Senator Casserly.

I occupy a standpoint in regard to the Southern people that entitles me to speak as to the condition of affairs there. I have offered to the Southern people, in my person, from the end of the war, from the time that I took off the uniform of a Federal soldier, the olive branch of peace. I have said to them, again and again, upon the rostrum in Alabama and here, that I was willing and anxious to forgive the past; that I fought as a Federal soldier only for the union of my country and for its peace and welfare and liberty in the future. I say that to-day. I cherish no animosities for the past. I am as ready to-day as I have been since the war to rise above all the passions of the past, and in a spirit of Christian statesmanship to do that which shall seem to me best for the welfare of my country now and in the future.

I am to-day with the Senator from California, and will vote with him, when the opportunity is presented, to offer amnesty for rebellion. But, sir, I should be sorry to know that that carried with it amnesty for murder and violence to-day. And I shall be pained to learn that this is a question of party

ascendency; that there is any party in this country, and particularly the party to which the honorable Senator belongs, which depends for its ascendency upon an organized band of Ku-klux assassins, who override the will of the people in some sections of the country, and persecute and murder men because of their political opinions. If there be a party in this country whose ascendency is dependent upon such work as that, then it is time that we and the country should know it. I hope that it is not true, and that the great Democratic party of the country rests upon the basis of broad principles which commend themselves to the judgment and to the will of the American people, and that it is not necessary for them, even in the lately rebellious States, to resort to violence and to a secret organization to reverse, as the President says in his message, the will of the people in order to maintain their ascendency.

Sir, I should suppose that we could come to the investigation of this matter with one accord, and I cannot see why party lines should be drawn upon it. This is a motion for investigation into the actual condition of things, and I hope that there are no parties and no partisans here who fear that they are to suffer by the investigation. If my party shall suffer from it, let it suffer. I am willing that all the sins that rest upon the shoulders of my party shall be brought to light, and I, for one, will discountenance them, and feel that my party is the stronger for the exposure, for it will tend to purify it. If it shall appear, upon the other hand, that the success of the Democratic party in the South has been the result of fraud and violence and intimidation of voters, and through the agency of a secret organization, then I hope my Democratic friends on this floor will be willing to discountenance such things, and to join us in applying the remedy, if there be one, under the Constitution, in the hands of Congress.

I cannot think that this will be made a question of party ascendency, nor do I think that the whole body of the Southern people approve of these outrages. I am convinced that there is a great body of men in the South—men, too, who belong to the same party organization that my friend from California does—who disapprove and denounce these things. They do it to me privately; but such is the terror in certain localities there that they dare not do it publicly. I have had men who occupied seats in Congress before the war, men of the Democratic party, and who now belong to it, tell me privately that the newspaper editors and other leaders who are inflaming the passions of the people and producing this violence throughout the State are

fools; but they lack the moral courage to say it publicly and to create a public opinion which shall crush out these organizations and give freedom of the ballot and political toleration throughout the South.

Thomas F. Bayard [Del.] opposed the motion.

Sir, this Administration commenced with words that were fair. "Let us have peace" was the incoming cry of the Administration. That sentiment gave to that party, probably more than anything else in the canvass, the success which they achieved. Since the incoming of the Administration, however, we have seen but little action in accordance with that sentiment on the part of those to whom the Government of this country has been intrusted.

The air has been filled with rumors that some such scheme was on foot of patching up this wretched system of reconstruction as should in effect again place the entire Southern people under martial law, wielded by the present Administration and its followers. How is it that after the lapse of more than five years, with unlimited power of legislation, with unlimited power to fill all the offices in the Southern States, new committees, new investigations, new laws and measures must be resorted to in order to produce good government throughout the Southern States? What a confession of incapacity and error is here made!

I anticipate as a foregone conclusion the passage of this resolution. I anticipate the collection of evidence, almost cut and dried to order, for the purpose of justifying almost any such measures as we have seen in the past, or which may be even exceeded in the future. And yet that does not prevent me from giving warning to my fellow countrymen all over this country of what I believe to be the truth of the dangerous attempts now being made.

The object of this resolution, this special committee, in my solemn belief, is nothing in the world but to obtain some pretext by which you shall place the Southern people again under martial law. There is not to-day in any Southern State a single Federal officer who has not been nominated by the President of your choice and confirmed by this Senate. There is not a district judge who is to preside at trials; there is not a district attorney who is to prosecute for offences against the laws of the United States; there is not a marshal, who has the sole discretion in selecting and summoning the jurors who are

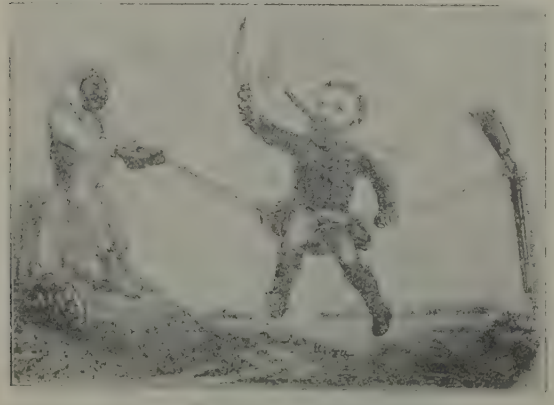
to try such cases, who is not a thick-and-thin partisan of your Administration. And yet in the face of all that you come here, disregarding the ordinary processes of the laws—and surely they are numerous enough, surely they are severe enough—and appeal to force.

We hear speeches in this Chamber in which we are told of individual acts of violence. Extracts are read of the most intensely bitter nature from certain Southern newspapers, in which it would seem that gentlemen of both political parties on this floor are equally denounced for not following those writers in their intemperate views and bitter personal feelings. Is it not a farce to suppose that while the Senate of the United States is trying this great indictment against a whole people senatorial minds are to be affected by these irresponsible, anonymous, unsupported statements culled from the writings of bitter and disappointed men? If that be the kind of testimony upon which you are to try, not the life or the fortune or the rights of a single man, however humble, but to try the rights of a whole people to govern themselves, free from your interference, I could go to your leading papers in the city of New York, I could take papers that are almost the political Bibles of such Senators as the Senator from Massachusetts, who spoke but just now, and I could there show you evidences of a feeling against the Southern people that would shut the gates of mercy upon them and their posterity forever. If I bring you, then, from the Northern press extracts as bitter, as unreasonable, as unjust as those which have been read to you from the South, will you send your committee to the North and reconstruct those States until no man shall print or say anything that seems offensive to the ear of a Radical majority? Is that to be your test of liberty?

There is one fact which I do not think will be disputed by any gentleman on this floor, let him come from what section he may. It is one of which I have personal knowledge by my own individual experience, and which I believe is concurred in by the entire country, and it is that in regard to the class of voters whom in fact you rely upon, and rely upon alone, in the Southern States, whom you have by your so-called constitutional amendments and laws made in pursuance thereof granted the right of suffrage, that class has exhibited in every part of this country—I make no exception—the utmost tyranny in respect of allowing any difference of opinion in themselves or to the majority of them. All over this country there has been one concurrent current of testimony to the effect that no colored

man in the North or in the South can vote against the majority of his own class and his own people except at the peril of his life.

I have never believed, and I have not been disappointed, I am sorry to say, that the Southern States have any chance on God's earth before the Congress of the United States unless they completely submit themselves to the will of the dominant party. The remedy for that is where? It is in that section where that party has its strength and existence.



THE PRECARIOUS SITUATION

From the collection of the New York Public Library

There is in the common heart of humanity something that partisans cannot reach and cannot touch. There is in the abstract sense of justice, simple fair play, common good faith, something that appeals to the hearts of men in masses, and to which they do respond; and if the Northern people shall look upon the humbugs and the shams that you have called republican governments in the reconstructed States, if they shall see a people misrepresented here in Congress after Congress, men assuming to speak for them when every man in his heart knows that there is no moral right so to represent them, that no such thing as the voice of the chosen representatives of the people of the Southern States has been heard here for many a long year,

and when you seek to keep alive that fraud and that sham by means of a constant resort to military power, then I say that, if there be not enough honesty, enough courage, enough intelligence in my fellow citizens of the Northern States to repudiate such schemes, I have no hope but that we shall live to see a government of laws supplanted by a government of force all over our country. The bitter cup you Senators and Representatives from the Northern country have pressed and now seek yet again to press to the lips of the people of the South may at no distant day be returned to your own.

Allen G. Thurman [O.].—Mr. President, I want to ask the Senator who moved this resolution why it is, with his views of the power of Congress, that he limits his inquiry to these exceptional cases of violence. If he wishes to preserve the purity of elections in the South why is it that he can see nothing but some violence of a mysterious or mythical Ku-klux Klan? Why is it that he cannot look at the statute laws of South Carolina, of Florida, of Alabama, of Texas, of Arkansas; of Louisiana? Why is it that he does not see that in each of those States, unless Alabama is an exception, it is by the statute law enacted by Radical legislatures absolutely in the power of the Radical governors of those States to elect whom they please, and defeat whom they please for every important office within the gift of the people? Why is it that he cannot see that?

Talk about violence! What violence to the elective franchise on the part of a few men who violate the laws and are punishable for it is comparable to this wholesale wrong which enables one man in a State to dictate who shall be elected in that State to every office of any importance! Sir, when the proper time comes I shall present to the Senate the statutes of those States and make the remarks that are pertinent upon them. I will show that if you want to preserve the purity of elections, if you want the majority of the legal electors in those States to determine who shall be their officers, if you want the voice of the people to prevail, if you want such a thing as a true republican government in those States, then, if you have the power, there is the place to apply the remedy.

Why, sir, look at the election in Florida; look at eight counties thrown out that gave majorities for the conservative candidates, upon the merest technical grounds about their returns that ever a sophist imagined, while another county, giving a large Radical majority, and to whose returns the same precise objection applies, is counted in favor of the Radical candidates and they are installed in office. What is a little violence in

North Carolina or Alabama compared to that? Look at the election laws in Louisiana; look at them in Texas, where the governor appoints every officer in the State from the chief justice of the State down to the lowest bailiff. Talk of purity of election there! Talk of the voice of the majority of the people prevailing! No; if you want to go into the question of the purity of elections, if you want to protect the purity of elections, first cast out the beam that is in your own eye before you look for the mote that is in your neighbor's.

But, Mr. President, that is not all. There is something very singular about these investigations. Less than two years ago there was an election in the city of Washington, where Congress exercises exclusive jurisdiction. A colored man nearly lost his life at the hands of a mob on that election day; his life was only saved by the interference of the police, and for a time the police itself was borne down by the mob. What was that colored man's offence? Nothing but this, that he sought to vote a Democratic ticket. Where then were your denunciations? Where then, with full and exclusive power of legislation, were your remedies? Where then was your committee of investigation? Nothing of the kind happened. It was only a Democratic negro who was mobbed by Radical negroes, and the thing passed in silence!

Who does not know that for a colored man to vote the Democratic ticket in much the greater portion of the Southern country is to risk his life? Talk of intimidation, indeed! There never was such intimidation in the world, there never was such deliberate, concerted, effective intimidation in the world as the colored men of the South exercise toward any one of their brethren who seeks to vote the Democratic ticket. It is as notorious as that the sun shines above our heads.

Oh, but it is said, that is the very thing we shall investigate by means of this committee. Well, we shall see when the report comes in. We shall see whether there is a white side as well as a black side to it.

Mr. President, I have never uttered one word in defence of Ku-klux organizations. The Senate will bear me witness that no one spoke more strongly against them than I did at the last session. If I were looking at the subject simply in a partisan point of view, I am not so stupid as not to know that every outbreak of that kind only injures the party to which I belong, only furnishes the material for our opponents to excite the passions of the people and to excite the passions of Congress. I know it full well; and if my voice could reach every man who

violates the law in the South, and could have potential influence with him, it would be addressed to him in three simple words, "Obey the laws." Such are my feelings; such are my natural instincts; and such is my interest and the interest of the party to which I belong. There is nothing to be gained by us by outrages, which only furnish our adversaries with pretexts for passing acts of legislation that but a few years ago would have shocked every sense of liberty, of freedom, and of constitutional law that had an abiding place in the American heart.

I have said, sir, I believe, all that I need to say; but I will say one word more about these Ku-klux. Mr. President, the darkest page in English history is that which records the bloody executions of the men whose heads fell from the block or who were swung upon the gallows by the oaths of Titus Oates and his confederates for complicity in an alleged popish plot. It was sufficient at that day, in the infuriated condition of the public mind, to assert that there was a plot to have it believed, to assert that there were conspirators to give credit to the statement, and to point the finger of the informer at any man to send him to the scaffold or to the block. That was the state of things there. It may be, but I hope it is not, that there are some men in this country who think that it is only necessary to assert that there is a Ku-Klux Klan to have it universally believed; to assert that there are conspirators and murderers in that Klan to find credit for their assertion; and to point the finger to a man to have it believed that he is of the Klan. It may be that there are persons who entertain such sentiment, and who, believing so, and thinking all fair in politics, are at all times ready to bring up this raw-head and bloody-bones and shake it in the face of an affrighted Congress and people. I am not one of them.

James W. Nye [Nev.] read an account of the Ku-Klux Klan from a message to the North Carolina legislature by Gov. W. W. Holden, November, 1870.

"These combinations were at first purely political in their character, and many good citizens were induced to join them; but gradually, under the leadership of ambitious and discontented politicians, and under the pretext that society needed to be regulated by some authority outside or above the law, their character was changed, and these secret Klans began to commit murder, to rob, whip, scourge, and mutilate unoffending citizens. This organization or these combinations were called the Ku-Klux Klan, and were revealed to the public, as the result of the measures which I adopted, as 'The Constitutional Union Guards,' 'The White Brotherhood,' and 'The Invisible Empire.'

"Unlike other secret political associations, they authorized the use of

force, with deadly weapons, to influence the elections. The members were united by oaths which ignored or repudiated the ordinary oaths or obligations resting upon all other citizens to respect the laws and to uphold the government. These oaths inculcated hatred by the white race against the colored race. The members of the Klan, as above stated, were hostile to the principles on which the government of the State had been reconstructed, and, in many respects, hostile to the government of the United States.

"They met in secret, in disguise, with arms, in a dress of a certain kind intended to conceal their persons and their horses, and to terrify those

KU-KLUX COSTUMES

From a photograph made in 1870 for J. G. Hester, deputy U. S. Marshal in North Carolina, who captured the disguises

Illustration in Green B. Raum's "The Existing Conflict"

whom they menaced or assaulted. They held their camps, and under their leaders they decreed judgment against their peaceable fellow-citizens, from mere intimidation to scourgings, mutilations, the burning of churches, schoolhouses, mills, and in many cases to murder. This organization, under different names, but cemented by a common purpose, is believed to have embraced not less than forty thousand voters in North Carolina. It was governed by rules more or less military in their character, and it struck its victims with such secrecy, swiftness, and certainty as to leave them little hope either for escape or mercy. The members were sworn to obey the orders of their camps, even to assassination and murder. They were taught to regard oaths administered before magistrates and in courts of justice as in no degree binding when they were called upon to give testimony against their confederates. They were sworn to keep the secrets of

the order, to obey the commands of the chief, to go to the rescue of a member at all hazards, and to swear for him as a witness, and acquit him as a juror. Consequently, grand juries in many counties frequently refused to find bills against the members of this Klan for the gravest and most flagrant violations of law; and when bills were found, and the parties were arraigned for trial, witnesses, members of the order, would in nearly every case come forward, and, taking an oath before the court on the Holy Evangelists to tell the truth, the whole truth, and nothing but the truth, would swear falsely, and would thus defeat the ends of justice.

"In fine, gentlemen, there was no remedy for these evils through the civil law; and but for the use of the military arms, to which I was compelled to resort, the whole fabric of society in the State would have been undermined and destroyed, and a reign of lawlessness and anarchy would have been established."

Senator Nye.—Sir, the time has come when these truths should be told, and the Republican party as such have long enough fought on the defensive. These things have been done; and the honorable Senator from California now invokes forgetfulness of the past. Sir, how ready am I to forget; how ready is every man to forget; but they will not let us forget. The man we clothe with citizenship to-day lies stark and stiff a murdered victim to-morrow. A State Senator goes to the capital and is slain in the very door of the capitol of his State. And yet my honorable friend from California says "Let us forget it." Sir, I would be glad to forget it; but these men are citizens of the same Government as myself. I demand protection from my Government, in the name of its power, for my personal rights as I pursue my duties. What I demand for myself they are entitled to, and so far as my power goes they shall have it if the Democratic party and the Republican party die together.

Sir, never since the dawn of the morning star has there been such an exhibition of magnanimity toward offenders as the Republican party have extended to these men. Day after day Senators from the Southern States have asked that these individuals be relieved from the disabilities under which they labor by reason of having been rebels; and those relief bills have been carried by a Republican Congress, and what is the return? Consult the record and see what is the return. It is a return of vengeance more direful than we had any right to expect. Instead of one principle of gratitude welling up, we behold them staining again and afresh their hands with innocent blood.

Sir, I confess I am sick of it, and I often inquire of myself has this Government the power, and if it has will it exercise it, to protect its citizens at home? But a few years ago the American nation was made to rejoice when in a foreign port, finding that an American citizen, and he not a native but a naturalized

citizen, had been improperly seized by a foreign power, one of our commanders, with a single man-of-war, opened his port-holes and demanded the surrender of that American citizen. How the American heart leaped with joy at this exhibition of its power and the willingness to use it. Now not merely are there isolated cases such as I have submitted, but they have become familiar, and so familiar that we cease to be moved by their frequent occurrence. I have often thought that it is much like the first field of battle that the soldier sees—terrible on first view, but a familiarity with it begets a feeling quite different from the first impression.

I hope the time has not yet arrived when we shall be unmindful of appeals such as come up here for the protection of our own citizens. If that time has arrived with others it has not with me. The boast of the British Government is that it protects its citizens wherever they are. The boast of the American Government should be that it protects its citizens wherever they are.

But, sir, we are told—it is suggested by the honorable Senator from Ohio—that the blacks are intolerant. If the black man has outraged the right of a citizen of the United States, bring him at once to judgment; and if the State power is inadequate, then I invoke the power of the Federal Government to do it. If our agencies will not perform their duty we must do it ourselves. Reverse the picture, and if a white man, who my friend from Ohio evidently thinks is so much the superior of the black, can so far forget his manhood as to trample on his inferior, bring him on the "double-quick" to the shambles for judgment.

But we are asked why these State governments do not do it. The answer is in the message I have submitted; they cannot do it. Here are organizations of men bound by oaths which chill the blood in the veins of an American citizen, under the penalty of their own death, to commit perjury, murder, rapine, the whole catalogue of crimes, and their brethren are sworn to swear them through.

Sir, gentlemen on the other side seem to consider this a political movement. In my judgment, in a matter like this politics sink into insignificance, and the cheek of a man who thinks of them in this connection ought to mantle with shame, while from every quarter of the lately rebellious States comes every day the repetition of the story of wrongs and outrages to which our citizens there are subjected. Sir, I think the Republican party has done more for this country and the world than any other

party; but I would strike out its past history, I would let its future go, before I would consent that a cry should come up here from unprotected citizens that their lives and their property are in danger and there is no source of succor for them.

Better by far that all our political recollections should be blotted out; for I tell you, Mr. President, and I say to my brethren in this Senate, that when a nation reaches that point that it does not give ample protection to its citizens that nation had better die. It is the citizens that make the nation; it is the citizens that uphold its pillars; it is to the citizens that you turn in the hour of danger; it is to the citizens that you turn in every aspect in which the Government is viewed; and when the Government in its power refuses to listen to their cries of outrage and wrong it is led in a wrong direction.

Gentlemen say it is to perpetuate the power of the Republican party. Sir, what higher claim could the Republican party or the Democratic party have to the confidence of the community than that they were willing to yield a ready ear and to make quick response to the cry of danger to the rights of the citizen?

Zachariah Chandler [Mich.]—The Senator from California accuses the Republican party with having maligned the Democratic party, and in a spirit almost of commiseration talks of the waning strength of the Republican party. Sir, when the Republican party desire his sympathy they will make application; but, so far from maligning the Democratic party, I desire to say that the English language is incompetent to perform that task. [Laughter.] The very worst malignment that can possibly be uttered against that Democratic party is to tell the plain naked truth.

The day is far distant when that old Democratic party that attempted to overthrow this Government will again be intrusted with power by the people of this nation. The Senator from Delaware says that there is no other way to reform the abuses that he alleges to exist except by the vote of the North. Let me inform that Senator that he will live to be old and that his children will be on the stage of life long before he will see this great Republican party that has saved the nation rebuked by the people of the North.

On January 19 the appointment of the investigating committee was agreed to. On the 20th Vice-President Colfax appointed the following Senators as the committee: John Scott [Pa.], chairman; Henry Wilson

[Mass.], Zachariah Chandler [Mich.], Benjamin F. Rice [Ark.], Thomas F. Bayard [Del.]. Later Francis P. Blair, Jr. [Mo.], and James W. Nye [Nev.] were added to the committee.

The first session of the Forty-second Congress (March 18-April 20, 1871) was largely occupied with discussion of outrages in the South.

Enforcement of the Fourteenth Amendment

Senate, March 18–April 5, 1871

On March 10 majority and minority reports were submitted to the Senate from the Committee of Investigation.

On March 18 John Sherman [O.] brought forward for discussion in the Senate a resolution that the Committee on Judiciary be instructed to report a bill to enable the President and the courts of the United States to execute the laws, punish organized violence, and secure the constitutional rights of citizens in the ex-rebel States.

The committee on investigation of alleged outrages in these States, he said, had already secured enough evidence to justify, indeed, make imperative, such a bill.

He referred particularly to the condition of affairs in North Carolina, the State which had been especially investigated by the committee.

Sir, the witnesses show that many of the young men who were arrayed in the Confederate army joined a secret military organization, with all the benefit of the discipline they had gained while in armed hostility to the Government of the United States. They are there in violation of the very liberal terms granted them by General Grant, and in violation of the treaty of capitulation under which they surrendered themselves as prisoners of war. They are armed with the very weapons they used against our own soldiers, and arms have flowed freely into North Carolina since the war was over, arms of the best character. They are disciplined and organized, according to the testimony of these high officers, in almost every county of North

Carolina; but in most of the counties, perhaps in a large majority of the counties, they have committed no outrages; but there they lie quiet, organized, ready at a moment's notice to spring to arms. In several of the counties of that State, as I will show you by the testimony of these witnesses, they have brought about a condition of affairs that is revolting to every instinct of humanity.

Senator Sherman then read the oath of this organization. It required the initiate to swear that he was not a member of the Union League, Grand Army of the Republic, "or any other organization whose aim and intention is to destroy the rights of the South, or of the States, or of the people, or to elevate the negro to a political equality with yourself; and that you are opposed to all such principles, so help you God!"

"You further swear before Almighty God that . . . you will oppose all Radicals and negroes in all of their political designs; and that should any Radical or negro impose on, abuse, or injure any member of this brotherhood, you will assist in punishing him in any manner the camp may direct."

I have read this oath, showing that here is a political organization, with political ends, political aims; and, although the language is somewhat covert, it shows that the object and intent of that political organization is to prevent large masses of the people of the Southern States from enjoying a right which has been guaranteed to them by the Constitution of our country.

It is essentially a rebel organization, and no conscientious man who was a Union man, North or South, white or black, during the war, could become a member of it unless he entertained and was willing to fight for and defend and obey the orders of his rebel leaders. That is the spirit of this organization.

These men are not only armed, disciplined, oath-bound members of the Confederate army, but they work in disguise; and their instruments are terror and crime. Why, sir, we are already familiar, and perhaps too familiar, with the common description of these Ku-Klux Klans riding at night over a region of country, going from county to county, coming into a county town, and spreading terror all over a community; and not only that, but they endeavor to excite superstition. They pretended, I believe, in the outset to be the representative ghosts of the Confederate dead. That was the idea which they sought to give

out; the ghosts of the Confederate dead were coming back to punish those who had been disloyal to the Confederate service; and they terrified men, women, and children, white and black. They excited the superstition of the ignorant negroes of the South, endeavored to frighten them first by superstition, then by intimidation, by threats, by violence, and by murder.

Mr. President, I do not know anywhere an organization similar to this Ku-Klux Klan. I have thought of the Thugs of India. They murdered, and they murdered secretly; but they did not disguise themselves while they were in the act of murder. If any Senator now, in looking over the record of crime in all ages, can tell me of an association, a conspiracy, or a band of men who combined in their acts and in their purposes more that is diabolical than this Ku-Klux Klan I should like to know where it was. They are secret, oath-bound; they murder, rob, plunder, whip, and scourge; and they commit these crimes, not upon the high and lofty, but upon the lowly, upon the poor, upon feeble men and women who are utterly defenceless. They go out at night, armed and disguised, under color of superstitious forms, and commit their work. They go over vast regions of country, carrying terror wherever they go. In all the record of human crime—and God knows it is full enough—where is there an organization against which humanity revolts more than it does against this? I know there is not a Senator here but feels that this thing ought to be put down.

Wherever there is a strong Republican majority or a strong Democratic majority this organization lies quiet; but wherever there is a close county and terror is necessary to enable them to carry the election, there they rise. Wherever the negro population preponderates, there they hold their sway, for a few determined men, disciplined as these men are, can carry terror among ignorant negroes, uneducated, full of superstition, without arms, equipment, or discipline. The testimony shows that this organization is powerful in that State; and it extends to the other States.

Senator Sherman then entered at great length into the details of the Ku-Klux and similar outrages.

On March 20 Thomas F. Bayard [Del.], a member of the investigating committee, replied to Senator Sherman. He charged that the motion was a Republican caucus measure which it was intended should be put through Congress whether justified or not. He declared that the general indictment made by the Senator against the

South was totally unwarranted, as testimony had been taken by the committee in the case of North Carolina alone. Take Virginia, for instance; by the confessions of the Senator and other Republicans law and order prevailed there. Why? It was the only State controlled by the Democrats since its readmission to the Union.

Senator Bayard then entered extensively into the testimony concerning the outrages in North Carolina, impeaching the credibility of witnesses because of their interest in securing an affirmative report from the committee, showing that they themselves were members of secret political organizations formed to prevent the free exercise of the suffrage, and affirming that the outrages proved were not different essentially from those which prevailed all over the Union.

Senators, I have served upon that committee, I trust with fidelity. I am very sure that I was there with no partisan or unfair purpose. I am very sure the suffering of no inhabitant of that State fell upon my ear without sympathy for their suffering and great regret for it, and a strong desire to punish the perpetrators of these wrongs; but I tell you to-day I believe there is more safety in the State of North Carolina, that there is less crime and less danger to human life in North Carolina, than there is in Washington city, in the District of Columbia. A comparison of the dockets of the respective criminal courts would establish this fact.

Look at the organizations now among the miners of coal. See what leagues they have formed for their protection and to keep up the prices of their labor, and see the disastrous results of all this upon the community in raising the price of coal, a necessity to all men, to a rate that almost forbids its use and entails great suffering. These things are all against law; but will you undertake to enter into those States to assume to yourselves the complete police power of each and every State in the Union? If so, pray what will you call your Government? Certainly do not so insult the intelligence of the people as to consider it any longer a Federal Union of equal States.

I am not here to apologize for or approve the creation of these secret political societies on any side. I have been opposed to them all my life. It is with me an inherited opposition in a republican form of government to creating secret political orders. The oaths of these societies, which have been read, are

very much the same as the oaths I have seen published of the Know-Nothings and other secret orders of that kind, all of which, I think, are inconsistent with a republican form of government, and certainly contrary to the Constitution of the United States.

Senator Bayard charged that the negroes, the chief laboring element of the South, had been organized by their white leaders into "Union Leagues" and other secret political associations, and that these were primarily responsible for the disorders in North Carolina.

How can there be peace in a community where there has been a deliberate organization of all the laboring men in hostility to the men from whom they are to receive employment? It is race against race. It is labor against capital. How would such a party be regarded in the Northern States? Let that fact go before the people of the North, that all the workingmen of the country are to be organized and inveigled into secret societies, each intimidating the other, the object of the organization being to control politically the operations of capital throughout the country. Why, sir, is it not a complete destruction of all the sweet affiances of life? Is it not a complete destruction of all the relations between man and his fellows? Is not the employer to use the justifiable influence of affection, of instruction, of counsel, and kindly services with those whom he assists to get their bread, and who in their turn assist to make his capital available to himself and them also? What peace can be expected to society where the two great coöperative classes essential for each other's safety shall be perverted from their natural friendship into foes by organization?

I ask those who profess political friendship for the colored people in the State of North Carolina whether they really believe that class will be safer in the hands of these political adventurers who are seeking to organize them for their own party purposes than they would be in the hands of those from whom alone they can obtain employment, and who were their friends in the past as they are now? The relation of the races during the war showed that there was no hostility between them. There was love and affection borne by the colored race toward those who were their masters. The history of that war will be hereafter, I am satisfied, the very best answer to the slanders against the white people of the Southern States. Throughout that war, if the negroes had those wrongs to avenge which your novelists,

lecturers, and other libelers[1] have averred them to have, they certainly would have availed themselves of the constant opportunities to avenge them; but the history of the war showed that those wrongs never could have existed, and that there were between those people, until disturbed by political adventurers, the strongest ties on each side of affection and protection.

Why not, therefore, Mr. President, let these colored people alone, that they may choose their friends as other men choose theirs? Why should they be controlled by these political adventurers? Why not leave them free to go back under the control of those who have been true and kind to them, and with whom naturally there is an affinity of feeling and interest? The answer is plain, that the welfare of the colored race is to be sacrificed for the benefit of the Radical party. That is the only reason for it. These poor people whom you profess to desire to see advanced are made nothing but cat's-paws for the purpose of gaining a political advantage.

Mr. President, the committee were charged with the examination of the security of property. The destruction of property by incendiarism was but one danger to which it was subjected. There was another and still more wholesale destruction of property, caused by the corrupt and wasteful mismanagement of the State's credit. The fact, Mr. President, is one beyond all doubt; is concurrently stated by the witnesses on both sides, that the State debt of North Carolina at the close of the war amounted to about fourteen million dollars, and that, in a little less than eighteen months after that State had been forced by the reconstruction acts under the control of Holden and his associates, that debt was increased from $14,000,000 to $35,000,000, and that without any benefit to the State, no trace where the money has been usefully expended, but the State is crushed under this fearful burden of debt. And who are to pay this? The Union Leagues of Governor Holden, the eighty thousand voters whom he has relied upon to retain political power in that State? No, sir. There would not be five per cent. of the taxation necessary to pay such a debt or the interest on it which the members of his party individually would have to pay. The result of this fearful accumulation of debt was to fill the minds of the people of that State with apprehensions of the gravest character. Bankruptcy was inevitable. They knew of Holden's complicity. It is proved abundantly by witnesses on both sides.

[1] There is particular reference here to Albion W. Tourgee, a "carpet-bagger" from Ohio, who settled in North Carolina after the war, becoming a judge in a Ku-klux district. He was a popular lecturer, and wrote several novels which dealt with the Ku-klux, and had a great sale.

On March 22-23 John Scott [Pa.], chairman of the investigating committee, replied to Senator Bayard.

The charge is made that Governor Holden, as the head of a conspiracy, seeks perpetuation of his power against the wishes of the people, and that the Senate lends itself to this scheme by instituting this inquiry.

I must notice here a remarkable statement made by my friend from Delaware. I was astonished that a gentleman usually so acute as he is, and so logical, should in one part of his argument have said to the Senate that the imbecility, the inefficiency, and the corruption of Governor Holden's administration were so great in all its departments, including the judiciary, that there was no protection for life and property, and people had to resort to violence for the purpose of redressing their wrongs, and then, in his argument and in his report, saying to the country that life and property were as secure there as they were in any part of the United States. When the assault was made on the administration of Governor Holden, then there was no protection for life and property in that State; but when it was necessary to screen the Ku-Klux, then life and property could be protected in the courts there as well as any place else. That will be something for some of the Senator's colleagues to reconcile when they follow him.

And, sir, with the fact staring the world in the face that these outrages were perpetrated for the purpose of overthrowing the reconstruction policy of Congress, the Senator from Delaware tells us that reconstruction is a failure, and he points us to Virginia as the only State in which the Democratic party is in power and where reconstruction is a success. Did he reflect that he could have paid no higher compliment to the Republican party of the nation? In Virginia under the reconstruction acts the Democratic party got into power, and there is no Republican Ku-Klux organized there. They submit, and yet the Democratic party is the party of law and order! When reconstruction resulted in putting the Radical party in power in North Carolina the members of your party organized the Ku-Klux and sought to overthrow it by rapine and murder and violence.

Senator Scott then analyzed the testimony before the committee to prove his charge that the Democrats of North Carolina had organized the Ku-Klux with the above purpose, and that grievous disorders had resulted therefrom.

Now, sir, having gone over these offences and their effects, I come to the reasons that are given in excuse or justification for them; first, the reconstruction acts, of which I have already spoken, and then the establishment of Union Leagues. On the general question of the utility of secret political societies in a republic I have such decided convictions that I have no hesitation in expressing them here or elsewhere. I think they are totally at war with the spirit and genius of republican institutions. I can hardly conceive of an emergency in a republican government which will justify the establishment of a sworn, secret political organization. When the ballot ceases to be the expression of the individual conviction of the voter, and is simply cast in obedience to a former oath, or as the result of the combinations of race, color, creed, clan, or nationality, then it ceases to be the true element of republican government. Therefore, I say, there ought to be no secret political organizations.

But, sir, the Union League that is alleged as one of the provoking causes of these disorders was established in the North during the war. It had a political purpose; there is no doubt about that. That is disclosed. So we say in the report. It was established in the South in 1867 or 1868. Whatever may be said of their inexpediency, as an abstract question did these leagues ever, as an organization, decree murder, rapine, or violence? The leagues established in 1867 or 1868 did not; but two or three organizations established within the last year or so, in imitation of the Union Leagues and in retaliation for the Ku-Klux, did. The Union Leagues, as such, never did, according to any testimony that is reliable, decree the burning of property or the murder of or personal violence to any man. That individual members committed wrong there is no doubt; but there is just as clear proof that in all the cases where the members of these organizations have been indicted there has been no trouble in convicting them.

The Senator then showed that, on the other hand, the outrages committed by the Ku-Klux were of the nature of organized conspiracies, and included arson, murder, and personal violence, and yet their perpetrators had escaped punishment by the courts.

He concluded:

I have no desire to overdraw this picture. If I could, by stretching forth my hand over these Southern States, restore

them all to peace and quietude, stop this disorder, no man would more willingly do it. All the feelings of my heart go out in the warmest desire for the peace and security of the South. Brothers of my own blood are there, and I would be recreant to all the dictates of duty, as well as of humanity, if I said one word that was calculated to give a wrong impression as to the true state of affairs. I do not wish to do it. I wish to see the honest men, the true men, of the Democratic party in the South stand up in the front, as ex-Governor Reid did, and stay the waves of this seething mob, lest ere long their own homes and hearthstones be buried in the general anarchy that must ensue. We want not the government of the mob in this land. We want a government in which the law will be supreme, in which (quoting the thought of another, for I have not his language) supreme justice will moderate the whole tone and tenor of public morals. Justice is the object at which all governments should aim. Justice is at once the brightest emanation of the Gospel and the greatest attribute of God. It teaches the lofty that he cannot sin with impunity. It teaches the lowly that the law is at once his protection and his right. And I trust that before this Congress rises, if we can do nothing else, we shall put some law on the statute book which shall satisfy the people of this land and of the world that we wish again, instead of disorder and strife, to inaugurate the reign of that supreme justice which introduces order and peace and love into a world which but for her would be a wild waste of passion.

On March 31 John Pool [Rep.], of North Carolina, reviewed at great length the origin and nature of the political outrages in his State. In the course of this presentation he replied to the rebuke administered by Senator Bayard to the white Republicans of North Carolina for organizing the negroes, who had proved their peaceful disposition during the war, into aggressive political societies, leading to the present disorders.

The negroes during the war did indeed behave themselves. They behaved very much better than anybody else on either side, and they ought to be entitled to consideration for it by the men who got the benefit of that good behavior. But, sir, they are now freemen; they have tasted the sweets of liberty for five or six years. No people who have once been free will be reduced to slavery, or *quasi*-slavery, without a struggle to maintain their liberties.

What was wrong, then, in aiding them to make this resistance? If they did not resist and their rights were overthrown the Federal Government would be compelled by the Constitution to enforce these rights. This meant the reëstablishment of martial law.

Did Senators realize what this meant? He did. The South did, and feared it, and the fear would have a repressing effect.

Martial law! It means the suspension of the *habeas corpus*. It means military tribunals. It means the breaking down of that great bulwark of Saxon liberty—the trial by jury. It means the substitution of military men as judges and jurors. It means the danger that men will be convicted upon insufficient testimony, and often innocent men punished. It means the quartering of soldiers upon communities, subject to all those petty outrages that must occur where soldiers are quartered among those whom they consider their enemies and the enemies of their flag. It means the subsistence of troops, whose presence has been rendered necessary by the communities where they are quartered upon the communities. It means the impoverishment of the property holder, the taking of his means to support the troops whose presence has been rendered necessary. Sir, it means all that any lover of his section of country ought to be desirous of avoiding.

Personally he believed that President Johnson's reconstruction policy should have been adopted. But it was not, and he and other Southern men accepted the policy of Congress. Did they do wrong in so accepting? So with the Fourteenth Amendment.

I stand not here to discuss its merits. In some of its features it had my hearty approval and approbation; in other features it had not. In the great liberty principles, the great principles of right, the immunities of American citizenship, it did have my approbation. I would have preferred something different, but what were we to do? It was proposed, and proposed by those who had the power, to put it on us and to execute it. I ask if it was wise policy to attempt resistance?

It was the resistance of President Johnson and his party to the reconstruction policy and the Fourteenth Amendment that caused all the trouble, for it encouraged the South to resist these.

If there has been a murder committed, if there has been a man or a woman scourged, it can be traced to that very action and to the encouragement that was given to resist by force, if necessary, the operation of the reconstruction acts.

I do not charge the Northern Democrats with intending to produce this state of things. I do not charge them with complicity in any crime, or outrage, or disorder. Men often do things the consequences of which they do not see. I wish the attention of the country called to the damage that those who here profess to be the friends of the Southern people are doing them when they encourage by word or deed acts which, when attempted, must lead to ruin and disaster.

The Southern Democratic party therefore took heart and came forward solidified upon the issue of resistance to the Fourteenth Amendment. What could be expected but that the negroes and the white men who had been Union men during the war would form a party in opposition? This party did not create sentiment among the negroes in favor of the Amendment, for this already existed. It simply organized in self-protection those who held the sentiment.

You may talk about leagues influencing votes. I do not know what is done inside the leagues; I never was in one; but there was and is human nature even under the black skin. They had liberty offered to them; they had rights offered to them; they had protection in those rights promised to them by the great and conquering nation that, with its legions, had trampled down before their eyes all opposition to its power and authority. Think you that they by any fair means could have been induced to turn their backs upon a measure that was to secure to them their rights and their liberties?

Had the negroes lost their rights Congress would certainly have intervened in their favor.

Think of the armies of the United States sent down to enforce the laws of the country and to carry out its Constitution, with all the black men on one side, and the army aiding them and supporting them in their rights, they believing that there was an effort being made by the white people to reduce them to slavery! Can any man doubt the scenes that must necessarily

follow? Why, sir, the occurrences of the rebellion would tame down into mere insignificance in comparison to what we should witness in every neighborhood, in every household in all that Southern country. It was to avoid this in the future, as well as from a sense of the innate right and justice of the reconstruction acts in their great liberty features, that a large number of the most intelligent and highly respectable white men of North Carolina went into a movement to organize a Republican party and to undertake to carry out in good faith the Fourteenth Amendment to the Constitution.

Reconstruction was made the national political issue. The Democrats declared that if they were placed in power they would use the army to disperse the "carpet-bag" State governments. They were defeated.

The Ku-Klux organization in the South grew out of this contest, and that is at the bottom of the whole of it. Those men have undertaken to do with the scourge, the halter, and the dagger what they understood their party to propose to do with the bayonet; and they have believed that they were sustained by their party in doing so, North and South.

That is the secret of this whole affair. The question that is now upon this nation is whether it will permit local violence to be substituted in the place of the Constitution and laws of this country. And if the nation does not mean to prevent it, if the nation does not mean to have the amendment enforced, in common humanity I want the nation to say so. Do not deceive the colored men longer. Do not longer deceive those white men who have been standing up to the Government and standing up to the rights of all American citizens as declared in the Fourteenth Amendment. But, sir, if the Government of the United States means to abandon its policy, it ought to look well to the consequences that must follow.

If the Fourteenth Amendment is not to be executed, what is to be the condition of the colored people in the Southern States? If they are not to have equal rights with white men, if they are not to be secure from outrage and wrong, from scourging and murder and assassination in the exercise of their rights, what is to become of them? It is idle to say that a man has a right on the statute book or in the Constitution if he dare not exercise it. It is deception to boast that America has freed her slaves if she denies to them the enjoyment of that freedom. It is an empty boast that you have struck the shackles from four

millions of people if worse shackles are thereby put upon them. Do not say that you have freed them, for freedom may be a very different thing in one section from what it is in another. No, sir; it will amount to this, that you have not freed the slaves of the South; you have taken them from under the protecting hand of interested masters and made them the victims of every villain and ruffian that chooses to outrage them.

The Senator from Delaware [Mr. Bayard] said, "Why not leave these colored men free to go back under the control of their natural leaders who have been kind to them?" Is that to be the issue in 1872? If it is, let us know it. "Left free to go back." What does "go back" mean? It may have to some ears a most unpleasant ring of old slavery.

"Free to go back." Sir, they are free to go back now. Who keeps them from it? Is there any Southern man who will drive a colored man from his plantation if he proposes to go there and work for nothing, or small wages, and behave himself? He is free to go back now; but he does not choose to go back, nor will he submit to go back as long as he has a hope of preventing it.

Who are "the natural leaders," that they should have control now, not only of the persons of those who were formerly their slaves, but the votes of their former slaves? "Let them go back under the control of their natural leaders," and I imagine those "natural leaders" will not quarrel with the Fifteenth Amendment. The land owners and old slave owners of the South will not quarrel with the Fifteenth Amendment if in the place of casting one vote, as they formerly did, they can march their hundred colored men whom they have under their control to the ballot box and cast one hundred votes. But who are the "natural leaders," and I ask what have they done for the material prosperity and glory of that Southern country for the last fifty years?

These "natural leaders" had wealth; they had intelligence; they had education; they had the benefit of the labor of these very men whom it is now proposed to put back under their control; they had political power, full swing and sway; even upon the floor of the American Senate they wielded the scepter with a strong hand; and what did they do for North Carolina? Let the condition of North Carolina in 1860 tell what they had done up to that time. I will not turn to the darker picture and point to our condition now. The proposition is nothing less than to put labor under the control of capital.

Who are the laboring men of the South? Have they not an

interest in the common welfare? Have they not an interest in the country? They were born there; they were brought up there; they are attached to the soil. Whatever is to the advantage of that section is for their advantage. They are the bone and sinew of the country. It is labor upon which our institutions must rest. It is not upon capital and upon political management that we can rely for the glory or the safety of this great nation. I would not put labor under the control of capital anywhere. If disaster should come, how would it be? Those who owned wealth could fly to another place more congenial or more safe for them to live; but the laboring men of the South, white or colored, cannot flee. We have white laboring men there as well as colored; the great bulk of the population were not slave owners; the great bulk of the white men of that population are not land owners beyond just enough land to attend with their own hands or with the aid of their wives and children.

They must stand and take whatever comes. If war, if bloodshed, if murder, if Ku-Klux outrage, if lawlessness and disaster and rapine come, they with their wives and little ones must stand by their cabins and suffer all the consequences, while the "natural leaders" can flee and seek asylums elsewhere. Sir, are they to be put under the control of "natural leaders," to be bandied about as a mere football of ambition and party? If that be the proposition, I protest against it.

Francis P. Blair, Jr. [Mo.], a member of the minority of the Committee of Investigation, made a long speech consuming two days (April 3-4) in opposition to the resolution. He stated that the origin of the political situation in North Carolina was the reverse of that given by Senator Pool. The Ku-Klux was the answer to the Union League and not its provocation.

In the nature of things, a set of men go down South, naked adventurers, lusting for the spoils of a State; they make use of these ignorant and superstitious negroes; convene them in secret leagues, sworn societies, and let them loose to depredate upon the property and upon the lives of the citizens there. That this thing should naturally have given rise to measures of defence every man will admit was probable. It did; and associations were made, and the witnesses testify that this Ku-Klux organization, as it was called, was formed because, when these negroes were tried, caught, and convicted, they were par-

doned by Governor Holden, and that there was no other means of restraining them from their devastations and from their crimes.

Sir, the Southern people from all time have been known as a people who were disinclined to secret societies of any kind. They were more repugnant to them than any other class of people whom I know. For a long period of time they eschewed the ballot and voted *viva voce,* such was their dislike to any secret method in their political affairs, and they were late in going into this thing, and went into it only under the pressure of proscription, of despotism. Sir, these secret leagues and these disorders are the spawn of despotism.

Oppression has in all times and in all countries been the prolific mother of disorder, and of that species of disorder which has called forth the Carbonari of Europe and all the other secret societies in Europe. These secret combinations have arisen from the pressure of despotism. These people of the South were absolutely free from them until their governments were taken away from them, until local self-government was denied to them; all the people of intelligence made incapable of holding office and incapable of voting at the first election, when this combination of carpet-baggers and scalawags and negroes was made to seize their governments and to plunder the States at large and the individuals—never until that time, and, when the governor of the State would pardon as fast as convictions were had, were these organizations made, because they were essential to the safety of the people.

Sir, you need not go back to the Democratic convention for the declarations of the Democratic party to find who instigated and who created these disturbances. They were instigated here, and created here. I do not mean that the members of Congress directly instigated these men to these crimes and disorders, but they commenced their measures of oppression; they struck down self-government at the South; they put the governments in the hands of an incapable, inefficient set of people, without character, whom nobody could respect. The magistrates were of such a character that they could not enforce obedience to the law, and inspired no respect for them or for the law.

What right had the Congress of the United States, after setting the example of violence and of lawlessness, to expect the observance of law from others? After they had trampled the Constitution under foot, robbed the people of a whole section of the country of all the rights guaranteed to them in the Constitution for their personal security and for the security of

their property, what right had these invaders of the law and violators of the law to expect obedience to it from other persons? Sir, I said the other day in a running debate that the Congress of the United States was the old original Ku-Klux organization, and I believed it and still believe it!

The testimony taken before the committee shows distinctly the truth of all the allegations I made in reference to the organization of this Loyal League, about its having preceded the organization of the Ku-Klux, and the purpose of the organization.

When North Carolina was reconstructed, the legislature was organized with only such persons as the negroes and carpet-baggers chose to elect to the legislature, and of those some were rejected by the military commander [Gen. Canby]. This legislature at its first meeting appropriated $25,000,000 in bonds of the State to adventurers, under the pretext of building railroads in that State, and the testimony shows that not $500,000 of that sum was ever applied to the construction of railroads or to the public works for which it was appropriated; that the presidents and others made away with it.

All the witnesses testify that this action on the part of the legislature spread consternation and terror throughout the State; that the people saw that their property was being confiscated and annihilated by this species of legislation; that the election was carried against Holden and his party mainly on this issue of their corruption, fraud, and swindling; that it was the only issue in the election until Holden attempted to save himself by using military power, by calling out the militia, and pretending that two of the counties were in insurrection, and at the same time threatening all the other counties with a similar visitation.

The President was called upon for troops. They also came, and were stationed in these so-called insurrectionary counties. But the tide could not be stayed. The illegal and unconstitutional action of the governor, instead of arresting by intimidation the aroused people of North Carolina, only added fuel to the fire. They saw that this man not only desired to plunder them, but he was willing to murder them if they would not submit quietly to be plundered. Hence the defeat and the overthrow of this party, and hence the appeal to Congress to reinstate these men in power.

North Carolina is not an isolated State in that respect. The same policy has bred the same evils everywhere in the South. Wherever reconstruction has gone it has carried with it plunder and recklessness and lawlessness and violence.

"GO ON!"—U. S. GRANT

THE CONSTITUTION OF THE UNITED STATES MUST AND SHALL BE PRESERVED AND PROTECTED

Cartoon by Thomas Nast

From the collection of the New York Public Library

Here the Senator discussed extensively the corruption of the governments of the various reconstructed States. He then presented his view of the proper remedy for the abuses and outrages in these States.

I deem it essential to the reëstablishment of anything like order or government in the South that the men of intelligence

and respectability and character in the South should be allowed to take part in their government. I think there is no hope until that is done. When that is done I believe the people of the South are willing to give negro suffrage a fair trial, and if it is found to be compatible with the existence of our institutions I believe there will be no effort to take from them the ballot. I do not believe, from what I hear from eminent men of the South, that there is any disposition even now to deprive the negro of the ballot. I have seen a letter from a very distinguished man, Mr. Stephens, of Georgia, in which he uses the very words I have used, that the people of the South are willing to give negro suffrage a fair trial, and that they do not desire to take judgment upon the failure which has already occurred, because they believe that the negroes, surrounded by the influences that they are now surrounded by, banded together as they are in these loyal leagues, incited to animosity by shameless adventurers of the North and others no better, and sustained as they have been by the military power of the Government, have not had a fair trial under that system, and cannot have a fair trial, until the influence of the men of character and men of intelligence of the South, who have the welfare and interest of the South at heart, can be fairly felt and exercised.

If it shall be found in time that under the best influences that can be thrown around them, the influences of those who have everything at stake in the South, free institutions cannot be sustained but must perish or the ballot be taken from the negro, I think there will be a means, and a constitutional means, discovered by which our institutions will be preserved.

Many of the citizens of the South, those who had been eminent in a civil or military capacity during the war, were debarred by the Fourteenth Amendment from holding Federal or State offices. To some of these, elected to the State legislatures, seats had been refused by the Republican State governments. This refusal was not in accord with the Amendment, since legislators are not "officers" of government, as decided in the case of William Blount. These were the very men to be seated.

Oliver P. Morton [Ind.] replied to Senator Blair.

This society of the Ku-Klux is the result of a general purpose, of a matured plan for the subjugation of the South by a party that is in hostility to the Government of the United States, by the party which organized and conducted the rebellion. It

proposes to gain the supremacy by driving Republicans into submission and silence, or by compelling them to fly from the State. It electioneers by murder, and persuades men by the lash and destruction of their property. It seeks to waste the courage of men and their devotion to principle by causing them to go to bed at night with a dread that they may be murdered and their houses destroyed by fire before morning. It works by means that sap the mental as well as the physical strength of men and lead them to sacrifice their principles and their feelings to purchase security for themselves and their families. It leaves no room for neutrality. All must take their stand upon the one side or the other—absolute submission upon the one hand, or total insecurity for life and property upon the other.

But as a party policy, it is short-sighted and wickedly foolish. Victory purchased by blood cannot be permanent or glorious. The spots which it makes upon the escutcheons of the party can never be washed out, but will deepen and redden from generation to generation. The blood which is spilled cries from the ground, and in a few years the avenger will come and punishment will fall suddenly and terribly upon the criminals.

The Democratic party may say that it has not committed these crimes; but the judgment of mankind will be that it has held the garments of those who did; that it has stood by in approving silence; that it has uttered no word of condemnation; that it has raised no hand to bring the guilty to punishment; and, while it may not have been the actual perpetrator of the deed, yet it has received the political profits that result from its perpetration. The Democratic party can relieve itself from these terrible imputations by denouncing the crimes, by admitting their existence, by uniting with others for their suppression, by showing a willingness to use all the means that may be within their power to protect life, liberty, property; but failing to do these things, it will be held responsible by the verdict of history.

The best remedy for these evils is their full and complete exposure, that they may be known, understood, and execrated by all men, so that a public opinion may be created which shall have power for their ultimate suppression. To remain silent from any cause is to approve of these crimes, is to encourage their continuance, is to give to their perpetrators security and impunity. We cannot remain silent without becoming participants, without implicating ourselves in the deed.

The persistent declarations of Northern politicians that the reconstruction acts are unconstitutional and void, that the people of the South have a right to resist them, and that the Government of the United States has wickedly oppressed these people and wantonly inflicted upon them liabilities and degradation have largely conduced to their present unhappy condition. The Southern mind, irritated by defeat, accepted these declarations as evidence of sympathy and of the justness of their cause, and the crimes and outrages that have been committed are in great part the natural and inevitable result. Had these politicians advised the people of the South to accept the situation and accommodate themselves to the result, who can doubt that peace, good-will, and prosperity would have been restored?

When the war ended many men who had been in the Union army remained in the South, intending to make it their home and identify themselves with its fortunes. Others emigrated from the North, taking with them large capital, believing that the South presented fine prospects for business, individual success, and general prosperity. In the reconstruction of the Southern States it so happened, and was, in fact, necessary, that many of these men should be elected to office and take a leading part in the government of the States in which they settled. This was their right and the natural result of the circumstances by which they were surrounded; but they were denounced as adventurers and intruders, and the odious slang of "carpet-baggers" was reëchoed by the Democracy of the North, who sent word to the South that these men had no rights they were bound to respect.

Emigration is a part of the genius of the American people. They are composed of those who came from abroad or their descendants. To emigrate from State to State, and there to enjoy all the privileges and immunities of citizens of the United States, is guaranteed by the Constitution, and it is an odious and anti-American doctrine that a man has no right to be elected to an office in a State because he was not born in it or has not lived in it many years. When we consider the circumstances under which the Territories were settled and new States formed, the rapid transition of our population from one part of the country to another, we shall comprehend the infamy and villainy of this slang against "carpet-baggers."

Why, sir, it is the same spirit in another form which a few years ago attempted to deny equal political rights to men of foreign birth and insisted that the offices should be held only by those who were born upon the soil; and it is humiliating that any portion of the people of the North should endeavor to ex-

cite the people of the South against their own citizens who have gone there to find homes. What the South needs is emigrants with carpet bags well filled with capital to revive industry, organize labor, and develop her resources; and the howl against this class of citizens is insane and suicidal.

Those who were born in the South and remained faithful to the Government, or have since joined the Republican party, are stigmatized as the "scalawags," as low persons of the baser sort, disgraced and degraded by every opprobrious epithet, and all of this execrable Billingsgate is reëchoed, with additions, in the North.

The mass of the people in the South are honest, humane, and kindly feeling, like the people of any other section of the country, and do wrong chiefly where they think they are doing right. But, for political purposes, their passions are artfully stimulated, their prejudices against negroes excited to madness, and skillful operators constantly reopen and aggravate the wounds and hatreds of the war.

Will the people of the South never learn that for thirty years the Democratic party has been their most deadly enemy? But for its baneful influence they would never have embarked in the rebellion. They were encouraged in the belief that the right was upon their side, that the Democracy of the North were their friends and allies and would never permit them to be coerced to remain in the Union; and after the war had lasted two years were urged to protract the struggle by holding out to them the prospect that a revolution was going on in the sentiment of the North that would soon acknowledge their independence. They clung to these fatal delusions until they were overwhelmed by defeat. Their allies deserted them at the critical moment, the revolution in the North never came, their prospects faded like an evening cloud, and the sun of the Confederacy went down in blood.

The Democratic party can come into power only by carrying all the Southern States, in which case the Southern Democracy will constitute the majority of the party, and will be the controlling element. The Southern Democracy would refuse to vote taxes and appropriations for pensions, except upon condition that Confederate soldiers and their widows and orphans should be pensioned, and put upon equal terms with those of the soldiers of the Union. The Southern Democracy would never vote taxes and appropriations to pay the national debt unless they were paid for their slaves. The Northern Democracy, who are committed by endless resolutions and years of declamation

to the position that slavery was wrongfully and unconstitutionally abolished, would sustain them.

The Southern question will be the great issue in 1872 that will dwarf into insignificance every other. No merely economical question can divide public attention with it. Shall reconstruction be maintained; shall the constitutional amendments be upheld; shall the colored people be protected in the enjoyment of equal rights; shall the Republicans of the South-

"IT IS ONLY A TRUCE TO REGAIN POWER"
Cartoon by Thomas Nast [1872]
From the collection of the New York Public Library

ern States be protected in life, liberty, and property? are the great issues to be settled in 1872. Questions of tariff, currency, civil service reform, will play some part, but it will be a subordinate one. In all the Southern States the Republicans will struggle for life, for the privilege of living in peace and security, while the Democratic party will struggle to regain their former power, and, as experience has shown, will not hesitate as to the means that may be used for that purpose. And in view of the solemn fact that everything is at stake for which we struggled and suffered through ten years of war and storm, let us bury all personal grievances, and forgetting past differences, banishing all selfish considerations, unite again as a band of brothers, and with unbroken front move forward resolved to conquer for the right.

The resolution of Senator Sherman was agreed to on April 5, by a vote of 38 to 12.

The bill, which the resolution instructed the Judiciary Committee to report, was superseded by one already presented in the House of Representatives.

The House had referred that portion of the President's message relating to interference in the South with the Fourteenth Amendment to a select committee. On March 28 Samuel Shellabarger [O.], chairman of this committee, reported a bill to enforce the amendment.

The debate on this bill naturally covered the same ground as that in the Senate, being based on the same testimony. The bill was passed on April 6 by a vote of 118 to 91. It was passed by the Senate, with amendments, on April 14—yeas 45, nays 19. There were several conferences over the amendments between committees of the two Chambers, which finally reported the bill as follows:

(1) Any person who, under color of a State enactment, shall deprive any person of the rights guaranteed by the amendment shall be liable for redress to the party injured, by prosecution in the Federal courts under the act of April 9, 1866;

(2) Two or more persons conspiring to break or nullify the amendment in any of its provisions or effects shall be punished by fine or imprisonment, or both, and any party injured by this conspiracy may obtain redress as above stated;

(3) Where such conspiracy became an insurrection by extending to the deprivation of a portion or class of the people of a State of their rights, and the State is unable or unwilling to suppress the insurrection, the President shall employ the army and navy, or other means, to suppress the insurrection, and to deliver the insurgents to the marshal of the proper district to be dealt with according to law;

(4) When the insurrection extends to a rebellion, by either overthrowing or setting at defiance the constituted authorities, the President shall, if he deems it necessary, suspend *habeas corpus* within the revolted district;

(5) Jurors serving in enforcement of the act shall take oath that they were or are not party to its infringement, and, if swearing falsely, shall be found guilty of perjury and punished accordingly;

(6) Persons having knowledge of the infraction of the act

and power to prevent it, but failing to prevent it, shall be liable for redress to a party injured thereby, or, in case of a murder, to the widow of the deceased, or, if there be no widow, to his next of kin, the damages in case of murder being not over $5,000; and,

(7) The act shall not supersede former acts except in instances of repugnancy.

The Senate agreed to the report on April 18 by a vote of 32 to 16, and the House on April 19 by a vote of 93 to 74. President Grant approved the act on April 20, 1871.

CHAPTER V

The Second Civil Rights Bill

Gen. Benjamin F. Butler [Mass.] Introduces in the House a Bill to Protect All Citizens in Their Civil Rights—Debate: in Favor, John R. Lynch [Miss.], Gen. James A. Garfield [O.], Gen. Butler [Mass.]; Opposed, Alexander H. Stephens [Ga.], Lucius Q. C. Lamar [Miss.], Charles A. Eldridge [Wis.], John Y. Brown [Ky.]; Bill Is Passed by House and Senate and Is Approved by the President.

ON February 3, 1875, Benjamin F. Butler [Mass.] reported in the House from the Committee on Judiciary a bill "to protect all citizens in their civil rights."

The bill provided that all persons within the jurisdiction of the United States should be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, theaters, etc., subject only to conditions established by law and applicable alike to all citizens irrespective of race.

Offenders against the act were to pay the injured person $500 (recoverable, with costs, by trial at law) and to be fined not less than $500 nor more than $1,000, or imprisonment for not less than 30 days nor over a year.

No discrimination on account of color should be made in selecting jurors; offenders against this provision were to be fined not more than $5,000.

No discrimination on account of race should be made in the disposition of public educational funds. Separate schools for white and negro children were allowed.

Cases arising under the act should be reviewed by the Federal Supreme Court.

Federal officers were empowered to enforce the act.

Civil Rights Bill

House of Representatives, February 3-4, 1875

John R. Lynch [Miss.], a negro, supported the bill. He replied to the argument of its unconstitutionality, which had been made by such Representatives as Alexander H. Stephens [Ga.] and Lucius Q. C. Lamar [Miss.]. These gentlemen had stood on the decision of the Supreme Court in the "Slaughter-house" cases, which was that only the privileges and immunities of citizens of the *United States* were placed under the protection of the Tenth Amendment to the Constitution, and those of citizens of the *States* were not further protected thereby.

But, said Mr. Lynch:

So far as this decision refers to the question of civil rights—the kind of civil rights referred to in this bill—it means this and nothing more: that whatever right or power a State may have had prior to the ratification of the Fourteenth Amendment it still has, *except in certain particulars.* What are those particulars wherein the Fourteenth Amendment confers upon the Federal Government powers which it did not have before? The right to prevent distinctions and discriminations between the citizens of the United States and of the several States whenever such distinctions and discriminations are made on account of race, color, or previous condition of servitude; and that distinctions and discriminations made upon any other ground than these are not prohibited by the Fourteenth Amendment. As the discrimination referred to in the slaughter-house cases was not made upon either of these grounds, it did not come within the constitutional prohibition. As the pending bill refers only to such discriminations as are made on account of race, color, or previous condition of servitude, it necessarily follows that the bill is in harmony with the Constitution as construed by the Supreme Court.

But Mr. Stephens and other State Rights opponents of the bill, while granting that the recent Amendments to the Constitution guarantee to negroes the privileges accorded to white persons, declare that it is the province of the several States and not of the Federal Government

to enact the laws enforcing these guaranties. This is the crux of the question. The Supreme Court had decided against this position, saying that by the fifth section of the Fourteenth Amendment the Federal Government was authorized to enforce the amendment *in case the States did not conform their laws to its requirements.*

As the Supreme Court has decided that the above constitutional provision was intended to confer upon Congress the power to prevent distinctions and discriminations when made on account of race or color, I contend that the power of Congress in this respect is applicable to every office under the constitution and laws of any State. Some may think that this is extraordinary power; but such is not the case. For any State can, without violating the Fourteenth or Fifteenth Amendments and the provisions of this bill, prohibit anyone from voting, holding office, or serving on juries in their respective States, who cannot read and write, or who does not own a certain amount of property, or who shall not have resided in the State for a certain number of months, days, or years. The only thing these amendments prevents them from doing in this respect is making the color of a person or the race with which any person may be identified a ground of disqualification from the enjoyment of any of these privileges. The question seems to me to be so clear that further argument is unnecessary.

I will now endeavor to answer the arguments of those who have been contending that the passage of this bill is an effort to bring about social equality between the races. That the passage of this bill can in any manner affect the social status of anyone seems to me to be absurd and ridiculous. I have never believed for a moment that social equality could be brought about even between persons of the same race. I have always believed that social distinctions existed among white people the same as among colored people. But those who contend that the passage of this bill will have a tendency to bring about social equality between the races virtually and substantially admit that there are no social distinctions among white people whatever, but that all white persons, regardless of their moral character, are the social equals of each other; for if conferring upon colored people the same rights and privileges that are now exercised and enjoyed by whites indiscriminately will result in bringing about social equality between the races, then the same process of reasoning must necessarily bring us

to the conclusion that there are no social distinctions among whites, because all white persons, regardless of their social standing, are permitted to enjoy these rights. See then how unreasonable, unjust, and false is the assertion that social equality is involved in this legislation. I cannot believe that gentlemen on the other side of the House mean what they say when they admit, as they do, that the immoral, the ignorant, and the degraded of their own race are the social equals of themselves and their families. If they do, then I can only assure them that they do not put as high an estimate upon their own social standing as respectable and intelligent colored people place upon theirs; for there are hundreds and thousands of white people of both sexes whom I know to be the social inferiors of respectable and intelligent colored people. I can then assure that portion of my Democratic friends on the other side of the House whom I regard as my social inferiors that if at any time I should meet any one of you at a hotel and occupy a seat at the same table with you, or the same seat in a car with you, do not think that I have thereby accepted you as my social equal. Not at all. But, if anyone should attempt to discriminate against you for no other reason than because you are identified with a particular race or religious sect, I would regard it as an outrage; as a violation of the principles of republicanism; and I would be in favor of protecting you in the exercise and enjoyment of your rights by suitable and appropriate legislation.

No, Mr. Speaker, it is not social rights that we desire. We have enough of that already. What we ask is protection in the enjoyment of *public* rights. Rights which are or should be accorded to every citizen alike. Under our present system of race distinctions a white woman of a questionable social standing, yea, I may say, of an admitted immoral character, can go to any public place or upon any public conveyance and be the recipient of the same treatment, the same courtesy, and the same respect that are usually accorded to the most refined and virtuous; but let an intelligent, modest, refined colored lady present herself and ask that the same privileges be accorded to her that have just been accorded to her social inferior of the white race, and in nine cases out of ten, except in certain portions of the country, she will not only be refused, but insulted for making the request.

Mr. Speaker, I ask the members of this House, in all candor, is this right? I appeal to your sensitive feelings as husbands, fathers, and brothers, is this just? You who have affectionate companions, attractive daughters, and loving sisters, is this

just? If you have any of the ingredients of manhood in your composition you will answer the question most emphatically, No! What a sad commentary upon our system of government, our religion, and our civilization! Think of it for a moment; here am I, a member of your honorable body, representing one of the largest and wealthiest districts in the State of Mississippi, and possibly in the South; a district composed of persons of different races, religions, and nationalities; and yet, when I leave my home to come to the capital of the nation, to take part in the deliberations of the House, and to participate with you in making laws for the government of this great Republic, in coming through the God-forsaken States of Kentucky and Tennessee, if I come by the way of Louisville or Chattanooga, I am treated, not as an American citizen, but as a brute. Forced to occupy a filthy smoking car both night and day, with drunkards, gamblers, and criminals; and for what? Not that I am unable or unwilling to pay my way; not that I am obnoxious in my personal appearance or disrespectful in my conduct; but simply because I happen to be of a darker complexion. If this treatment was confined to persons of our own sex we could possibly afford to endure it. But such is not the case. Our wives and our daughters, our sisters and our mothers, are subjected to the same insults and to the same uncivilized treatment. You may ask why we do not institute civil suits in the State courts. What a farce! Talk about instituting a civil-rights suit in the State courts of Kentucky, for instance, where the decision of the judge is virtually rendered before he enters the court-house, and the verdict of the jury substantially rendered before it is impaneled. The only moments of my life when I am necessarily compelled to question my loyalty to my Government or my devotion to the flag of my country is when I read of outrages having been committed upon innocent colored people and the perpetrators go unwhipped of justice, and when I leave my home to go traveling.

Mr. Speaker, if this unjust discrimination is to be longer tolerated by the American people, which I do not, cannot, and will not believe until I am forced to do so, then I can only say with sorrow and regret that our boasted civilization is a fraud; our republican institutions a failure; our social system a disgrace; and our religion a complete hypocrisy.

The enemies of this bill have been trying very hard to create the impression that it is the object of its advocates to bring about a compulsory system of mixed schools. It is not my intention at this time to enter into a discussion of the question as

to the propriety or impropriety of mixed schools; as to whether or not such a system is essential to destroy race distinctions and break down race prejudices. I will leave these questions to be discussed by those who have given the subject a more thorough consideration. The question that now presents itself to our minds is what will be the effect of this legislation on the public-school system of the country, and more especially in the South It is to this question that I now propose to speak. I regard this school clause as the most harmless provision in the bill. If it were true that the passage of this bill with the school clause in it would tolerate the existence of none but a system of mixed free schools, then I would question very seriously the propriety of retaining such a clause; but such is not the case. If I understand the bill correctly (and I think I do), it simply confers upon all citizens, or rather recognizes the right which has already been conferred upon all citizens, to send their children to any public free school that is supported in whole or in part by taxation, the exercise of the right to remain a matter of option as it now is—nothing compulsory about it. That the passage of this bill can result in breaking up the public-school system in any State is absurd. The men who make these reckless assertions are very well aware of the fact, or else they are guilty of unpardonable ignorance, that every right and privilege that is enumerated in this bill has already been conferred upon all citizens alike in at least one-half of the States of this Union by State legislation. In every Southern State where the Republican party is in power a civil-rights bill is in force that is more severe in its penalties than are the penalties in this bill. We find mixed-school clauses in some of their State constitutions. If, then, the passage of this bill, which does not confer upon the colored people of such States any rights that they do not possess already, will result in breaking up the public-school system in their respective States, why is it that State legislation has not broken them up? This proves very conclusively, I think, that there is nothing in the argument whatever, and that the school clause is the most harmless provision in the bill. My opinion is that the passage of this bill just as it passed the Senate will bring about mixed schools practically only in localities where one or the other of the two races is small in numbers, and that in localities where both races are large in numbers separate schools and separate institutions of learning will continue to exist, for a number of years at least.

The following editorial appeared in a Democratic paper in my own State—the Jackson *Clarion*, the leading conservative

paper in the State, the editor of which is known to be a moderate, reasonable, and sensible man:

> The question has been asked what effect will the civil-rights bill have on the public school system of our State if it should become a law? Our opinion is that it will have none at all. The provisions of the bill do not necessarily break up the separate school system unless the people interested choose that they shall do so; and there is no reason to believe that the colored people of this State are dissatisfied with the system as it is, or that they are not content to let well enough alone. As a people, they have not shown a disposition to thrust themselves where they are not wanted, or rather had no right to go. While they have been naturally tenacious of their newly acquired privileges, their general conduct will bear them witness that they have shown consideration for the feelings of the whites.
>
> The race line in politics never would have been drawn if opposition had not been made to their enjoyment of equal privileges in the government and under the laws after they were emancipated.

The colored people in asking the passage of this bill do not thereby admit that their children can be better educated in white than in colored schools; nor that white teachers because they are white are better qualified to teach than colored ones. But they recognize the fact that the distinction when made and tolerated by law is an unjust and odious proscription; that you make their color a ground of objection, and consequently a crime. This is what we most earnestly protest against. Let us confer upon all citizens, then, the rights to which they are entitled under the Constitution; and then if they choose to have their children educated in separate schools, as they do in my own State, then both races will be satisfied, because they will know that the separation is their own voluntary act and not legislative compulsion.

The negro question ought to be removed from the politics of the country. It has been a disturbing element in the country ever since the Declaration of Independence, and it will continue to be so long as the colored man is denied any right or privilege that is enjoyed by the white man. Pass this bill, and there will be nothing more for the colored people to ask or expect in the way of civil rights. Equal rights having been made an accomplished fact, opposition to the exercise thereof will gradually pass away, and the everlasting negro question will then be removed from the politics of the country for the first time since the existence of the Government. Let us, then, be just as well as generous. Let us confer upon the colored citizens equal rights, and, my word for it, they will exercise their rights with moderation and with wise discretion.

I will now refer to some of the unfortunate remarks that

were made by some gentlemen on the other side of the House during the last session—especially those made by the gentleman from North Carolina [William M. Robbins] and those made by the gentleman from Virginia [John T. Harris]. The gentleman from North Carolina admits, ironically, that the colored people, even when in bondage and ignorance, could equal, if not excel, the whites in some things—dancing, singing, and eloquence, for instance. We will ask the question, Why is it that the colored people could equal the whites in these respects, while in bondage and ignorance, but not in others? The answer is an easy one: You could not prevent them from dancing unless you kept them continually tied; you could not prevent them from singing unless you kept them continually gagged; you could not prevent them from being eloquent unless you deprived them of the power of speech; but you could and did prevent them from becoming educated for fear that they would equal you in every other respect; for no educated people can be held in bondage. If the argument proves anything, therefore, it is only this: That, if the colored people while in bondage and ignorance could equal the whites in these respects, give them their freedom and allow them to become educated and they will equal the whites in every other respect. At any rate I cannot see how any reasonable man can object to giving them an opportunity to do so if they can. It does not become Southern white men, in my opinion, to boast about the ignorance of the colored people, when you know that their ignorance is the result of the enforcement of your unjust laws.

So far as the gentleman from Virginia is concerned, the gentleman who so far forgot himself as to be disrespectful to one of his fellow members, I have only this remark to make: Having served in the legislature of my own State several years, where I had the privilege of meeting some of the best, the ablest, and, I may add, the bitterest Democrats in the State, it gives me pleasure to be able to say that, with all of their bitterness upon political questions, they never failed to preserve and maintain that degree of dignity, self-respect, and parliamentary decorum which always characterizes intelligent legislators and well-bred gentlemen. Take, for instance, my eloquent and distinguished colleague [Mr. Lamar] on the other side of the House, and I venture to assert that he will never declare upon this floor or elsewhere that he is addressing only white men. No, sir; Mississippians do not send such men to Congress, nor even to their State legislature. For, if they did, it would not only be a sad and serious reflection upon their in-

telligence, but it would also be a humiliating disgrace to the State.

Such sentiments as those uttered by the gentleman from North Carolina and the gentleman from Virginia are certainly calculated to do the Southern white people a great deal more harm than it is possible for them to do the colored people. In consequence of which I can say to those two gentlemen that I know of no stronger rebuke than the language of the Saviour of the world when praying for its persecutors:

> Father, forgive them; for they know not what they do.

The opposition to civil rights in the South is not so general or intense as a great many would have the country believe. It is a mistaken idea that all of the white people in the South outside of the Republican party are bitterly opposed to this bill. In my own State, and especially in my own district, the Democrats as a rule are indifferent as to its fate. It is true they would not vote for it, but they reason from this standpoint: The civil-rights bill does not confer upon the colored people of Mississippi any rights that they are not entitled to already under the constitution and laws of the State. We certainly have no objection, then, to allowing the colored people in other States to enjoy the same rights that they are entitled to in our own State. To illustrate this point more forcibly, I ask the clerk to read the following article from the ablest conservative paper in the State:

> A civil rights bill is before the Senate. As we have civil rights here in Mississippi and elsewhere in the South, we do not understand why Southern Representatives should concern themselves about applying the measure to other portions of the country; or what practical interest we have in the question. On the 29th, Senator THOMAS M. NORWOOD, of Georgia, one of the mediocrities to whom expediency has assigned a place for which he is unfitted, delivered himself of a weak and driveling speech on the subject in which he did what he was able to keep alive sectional strife and the prejudices of race. We will venture to say that his colleague, General JOHN B. GORDON, who was a true soldier when the war was raging, will not be drawn into the mischievous controversy which demagogs from both sections, and especially latter-day fire-eaters who have become intensely enraged since the surrender, take delight in carrying on.

The opposition to civil rights in the South is confined almost exclusively to States under Democratic control, or States where the legislature has failed or refused to pass a civil-rights bill. I ask the Republican members of the House, then, will you refuse or fail to do justice to the colored man in obedience to

the behests of three or four Democratic States in the South? If so, then the Republican party is not made of that material which I have always supposed it was.

Some well-meaning men have made the remark that the discussion of the civil rights question has produced a great deal of bad feeling in certain portions of the South, in consequence of which they regret the discussion of the question and the possibility of the passage of the pending bill. That the discussion of

THE "CIVIL RIGHTS" SCARE IS NEARLY OVER

THE GAME OF (COLORED) FOX AND (WHITE) GOOSE

Cartoon by Thomas Nast

From the collection of the New York Public Library

the question has produced some bad feeling I am willing to admit; but allow me to assure you, Mr. Speaker, that the opposition to the pending bill is not half so intense in the South today as was the opposition to the reconstruction acts of Congress. As long as congressional action is delayed in the passage of this bill, the more intense this feeling will be. But let the bill once pass and become a law, and you will find that in a few months reasonable men, liberal men, moderate men, sensible men, who now question the propriety of passing this bill, will arrive at the conclusion that it is not such a bad thing as they supposed it was. They will find that Democratic predictions have not and will not be realized. They will find that there is no more social equality than before. That whites and blacks do not intermarry any more than they did before the passage of the bill. In short, they will find that there is nothing in the bill but the recognition by law of the equal rights of all citizens before the law. My honest opinion is that the passage of

this bill will have a tendency to harmonize the apparently conflicting interests between the two races. It will have a tendency to bring them more closely together in all matters pertaining to their public and political duties. It will cause them to know, appreciate, and respect the rights and privileges of each other more than ever before. In the language of my distinguished colleague on the other side of the House, "They will know one another, and love one another."

The white-man's-government, negro-hating democracy will, in my judgment, soon pass out of existence. The progressive spirit of the American people will not much longer tolerate the existence of an organization that lives upon the passions and prejudices of the hour. But, when that party shall have passed away, the Republican party of to-day will not be left in undisputed control of the Government; but a young, powerful, and more vigorous organization will rise up to take the place of the democracy of to-day. This organization may not have opposition to the negro the principal plank in its platform; it may take him by the right hand and concede him every right in good faith that is enjoyed by the whites; it may confer upon him honor and position. But if you, as leaders of the Republican party, will remain true to the principles upon which the party came into power, as I am satisfied you will, then no other party, however just, liberal, or fair it may be, will ever be able to detach any considerable number of colored voters from the national organization. Of course, in matters pertaining to their local State affairs, they will divide up to some extent, as they sometimes should, whenever they can be assured that their rights and privileges are not involved in the contest. But, in all national contests, I feel safe in predicting that they will remain true to the great party of freedom and equal rights.

I appeal to all the members of the House—Republicans and Democrats, conservatives and liberals—to join with us in the passage of this bill, which has for its object the protection of human rights. And, when every man, woman, and child can feel and know that his, her, and their rights are fully protected by the strong arm of a generous and grateful republic, then we can all truthfully say that this beautiful land of ours, over which the Star Spangled Banner so triumphantly waves, is, in truth and in fact, the "land of the free and the home of the brave."

On February 4 Charles A. Eldridge [Wis.] spoke against the bill.

The legislation of Congress since the close of the war upon the negro question, and the effects of that legislation upon the Southern States and even upon the Union itself, stand a perpetual reproach to the party by whom it was enforced, and an ever-present remonstrance and protest against further enactments in the same direction.

It ought to be enough to "call a halt" that entire States, once proud and majestic commonwealths, are in ruins, lying prostrate before us, in the very struggle and article of death—the work of our legislation. Look at South Carolina; that once proud and prosperous State with her three hundred thousand property holders, two hundred and ninety thousand of them white, including the intelligent, educated, refined men and women of the whole State, subjected by this kind of legislation to the control, domination, and *spoliation* of an uneducated, semi-barbarous African race just emancipated from the debasing and brutalizing bonds of slavery. Look at Mississippi, Arkansas, Alabama, and Louisiana, once the most genial and fairest portion of the Republic—grand, mighty States of the Union, marching rapidly and proudly forward in the outward and upward march of wealth and civilization, rent and torn by civil strife, ravaged, desolated, and destroyed by *actual war*—a war of races brought on and kept up by congressional legislation. This state of things is not the result of natural causes, but it is the result of the *unnatural relation* in which the two races have been placed to each other. It is the result of the conflict which may always be expected when it is attempted to subject men of culture, civilized men, men accustomed to freedom, to the domination and rule of brute force. The history of the world furnishes no instance of harmonious government brought about by the forced equality and commingling of such antagonistic forces, and certainly not by the subjugation of the intellectual to the physical. The white race, with its pride of blood, the memory of its achievements, the consciousness of its superiority and power, will never brook African equality or live under Africanized governments; and the sooner this truth is realized by American statesmen the sooner will the remedy for the evils that are upon us be devised.

Sir, this negro question is the mightiest problem of the age; none of half its magnitude, so far as the future of the Republic is concerned, confronts the statesman of this country to-day. It will not do longer to treat it as a mere partisan question or allow the passions evoked by the war to control legislation in regard to it. The excuses heretofore made for imposing African

governments upon the Southern white men will not do. Higher considerations must control. You cannot turn from this sickening reality and foul work of your hands with the flippant and senseless plea so often interposed, even if it were true (which it is not), that slavery embruted and unfitted the emancipated negro for the duties devolved upon him for the government of himself and those you have placed under him, and that it is only a just retribution upon his former master who had so long oppressed him.

This retort, which has been so successful in prejudicing the ignorant and thoughtless and so effectively used in persuading your partisan followers, will not avail at the bar of statesmanship. The very statement refutes itself. It matters not now who was or was not responsible for slavery, whom it injured, or how deep the degradation and wrong it wrought. The question for the statesman is and always was, in view of the facts, what are the demands of patriotism? So far as the freedmen were concerned in introducing them into the governing force of the country, as a part thereof, it was a question of their *fitness* for the duties imposed and no other consideration should have entered into its determination. No partisan consideration should have been allowed to divert the mind from the real question involved.

Are they according to the fundamental principles that underlie our system, in the broad light of our civilization, qualified according to the requirement and experience of enlightened statesmanship to govern themselves as a race, as a people? Nay more, is it safe and wise, considering only the true interest of the Republic, to intrust them not only with the government of themselves, but with the government of their former masters, their wives and children and all the vast and varied interests of state? None but the merest partisan and demagog could *pretend* that by an act of legislation the negro race can be invested all at once with those high qualities of statesmanship, that self-control, that moderation of conduct, that consideration for individual rights, those sensibilities and refinements, that sense of reciprocal duties and obligations, and those exalted ideas of government which, whatever the white race now possesses, whatever it *now is*, have been the growth and accumulations of ages and have sprung *from* and are a part of our civilization.

In making these suggestions I would not disparage or discourage the negro race. I would not deprive them of any legal right. Nor would I throw any impediment in the way of their

growth and development as men. They should have a fair field and an equal chance in the race of life—a full, free opportunity to overcome all natural or acquired prejudices against them, and to demonstrate if they can that they are capable of attaining to the high civilization of the white race. To put them in places of trust, of responsibility, and power without any qualification, without any preparation, is simply to do them the greatest possible injury and at the same time, whenever it is done, to endanger our system of republican government. This has been done already to the great detriment of both the black and white races.

No man or community of men, no race or people on the face of the earth, ever was thrust forward by any other people or race, so far as legislation can put them forward, so rapidly and so regardless of the welfare of both races as the white race has the negro of America. I do not believe there is a candid man, certainly no *statesman*, who will now deny that the investiture of the great mass of ignorant, stupid negroes with the power of government was a mistake. It would have been far better, in my judgment, for the black race, for its future as well as its present well-being, to have required some previous preparation, some educational qualification as a condition to the exercise of the right of suffrage. It would have been more in consonance with our system, the corner-stone of which we profess is the intelligence of the people, to have made intelligence the condition of the exercise of the exalted privilege and duty of governing in common with the white race. This, I believe, would have stimulated the black man to greater efforts and given him a better appreciation of the privilege itself. It would have modified his conceit and been an inducement to acquaint himself with the duties he would take upon himself; it would have moderated his demands for place and power by a better comprehension of the great responsibility imposed, and it would have made him far less offensive and obnoxious to those whose conviction and prejudice were against the equality the law conferred. In any and every view that can be taken of the subject it would have been better both for the negro and the white man, for the whole country, to have had some period of probation and preparation, some learning and knowledge of the science of government as a prerequisite to its administration, and as some assurance of his fidelity to and capability for the performance of the duties required.

Sir, I will not deny it must be admitted on all hands that the negro has not been justly and fairly dealt by. He has not

been sincerely and candidly treated by those who have made the greatest professions of being his friends. His present nor his future welfare nor any of his greatest interests as a man and a citizen of the Republic in his relations with the white race have been much considered in the legislation claimed to be in his interest and for his advantage. He has been made the sport and convenience of the Republican party ever since his emancipation; he has been a sort of shuttlecock cast about for the amusement or *advantage* of those who have made him believe they were his special guardians and friends. The right or privilege of suffrage, for which so much is demanded of him by those who still for their own purposes champion his cause and claim to be *par excellence* his friends, was not conferred because of love for him or his race or any real advantage it was believed it would be to him, but because it was supposed it would add to and strengthen their political party and prolong their crime. Herein was committed the grand error, mistake, blunder, or crime, whichever it should be called, upon the negro question. Both he and the State and all the most vital interests of both have been sacrificed and made subservient to the supposed interests of a mere political party.

The black man has been literally forced into his present attitude in relation to the white race; forced, too, without knowledge or any comprehension of what is to be the result. He is little to be blamed for the condition in which he now is or the circumstances that surround him. He has been and is being "ground as between the upper and the nether millstone" by two antagonistic and opposing forces. He is no longer loved by either except for the use that can be made of him, and his welfare is at all times sacrificed to the paramount interest of party. The pretended affection of the Republican party has been his delusion and snare. It deluded him into faith in its friendship and into its support, and thereby into sharp and hostile antagonism to those among whom he was reared and must live, and with whom every interest of happiness and prosperity demands he should be friends. It deluded him into the giving up of a *real* for a *pretended* friendship, and caused him to sacrifice the toleration and encouragement of those whose interests were in common with his own for those who had nothing in common with him and who could never care for him except in so far as he strengthened them in the control of political and partisan power. It induced him to separate from and antagonize his natural ally and friend in an unnatural and partisan alliance with men who had no higher motive than to use him

for their own selfish purposes, regardless of the consequences to him or his race.

Mr. Speaker, it would be interesting and instructive, if we had time, to commence at the beginning of the history of the Republican party upon the negro question and note its development and progress step by step down to the present time. I think we should be able to see and comprehend the motive by which it has been actuated and controlled. We should see how at one time or another it has disavowed with indignant denial most or all of the measures it has afterward advocated and enforced. We should see that party exigencies and party considerations alone have controlled it in the most of what it has done. We would then see how little the welfare and advantage of the colored race had entered into its consideration or controlled its action in relation thereto.

In 1868 in its national platform upon which President Grant was first elected it denied the right of the Federal Government to control the suffrage of the loyal States, and declared as a fundamental principle that the control of it belonged exclusively to the people of the several States. Before the President was inaugurated, in January, 1869, a distinguished member of this House from the State of Massachusetts, afterward Secretary of the Treasury, and now a Senator of the United States in the Senate [George S. Boutwell], reported by the direction of a majority of the Judiciary Committee of the House in favor of the enforcement of universal suffrage by the Federal Government. He enforced his views by a lengthy and impassioned speech, urging the conferring of suffrage upon the colored man almost upon party grounds alone. He assured the House and the country that it was *"the last of the series of great measures" with which the "republican party was charged"* for the pacification of the country and for the establishment of the institutions of the country upon the broadest possible basis of *"republican equality, both State and national."* And his main argument was based upon the fact that this measure would add *one hundred and fifty thousand votes to the Republican party "who are ready to battle for us at the ballot box* in favor of human rights."

This is the sordid, selfish appeal that has been made upon this negro question from the beginning. Not *his interest*, not the *interest of the Republic*, not the gerat interest of *patriotism* and *humanity*, but the interest of the Republican party.

One hundred and fifty thousand men stand ready to do battle for *us, for our party*, for the *Republican party;* and can we

decline the *tempting offer?* They may be ignorant of the first principles of government—unable to read, write, or even to speak and understand *any intelligent language*—unqualified in every respect according to the requirements of our system; they may endanger the Republic, jeopardize our most cherished institutions, drag down and degrade the white race, injure and destroy the colored race by bringing the two races into fatal collision; but it will add *one hundred and fifty thousand votes to our party.* These are the considerations, *the controlling* considerations of the past upon this subject, and such are the motives for further agitation for civil and social rights and social equality of the races. In these motives and in this spirit your civil-rights bills and all like measures have their origin and growth. They are the pandering of party to the ignorance, conceits, unreasoning ambitions, untrained and selfish instincts of the least advanced and spoiled portion of the negro race. The better class, the most thoughtful, those who are really capable of understanding something of the situation and condition of affairs, are beginning to see through these schemes and machinations of their pretended friends. They see the folly and danger of these measures—of pressing the demands of the lowest portion of the race for place and position without preparation, without qualification, and against the prejudice which is more because of this ignorance and unfitness than any other repugnance which may be felt. They comprehend the situation so far, at least, as to understand that the demand for further recognition and *"the protection of their civil rights"* comes from those the least competent to understand or appreciate what has been done for them or the rights they now may enjoy. They understand that the clamor for civil rights comes from the most ignorant and dissolute, the dishonest, scheming politician of their own race, instigated by the unprincipled "carpet-bagger," "scalawag," and "pot-house" politician, who would make merchandise of all the rights of the colored race and of their bodies and souls, if thereby they could keep themselves in control of place and power. The most intelligent and worthy of the black race are grateful and contented that so much has been done for them, and that with so many favorable surroundings their destiny is in their own hands. They have sense enough to comprehend, in some degree at least, the solemnity and greatness of the work of self-government under even the most favorable circumstances, and, knowing that immunities and privileges imply obligations and duties, would not force themselves forward without preparation. The colored race in this country have

opportunities such as no other race or people in the history of the world ever had.

The chains of slavery wherewith they were bound are broken and removed, and the whole people placed at once, by the race that held them in bondage, upon terms of perfect, *absolute equality with themselves.* They are not only in the enjoyment of all that *freedom* itself can give, but the lights of the highest civilization are shining upon them, and the examples of refinement, education, patriotism, and progress—the development of centuries—are before and around them, to guide and exalt their aspirations. If they have in them any elements of growth, civilization, and greatness; if in the economy of the Almighty they are or *are to be* capable of self-government and the comprehension and appreciation of the great principles of civil liberty and republican government—nothing on earth is now in their way. They start from vantage ground—with everything to stimulate, inspire, and guide them.

The law has done all it can accomplish for them. So far as the law is concerned, the black man is in all respects the equal of the white. He stands, and may make the race of life, upon terms of perfect equality with the most favored citizen. There is no right, privilege, or immunity secured to *any* citizen of the Republic that is not confirmed to the colored. There is no court, no tribunal, no judicial jurisdiction, no remedy, no means of any sort in the land, provided by law for the redress of wrongs or the protection of the rights of life, liberty, or property of the white man that is not equally open and available to the black man. The broad panoply of the Constitution and the whole body of laws, civil and criminal, and every means provided for their enforcement, cover and extend to every American citizen, without regard to color or previous condition. The white man may with no more legal impunity trench upon or invade the dominion of the black man's rights than the black man may the white man's. The barriers of laws surrounding and protecting them are the same. There is no distinction, no exception, no immunity in favor of the white race. And let it never be forgotten that voluntarily, in the pride and majesty of its power, the white race has thus far *done it all.* With sublime indifference and disregard of all natural and conventional differences, if not with *sublime wisdom and discretion,* the *liberator,* the white race, decreed and proclaimed to the world that his *former slave, the negro race,* whatever he may have been or may become, is henceforth and forever shall be under the law of the Republic a co-citizen and an equal.

And, sir, what would gentlemen, what would the greatest patriot, the greatest philanthropist, have more? What would the intelligent negro, the man best capable of comprehending the wants, the necessities, the highest good of his own race, ask for more? The common-law rights of both are the same. Both are equal in its protection. White and black may alike invoke its interposition for the protection of rights and the redress of wrongs. If equality, exact and impartial equality, of legal rights and legal remedies is desired, it is now enjoyed alike by both. If you would not place one race above the other; if you would make no distinction "on account of race or color or previous condition"; if you would have the recent amendments to the Constitution impartially administered; if you would have the laws of the land throughout its length and breadth, in their application to the citizen, take no note of the color of his skin or the race from which he sprang, let the "common law" remain unchanged; let there not be one law for the white man and another for the black man. No change, no distinction in favor of the one or the other can fail to injure both.

To make the colored citizen feel that he is the pet, the especial favorite of the law will only feed and pander to that conceit and self-consequence which is now his weakest and perhaps most offensive characteristic. If he be made to feel that extraordinary provisions of law are enacted in his favor because of his weakness or feebleness as a man, the very fact weakens and enfeebles him. The consciousness that there is necessity for such legislation and protection for him must necessarily humiliate and degrade him. Such laws, too, are a constant reminder to him that he is inferior to the white race. They not only remind him of his inferiority and the superiority of the white race in its not requiring these special enactments, but they naturally and necessarily awaken in him a feeling of bitterness and unfriendliness toward the white race. It is impossible that the negro race should live upon terms of mutual confidence and friendship with a race from whom it requires to be protected by a special code—against whose wrongs and oppressions he is not safe except those wrongs are denounced by extraordinary laws and penalties. There can be no peace, no harmony, no confidence, no mutual respect, no feeling of equality between two races living together and protected from the infringement of each other's rights by different laws and different penalties. It is useless to deprecate or deplore the natural or acquired prejudice of the races so long as the laws

enacted for their government in their very nature necessarily awaken, keep alive, and foster them. And whether the prejudice be the plant of the Almighty or the growth of slavery, it cannot be removed by legislative enactments. It may be, as in my judgment it most certainly will be, increased and aggravated by such legislation as this, but it cannot be lessened. If the Southern man believes, correctly or erroneously, that the negro race is an inferior race, this kind of legislation is certainly not calculated to remove that belief. This bill and all such bills go upon the ground that the colored race is inferior, feebler, and less capable of taking care of itself than the weakest and most inferior white man. *This* is the very predicate of this legislation. And, whether he claims the natural equality of the races or not, it is an insult to every colored man in the Republic. It is an unnecessary exaggeration and parading of the distinction between them.

Sir, I have intimated already, and it has been illustrated and demonstrated in and by the effects of previous similar legislation, that the greatest danger now to be apprehended lies in the bringing of the two races into fatal antagonism of rights and interests. If there be natural prejudice, if there be antipathy, if there be antagonisms between the races, almost the entire legislation of Congress on the negro question has been and is calculated to increase and intensify them all. I have referred to some of the effects upon the colored race; but the effects upon the white race and its disposition toward the colored cannot be less deleterious. Born and reared with the idea that they were masters and the colored men slaves, it was not the work of a moment, or a small thing, to reconcile themselves to the changed condition. And yet, under all the circumstances, they may appeal with confidence to this House, the country, or the world that they have conducted themselves with commendable patience and forbearance. Have we not all been disappointed and surprised at their magnanimity and submission? Have they not commended themselves to our warmest sympathy and approbation? Have they not borne themselves under the greatest trials and the severest ordeals to which poor human nature can be subjected with a greatness and grandeur almost sublime?

Without malice, without resentment, without reproach, they have acquiesced in the emancipation of their slaves and their elevation to free and equal citizenship with themselves.

If there have been some factions, dissatisfied, and turbulent spirits, it was to have been expected. But the hostile collisions, strifes, and conflicts, I believe on my soul, are more to be at-

tributed to the political and unwise legislation of Congress than to all other causes combined. But, because they have thus far with almost broken spirits submitted, we must not forget there is a point beyond which Congress must not go. We must not from the past presume too much. We must not for political or partisan considerations seek to degrade or dishonor them. The white people of the Southern States are a proud, honorable, intelligent people. They are the depositaries of the civilization of many centuries. The negro race, possessed of all the natural capabilities the most enthusiastic African admirer can claim for it, even with the example of the white race constantly before it, must grow and develop rapidly for many, many years before it will attain to the same civilization.

Let us beware, then, how we create the means for irritation and strife between the whites and the blacks of the South. It can be no doubtful or uncertain struggle. Let party exigencies and party necessities be whatever they may seem, it is worse than madness, it is a crime without a name, to bring the two races by our legislation into collision. The white men of the South cannot be brought to submit to the domination of the black man. The attempt will bring ruin and destruction upon the black man or it will end in the extinction of both black and white. The black man *has been* a slave, *the white man never*. The black man has with submission and patience worn the yoke of bondage and threw it not off himself; the white man never did and never will submit to be ruled by any race but his own. He may and probably will for a time submit to the sword of the Federal power, but I pray gentlemen not to presume upon that *too far*. His ancestors long ago taught the Anglo-Saxon the idea of opposition to *"intolerable burdens."* And no Anglo-Saxon can bear dishonorable burdens, or burdens imposed upon him by other hands than his own, without seeking the first opportunity to throw them off. The pride of blood and race will never brook the rule of inferior men. The gentleman from Massachusetts [Mr. Butler] well said "social equality could not be brought about by legislation." Neither can you by legislation make the white man submit to the rule and domination of the black. I beg gentlemen, as I did in speaking upon this subject in 1868, to "hesitate long before they attempt to bring it about." It will, *it must* end in the overthrow and destruction of the weaker race.

JOHN Y. BROWN [Ky.].—I had hoped that this measure would fail; but it is now manifest to all of us that it is a foregone conclusion that to-day's sun may set upon it as a law

of the land. Men upon the opposite side have been dragooned into its support, and its success has been in a measure accomplished by a daring and revolutionary innovation on the time-honored rules of this House. It is the culminating, crowning iniquity of radicalism. It is born of malignity; it will be passed in defiance and in violation of the Constitution; and executed, I fear, in violence and bloodshed.

I regard it as a part of the machinery which is to be set in motion in this country for the campaign of 1876. I believe now that a deliberate conspiracy has been formed for the overthrow of our constitutional liberties. The people of the country do not favor these radical schemes; they have repudiated their originators. You men who propose to pass them have been weighed in the balance and found wanting. Judgment has been passed upon your political record, and nearly two-thirds of that side of the House retired to private life.

THE SPEAKER [James G. Blaine].—The gentleman will address the Chair.

MR. BROWN.—And your conduct now in this and other matters, Mr. Speaker, reminds me of a passage in Junius where he describes a bad tenant, having received notice to quit, breaking the furniture, putting the premises in disorder, and doing all he could to vex the landlord. Gentlemen and Mr. Speaker, the South is broken; it lies in its helplessness and despair before you; homes dilapidated, fields wasted, bankruptcy upon it. Is there nothing in its situation to touch your pity? And, if your magnanimity cannot be reached, will you not be moved by some sense of justice?

In 1872, by a conspiracy between the Attorney-General, Governor Kellogg, and a drunken Federal judge, the sovereignty of a State [Louisiana] was overthrown. That usurpation has been perpetuated since by bayonets. And but recently one of your generals [Philip H. Sheridan] entered the legislative halls of Louisiana, like General Oliver Cromwell when he invaded the English House of Commons with his Colonel Pride, and, keeping touch and time to what had gone before in the sad history of that State, ruthlessly expelled its duly qualified members.

Onward and onward you go in defiance of the sentiment of the country, without pity and without justice, remorselessly determined, it seems, to devote these distressed Southern people to complete destruction, to give their "roofs to the flames, their flesh to the eagles." Your lieutenant-general but steps upon the scene when he sends his dispatch to the world that they

are banditti. We have heard it echoed elsewhere that they were thieves, murderers, night-riders. The clergy of that State, Jew and Gentile, have denied it. The business men and the Northern residents there have denied it. A committee of your own House, a majority of whom were Republicans, have given it their solemn and emphatic contradiction and nailed the slander to the counter. But still it is echoed and reëchoed. Now again that accusation has come from one—I speak not of men but of language, and within the rules of this House—that accusation against that people has come from one who is outlawed in his own home from respectable society; whose name is synonymous with falsehood; who is the champion, and has been on all occasions, of fraud; who is the apologist of thieves; who is such a prodigy of vice and meanness that to describe him would sicken imagination and exhaust invective.[1]

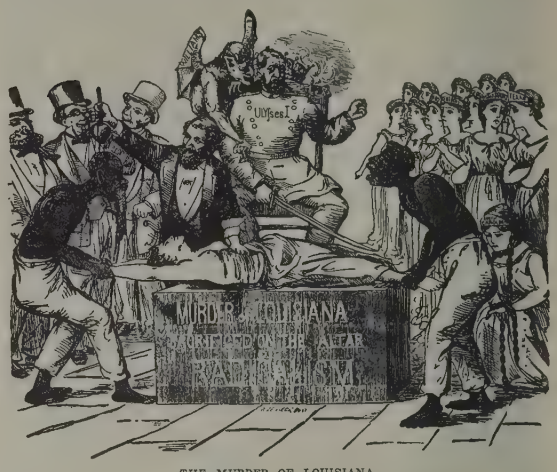
General James A. Garfield [O.] supported the bill.

Mr. Speaker, I concur with those gentlemen who have said that this is a solemn and an interesting occasion. It recalls to my mind a long series of steps which have been taken during the last twenty-five years in the greatest of all the great moral struggles this country has known; and the measure pending here to-day is confronted, in the last assault which has been made upon it, by the first argument that was raised against the anti-slavery movement in its first inception; I mean the charge that it is a sentimental abstraction rather than a measure of practical legislation.

The men who began this anti-slavery struggle forty years ago were denounced as dreamers, abstractionists, who were looking down to the bottom of society and attempting to see something good, something worthy the attention of American statesmen, something that the friend of human rights ought to support in the person of a negro slave. Every step since that first sentimental beginning has been assailed by precisely the same argument that we have heard to-day. I expressed the hope years ago, Mr. Speaker, that we had at last achieved a position on this great question where we could remit the black man to his own fate under the equal and exact laws of the United States. I have never asked for him one thing beyond this: that he should be placed under the equal protection of the laws, with the equal right to all the blessings which our laws confer;

[1] The reference was to Gen. Butler.

that, as God's sun shines with equal light and blessing upon the lofty and the humble alike, so here the light of our liberty shall shine upon all alike! and that the negro, guaranteed an equal chance in the struggle of life, may work out for himself whatever fortune his own merit will win.



THE MURDER OF LOUISIANA

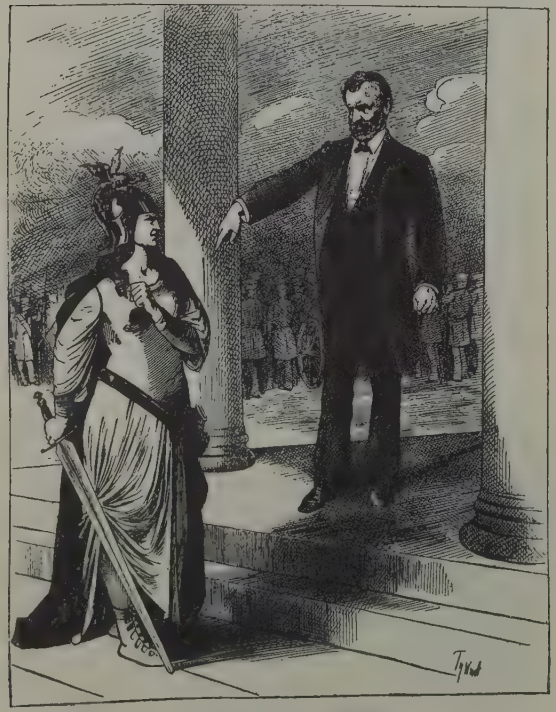
From the collection of the New York Public Library

The warnings uttered to-day are not new. During the last twelve years it has often been rung in our ears that by doing justice to the negro we shall pull down the pillars of our political temple and bury ourselves in its ruins.

I remember well when it was proposed to put arms in the hands of the black man to help us in the field. I remember in the Army of the Cumberland, where there were twenty thousand Union men from Kentucky and Missouri, and we were told that those men would throw down their arms and abandon our cause if we dared to make the negro a soldier. Nevertheless, the men whose love of country was greater than their prejudice against color stood firm and fought side by side with the negro to save the Union.

When we were abolishing slavery by adopting the Thir-

teenth Amendment we were again warned that we were bringing measureless calamity upon the Republic. Did it come? Where are the Cassandras of that day who sang their song of



LOUISIANA AND THE NATION

Louisiana.—"I have been wronged, Mr. President, bitterly wronged. I ask for justice—shall I ask in vain?"

President.—"Down with your arms, then. The nation cannot parley with armed citizens. Order first, and then the righting of your wrongs, but not till then."

From the collection of the New York Public Library

ruin in this hall when we passed that Thirteenth Amendment? Again when the Fourteenth Amendment was passed the same wail was heard, the wail of the fearful and unbelieving. Again when it was proposed to elevate the negro to citizenship, to give him the ballot as his weapon of self-defence, we were told the cup of our destruction was filled to its brim. But, sir, I have lived long enough to learn that in the long run it is safest for a nation, a political party, or an individual man to dare to do right, and let consequences take care of themselves, for he that loseth his life for the truth's sake shall find it. The recent disasters of the Republican party have not sprung from any of the brave acts done in the effort to do justice to the negro. For these reasons I do not share in the fears we have heard expressed to-day, that this bill will bring disaster to those who shall make it a law. What is this bill? It is a declaration that every citizen of the United States shall be entitled to the equal enjoyment of all those public chartered privileges granted under State laws to the citizens of the several States. For this act of plain justice we are told that ruin is again staring us in the face! If ruin comes from this, I welcome ruin.

Mr. Speaker, the kind of cowardice which shrinks from the assertion of great principles has followed this grand anti-slavery movement from the beginning until now; but God taught us early in this fight that the fate of our own race was indissolubly linked with that of the black man on this continent—not socially, for none of us are linked by social ties except by our own consent, but politically in all the rights accorded under the law.

This truth was stated early by one of our revered poets when he said:

> We dare not share the negro's trust.
> Nor yet his hope deny;
> We only know that God is just,
> And every wrong shall die.
>
> Rude seems the song; each swarthy face,
> Flame-lighted, ruder still;
> We start to think that hapless race
> Must shape our good or ill;
>
> That laws of changeless justice bind
> Oppressor with oppressed;
> And close as sin and suffering joined
> We march to Fate abreast.[1]

[1] "To a Slave Singing at Midnight," by John G. Whittier.

J. A. Garfield

Their fate politically must be ours. Justice to them has always been safety for us. Let us not shrink now.

General Butler spoke in support of his bill:

I had hoped, when this bill was first brought before the House, that, in all kindness of heart, in all singleness of purpose, with all propriety of tone and thought, we should discuss one of the most momentous questions of civil liberty that can be raised; a question the solution of which, for good or for evil, will affect our country longer, much longer, than we shall remain on the earth; but I have been disappointed.

It is a question of equal civil rights to all citizens—a doctrine in which I was brought up from my earliest boyhood. I have always been taught that the foundation of all democracy was equality of right, equality of burden, equality of power in all men under the law. And when, a few years ago, a religious and partisan furore shook the land, and it was attempted to disfranchise from some of their rights in many of the States a portion of our citizens because of their foreign birth and because of their religion, when the cry went out "put no one but Americans on guard," I stood in my State in almost a hopeless minority, indeed almost alone, in saying that the privilege of American citizenship, once granted, was like the privilege of the Roman citizen—to be to him the same in Latium and at Athens. And I stood firmly to that until all that prejudice was rolled away from the foreign-born citizen by his standing shoulder to shoulder with our brothers and sons in the red track of battle.

Now comes another question of prejudice in which I was educated in my youth differently—the rights of the colored man. He has been made, by right or by wrong, but under the forms and with the force of constitutional law, a citizen of the United States. And, were he as black as the black diamond, he has an equal right to every privilege with any citizen who is white as an angel. And upon that ground alone can a democratic republic stand. Upon that ground alone is civil and constitutional liberty on this continent to be preserved. And, therefore, I wonder with amazement when I hear it here stated that this bill is intended as a stab to constitutional liberty. Why, sir, this bill is the very essence of constitutional liberty. What does it do? It simply provides that there shall be an equality of law all over the Union.

My friend from Mississippi [Mr. Lamar] says that in Mississippi the white man and the colored man have equal privi-

leges. Be it so. Good for Mississippi. This was so made by a Republican legislature in which was a colored majority. But where is the like law in Kentucky, the "dark and bloody ground"? Where is that law in Tennessee? Where is that law —without stopping to enumerate—in a majority of the Southern States? But, if it is a good law in Mississippi, why should it not be extended over all the Southern States? If it is a good law, and my friend from Mississippi agrees it is a good law and works well there, why should it not be enforced by proper and sufficient penalties to restrain bad men from violating it? And that is all the bill does.

Now, then, what are the objections here made to this bill? The first objection stated on the other side is that this bill establishes social equality. By no means; by no means. I undertook to show, when up before, how social equality is not touched by the bill. It allows men and women of different colors only to come together in public, in theaters, in stage-coaches and cars, in public houses. I am inclined to think that the only equality the blacks ever have in the South is social equality; for I understand the highest exhibition of social equality is communication between the sexes.

Now, sir, the next question we have to encounter is that this bill is born of malignity. Sir, I have a good authority on this point. It is generally supposed and believed that this bill was originated by Charles Sumner, of Massachusetts. The gentleman from Mississippi [Mr. Lamar], speaking the honest sentiments of his heart, no doubt, in regard to that great man and this bill,[1] says:

> He did not hesitate to impress most emphatically upon the Administration, not only in public, but in the confidence of private intercourse, his uncompromising resolution to oppose to the last any and every scheme which should fail to provide the surest guaranties for the personal freedom and political rights of the race which he had undertaken to protect.
>
> . . . . . .
>
> The spirit of magnanimity, therefore, which breathes in his utterances and manifests itself in all his acts affecting the South during the last two years of his life was as evidently honest as it was grateful to the feelings of those to whom it was displayed.

When Mr. Sumner came to contemplate death his great regret was that he had not time to finish this work, that of passing the civil rights bill which lies upon your table now.

But this was not the origin of the civil rights bill. When

[1] In his eulogy in the House upon Sumner, who died March 11, 1874.

we go down into the depths of the origin of civil rights it is much further down than that. There was an old man of Puritan stock, a fanatic, if you please, who undertook to carry equality of rights into the wilderness of Kansas. He was there met by the bludgeon and the dagger and the pistol as the emblems of that civilization which he sought to overthrow. Almost crazed by that, but yet with a full belief that God had ordained that slavery should no longer exist, he organized a band of men, seventeen in number, at the head of which he put himself, and into which he took his two promising sons, defying the power of the commonwealth of Virginia, defying the power even of this great Government, and made an invasion into Virginia and established himself there for the purpose of freeing the slaves; not in any purpose of malignity, but of love for the slave, but with a belief that God himself would interfere by a miracle and set right this great wrong, now acknowledged by all to be such. He was a brave, strong old man; he inaugurated that movement to which we are now about to put the finishing stroke.

He did it, you say, against the law. Pardon me; he had seen the law so outraged in support of slavery in Kansas that he had got his brain muddled on the question of legal right and wrong. The great brave act which he did there has been recognized by his countrymen in gratitude. Monuments have been erected to his memory, and it became the rallying cry to which marched the armies of liberty. He had many good qualities; he was a brave man; he never did a cowardly act; he never struck at anybody behind his back; and, more than that, he never told a lie. Even when he lay in prison, and the Governor of Virginia visited him and offered him life itself if he would but state what was not true, the old man spurned the bribe and went to the scaffold and gave his life for a poor and lowly race. And his disembodied spirit rose from thence to heaven, wafted there by the prayers and blessings of all the meek and lowly and of all the Christians in the land, and there it looks down smiling upon us from the realms of bliss, into which no *liar* shall ever go. His name was John Brown, the elder; not the younger of that name.

There was another scene in the great drama of human liberty. There was a revolt in the South against the Constitution of the United States. There was an attempt to form a new confederation, whose cornerstone was slavery. There was an effort made to carry off eleven States from the constellation of stars. There was a treasonable endeavor to overturn this

Government by force of arms in the interest of slavery. And that brought to the front another John Brown. I dare not trust myself to be a eulogist of that John Brown, the younger of that name. Therefore I pray the Clerk to read it from the report of the Committee on Elections of this House, where it is set out in language that must be parliamentary, however severe.

[From the Louisville *Courier*, May 15, 1861]

ELIZABETHTOWN, *April* 18, 1861.

Editors Louisville Courier:

My attention has been called to the following paragraph which appeared in your paper of this date:

"JOHN YOUNG BROWN'S POSITION.—This gentleman, in reply to some searching interrogatories put to him by Governor Helm, said, in reference to the call of the President for four regiments of volunteers to march against the South. *'I would not send one solitary man to aid that government, and those who volunteer should be shot down in their tracks.'* "

This ambiguous report of my remarks has, I find, been misunderstood by some who have read it, who construe my language to apply to the *government of the Confederate States.* What I did say was this:

"Not one man or one dollar will Kentucky furnish *Lincoln* to aid *him* in his *unholy war against the South.* If this *Northern army* shall attempt to cross our borders *we will resist it unto the death;* and, if one man shall be found in our commonwealth to volunteer to join them, *he ought* and I believe will be *shot down before he leaves* the State."

This was not said in reply to any question propounded by ex-Governor Helm as you have stated, and is no more than *I frequently uttered publicly and privately* prior to my debate with him.

Respectfully,

JOHN YOUNG BROWN.

ROBERT S. HALE [N. Y.].—I raise the question of order that this document read from the desk has been improperly read, and not to be allowed to go into the *Record.*

MR. BUTLER.—I think I have a right to show how what has been read is pertinent to this discussion.

THE SPEAKER.—The Chair will hear the gentleman.

MR. BUTLER.—The gentleman from Kentucky [Mr. Brown] made a speech against the civil rights bill, and I have endeavored to put his published sentiments, as reported upon by a committee of this House, before the House to show how little heed we should pay to anything he says on the subject unless he has deeply repented; and I have no knowledge of his repentance.

Again it is pertinent in this: He accused me of being the only one who charged that there were murderers in the South. I produce the solemn report of a committee of the House and his own letter to show that there were men who counseled murder in the South, and not only murder, but assassination, and that, instead of my being his accuser, he was his own accuser; and that this state of things existed, which shows how completely the negro, if we do not protect him in his rights, is at the mercy of the same men who would have shot down the gentleman from New York himself if he had ever dared to step across the line of Union bayonets during the war. [Applause on the floor and in the gallery.]

Now, sir, having vindicated my right to say what I please upon this question, and I do not please to say anything that I have not a right to say, I desire to say in all kindliness to the Southern people that I sympathize with them in their deplorable condition. It is different from what it is with us in the North. When the Northern army was disbanded hundreds and thousands of men were sent back home, some of whom, if unemployed, would have become the pests of society. But we rapidly absorbed all those, with a very few exceptions, because we had employment—mechanical, manufacturing, seafaring, and other employments—to take up all the unruly and uneasy spirits that got into the army and were demoralized by camp life.

But with the South it was different. Their system of labor had prevented the white man from laboring, even from learning to labor, and, when the Southern army disbanded, it threw upon society a class of men demoralized by war, without work, without employment, largely without education by which they might divert their minds, with nothing on earth to do except to brood upon their defeat and think how wrong it was that the result of the war had been such as to take from them the negro who had earned their living for them before the war. And that state of natural irritation has brought forward in the South a large number of unruly men, demoralized men, who make substantially all the disturbances there. Most of the "white-leaguers," that are not young men simply growing up with the teaching of the war, are men of that class.

I call upon the good men South, if they want prosperity, that they themselves check and control this class of men. They are impoverishing the South; they are impoverishing our country. And, when I spoke of the South having a large minority of murderers and night-riders, I spoke of that class of men that make the Ku-Klux and White Leagues. It never occurred to me that any man on this floor could suppose for a moment that I referred to men who are here, or to a majority of the men in the South, who, I have no doubt, honestly desire peace and

quiet. I am bound in all fairness to say so much; and it is done without compulsion.

I have now an answer to make to the gentleman from Virginia [Thomas Whitehead], who told us yesterday that, if we passed this civil rights bill, the people of the South would export their cotton and tobacco directly to Europe and would not let us of the North make a profit on it. What an argument to address to men of common intelligence! Think of it a moment. If we do what is right to preserve the rights of the negro, who raises the cotton and tobacco, and without whose labor there would not be a bale of cotton or twenty pounds of tobacco raised there, we are threatened that the South will sell it all to England! Will you indeed? And you will not buy our goods, you say. Now that depends upon whether we can sell goods to you cheaper than England can. You know you would buy wooden nutmegs if we sent them down there, and they were cheaper than the real articles.

The day has gone past when the merchants of New York were kept in the slavery column by threats that the South would not trade with them. Why, sir, ten years have passed, a great war has passed; and are we to be thrown out of our propriety here by an argument of that sort?

Another argument: We are told that if we pass this bill we shall not come back to Congress, and we are reminded that this bill was the great issue in the last election. But I say in the face of the country that it is my deliberate conviction that the reason why some here have not been sent back is because we did not pass this bill a year ago. The people turned from us because we were a do-nothing party, afraid of our shadows; because we were aptly described by that portion of Scripture which relates how it was written to the angel of the church of the Laodiceans:

I know thy works, that thou art neither cold nor hot: I would thou wert cold or hot. So then because thou art lukewarm, and neither cold nor hot, I will spew thee out of my mouth.

The Republican party being neither hot nor cold, the country rightly spewed us out of its mouth. When I am met in the argument by the assertion, "You do not represent the people; you were beaten in your election," my answer is that my successor—a very estimable gentleman he is in every sense—could no more have come here than he could have been translated to heaven as Elijah was if he had not agreed to stand upon the doctrine of equality of races and of men before the

law, and so declared on every stump in my district. Nor could one Democrat have been elected from Massachusetts, not even my old friend who voted with me fifty-seven times for Jeff Davis, unless it was understood that he stood with me for the equal rights of all men.

I say again, as you on the other side were compelled in your platform of 1872 to declare for equality of rights of all men before the law, so every Republican was bound to stand by that. And where we were beaten it was because we had neglected to do the thing we had promised, and it was not made an accomplished fact. When we passed the Thirteenth Amendment to the Constitution of the United States we lost Ohio the first year; but we regained it the next. So now, if the Republican party will finish their great work, pass the civil rights bill, and by bayonet or otherwise bring peace, prosperity, law, and good order in the South, and put down those that ride by night there to murder and burn, which the South ought to do for itself, you will find that we will come back here sustained by voices of the loyal Union-loving men of the country.

The bill was passed by a vote of 162 to 99. The Senate passed it on February 27 by a vote of 38 to 26. It was approved by the President on March 1.

President Grant's successor, Rutherford B. Hayes [O.], entered upon his administration with the avowed purpose of conciliating the South, and that section was permitted to settle the negro question for itself. Complaints of intimidation of the negro gradually ceased, though it was charged by Republicans that he continued to be deprived of the suffrage and of his civil rights in general by even more effective, though less forceful, means, such as State laws discriminating against him, frauds in election, etc.

At various times since Hayes's Administration Northern statesmen have proposed bills for enforcing civil rights in the South (stigmatized by their opponents as "force bills"), but these resulted in no legislation. In the presidential campaigns of 1880 and 1884 Republican speakers used the South's denial to the negro of his civil rights as an argument for keeping the Democratic party out of national control, but this "waving of the bloody

shirt," as the Democrats called it, was laid aside thereafter for appeals to the reason and material interest, rather than the emotions and prejudices, of the voters.

"OF COURSE HE WANTS TO VOTE THE DEMOCRATIC TICKET!"

Democratic "Reformer."—"You're as free as air, ain't you? Say you are, or I'll blow yer black head off!"

Cartoon by A. B. Frost

CHAPTER VI

The Seminole War

Resolution of Censure in the House of Representatives against Gen. Andrew Jackson for Barbarous Treatment of the Seminoles—Debate: in Favor, Thomas W. Cobb [Ga.], James Johnson [Va.], Henry Clay [Ky.], Charles F. Mercer [Va.], Joseph Hopkinson [Pa.], John Tyler [Va.]; Opposed, John Holmes [Mass.], Richard M. Johnson [Ky.], Alexander Smyth [Va.], Lemuel Sawyer [N. C.], George Poindexter [Miss.]—Resolution Is Negatived—Later History of the War.

THE political status of the Indian in this country has been from the beginning of our Government an anomalous one. The various tribes were considered as quasi-foreign nations, with whom treaties were made by the Government, yet over whom it acted as a responsible guardian. This relation brought on at several times a conflict between the Federal Government and the government of the States within whose boundaries the tribes were located, since in their desire to possess the lands of the Indians, who were without the protection of representation in the State legislatures, the white settlers, acting through these bodies, with the purpose of driving the tribes from their borders, imposed upon them annoying restrictions and civic disabilities in violation of treaties made with them by the Federal Government.

It was during the administration of Andrew Jackson that this conflict became most critical, and it is therefore important that the attitude of this President toward the Indians be understood from the time that, as a general in the United States Army, he came into contact with them, particularly with the Seminoles and their kinsmen, the Creeks.

The Seminoles were originally a part of the Creeks

of Georgia. Early in the eighteenth century they split off from the main stock and occupied Florida, thus receiving the name *Simanoli,* or "Runaways," a term which was further justified by the accession to their ranks of a number of fugitive slaves. About the beginning of the eighteenth century they possessed a score of villages, the chief of which were Mikasuki and Tallahassee. The people of Mikasuki were the leaders in warlike enterprises, which (although they claimed provocation) led them into Georgia, where they committed depredations and murderous outrages on the white settlers besides inciting slaves to run away with them. They were known as "Red Sticks" from their practice of setting up a painted pole as an emblem of war.

In 1817 General Andrew Jackson was sent to the Florida frontier of Georgia to suppress the outrages committed by the "Red Sticks." Despite the fact that Florida was Spanish territory, during this and the following year he pursued them to their homes in the peninsula and destroyed their principal towns and hanged two Englishmen, Alexander Arbuthnot, a trader, and Robert C. Ambrister, an adventurer, for inciting the Indians to their outrages upon the Georgia settlers. He also seized Pensacola in spite of the remonstrance of the Spaniards. These actions created intense excitement in England, and, had it not been for Spain's weakness, would have involved us in war with that country. After considerable correspondence Great Britain was pacified, and the difficulty with Spain was settled by the purchase from her of Florida in 1819 for $5,000,000 (paid by the United States assuming claims to that amount of American citizens against Spain), and by our giving up all claims to Texas, the ownership of which had been in dispute between Spain and the United States since the Louisiana Purchase.

During the session of Congress following Jackson's high-handed actions (1818-19) a resolution of censure was presented against him, particularly for his hanging Arbuthnot and Ambrister, it being claimed that the former was clearly innocent of the charge against him,

and that the latter, though he may have been guilty, had not been proved so by the proper forms of law. The debate soon developed charges of barbarities committed by General Jackson on the Indians. It continued from January 12 to February 8, 1819, when the resolution was separated into two sections, one relating to the trial of Arbuthnot and one to the trial of Ambrister; and the former was negatived by a vote of 108 to 62, and the latter by a vote of 107 to 63. The chief speakers in favor of censure were Thomas W. Cobb [Ga.], James Johnson [Va.], Henry Clay [Ky.], Charles F. Mercer [Va.], Joseph Hopkinson [Pa.], and John Tyler [Va.]. Those opposing censure were John Holmes [Mass.], Richard M. Johnson [Ky.], Alexander Smyth [Va.], Lemuel Sawyer [N. C.], and George Poindexter [Miss.].

Censure of General Jackson

House of Representatives, January 12-February 8, 1819

The report of the military committee was read through, concluding with the following resolution:

"*Resolved,* That the House of Representatives of the United States disapproves the proceedings in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister."

Mr. Cobb declared that illegal evidence had been accepted at the trial. The rules of evidence, in courts-martial, differ very little, in principle, from those established in the courts of common law. It was so declared by the only American authority (Macomb on Martial Law) on that subject. If we test the evidence produced in those trials by these rules, we shall blush at the shameful perversion of justice therein displayed. The evidence of papers, not produced or accounted for, the *belief* of persons whose testimony of *facts* ought to have been doubted, *hearsay,* and *that* of *Indians, negroes,* or *others* who, had they been present, could not have been sworn, were all indiscriminately admitted and acted upon. Miserable, indeed, will be the precedents established by *this* court-martial for *others* which may hereafter be formed!

I would also call the attention of the committee to the principle by which the commanding general professes to have been governed in ordering the execution of Ambrister, and which, in

its extent, as contended by the report of the committee under consideration, applied with equal force to the case of Arbuthnot. It is in these words: "It is an established principle of the law of nations that any individual of a nation making war against the citizens of another nation, they being at peace, forfeits his allegiance, and becomes an outlaw and a pirate." The military committee, in their report, have very properly denied the establishment of any such principle in the law of nations. Sir, I boldly challenge any man of common sense to prove the existence of such a principle to the extent it is here laid down. Reason, propriety, justice, and humanity all cry aloud against such a principle! So far as my researches have gone, it is absolutely denied by the writers on national law; and I sincerely hope will be absolutely denied by every member of this committee. If this principle was true, then Lafayette, DeKalb, Pulaski, and a large host of foreigners who joined the standard of our fathers in the Revolution, and, by their blood and at the expense of their lives, aided in the establishment of the independence of this nation, were "outlaws and pirates"; and, had they been captured, were subject to have been tried and sentenced to an ignominious death by a court-martial. For, when they entered our service, they were "individuals of a nation at peace" with England, and they, after they joined our arms, "made war upon England and her citizens, and thereby forfeited their allegiance." Sir, is this committee prepared to brand these men with the titles of "outlaws and pirates," by their sanction to this principle? I will not yet believe it.

But, it may be said that, these Englishmen, having "joined a savage nation who observe no rules and give no quarter," we have a right to treat them precisely as we might treat the savages whom they have joined, and that we would have a right to put the savages to death, upon a principle of retaliation. Let this position for a moment be admitted, and yet it will be evident that the principle under which we should proceed would be a very different one—to wit, that of retaliation. For even savages cannot regularly be put to death until they refuse "to observe rules or give quarter."

Does the commanding general of the American army possess the power to exercise the right of retaliation? If in its exercise there is any responsibility, it is placed upon the nation. They are accountable to all other nations for the manner in which they conduct their wars. To the nation, therefore, it belongs to establish the rules of war, by which it would be

governed; and the authority by which they were to be established was that in whose hands was vested the right of declaring war. In their establishment, the character of the nation for justice, for humanity, etc., was deeply involved. Who are the legitimate guardians of the character of this nation but Congress—the war-declaring power? I am not singular in this opinion. The late President of the United States, the virtuous James Madison, was of the same opinion. For when, during the late war, it was thought necessary to apply the retaliatory principle, did he believe himself clothed with power to do it, although Commander-in-Chief? No—he believed it was in Congress alone. To Congress he applied for the power, and, by a special act, they conferred it on him.

Mr. Holmes.—It is not, sir, because General Jackson has acquired so much glory in defence of his country's rights that I defend him—it is not for the splendor of his achievements or the brilliancy of his character. I would not compromit the rights and liberties of my country to screen any man, however respectable. If General Jackson has been ambitious, I would restrain him; if cruel, I would correct him; if he is proud, I would humble him; if he is tyrannical, I would disarm him. And yet, I confess, it would require pretty strong proof to produce conviction that he has intentionally done wrong. At his age of life, crowned with the honors and loaded with the gratitude of his country, what adequate motive could induce him to tarnish his glory by acts of cruelty and revenge?

I assure the gentleman from Georgia that, in endeavoring to anticipate the arguments of the friends of General Jackson and the President, he has not anticipated me. I admit, in the outset, that the President has no right to commence a war, even against Indians, without the consent of Congress. If, with these admissions, the President and General Jackson cannot be defended, they cannot, in my opinion, be defended at all.

It is, then, incumbent on me to show that the Indians commenced the war.

On the 9th of August, 1814, a treaty was signed at Fort Jackson between the United States and most of the chiefs and warriors of the Creek Nation. By this treaty certain lands were ceded to the United States, and the inhabitants of the frontiers understood that the war was ended. But it was soon found that several of the hostile Creeks and the Seminoles had, within the limits of Florida, associated for the purpose of commencing hostilities against the United States. By the instigation and aid of a certain Colonel Nicholls a fort

was erected on the Appalachicola, and within the province of East Florida, to facilitate their hostile designs. At this place were assembled a motley banditti of negroes, Indians, and fugitives from all nations, and trained and instructed in the arts of robbery and murder. The people of the United States soon felt the effects of their vengeance. Several families, including women and children, were barbarously murdered. In 1816 a boat's crew were cruelly butchered, one of whom was tarred, set on fire, and burned to death. On the 30th of November last Lieutenant Scott and his party, consisting of about fifty men, women, and children, were murdered in a manner too shocking to describe.

The war having been commenced by the Seminoles and their associates, and the President of the United States having the power, by the Constitution and laws of the United States, to meet and repel the enemy, the inquiry is important on what ground he may meet them. I differ from many gentlemen in regard to the political rights of the Indians. Whatsoever may be their rights in peace, either by natural or conventional law, in war I deem them as sovereign. Their residence within the limits of the United States, limits to which they have never assented, neither brings them within our protection nor entitles us to their allegiance. The laws of the United States have no operation upon them, and, if they levy war, they are not punishable as traitors. A tribe of Indians whose territory is exclusively within our limits may wage war and make peace with us; pursue, capture, and destroy us; send and receive flags; grant and receive capitulations, and are entitled to a reciprocation of every act of civilized warfare, and subject to the same rules of severity and retaliation as other nations. To invade their territory and cross their line is, as to them, passing out of the limits of the United States. And, if General Jackson had no right in this war to cross the Florida line, neither had he a right to cross the Indian line within our limits. If there is any force in the argument so often urged on other occasions that every war of invasion is an offensive war, and one, consequently, which the President could not wage without the authority of Congress; then it follows that Congress must declare war before the President can march the militia across the Indian line, even within the limits of the United States. But such a construction of the Constitution is totally inadmissible. When war is commenced by savages it becomes the duty of the President to repel and punish them. To follow them to the line affords us no security. The invasion cannot be

effectually repelled but by pursuing them into their own territory and retaliating on them there. Such has been the uniform construction of the power of the President ever since the adoption of the Constitution. In no instance that I recollect has Congress declared war against an Indian tribe. The defeat of St. Clair and subsequent victory of Wayne were on Indian territory. The battle at Tippecanoe (fought by my friend from Ohio [General William Henry Harrison] with so much honor to himself and satisfaction to his country) was within the limits of the Indian nation. In neither of these instances was a declaration of war deemed necessary by Congress.

The territory of these Indians is on both sides of the Florida line. Their possessions and residence are transient and ambulatory, without regard to this line. The nation, if such they may be called, is at war with us, and in this war they can occupy their territory in Florida in spite of Spain. Singular, indeed, would it be if we should be engaged in war with an enemy who had a perfect right to be where we had no right to meet him. Spain claims a jurisdiction to a territory occupied by our enemy; she has no power nor inclination to expel him; and yet it is gravely said this enemy cannot be pursued to this territory without an act of hostility against Spain. Unfortunate, indeed, would be the condition of the United States if a horde of unprincipled banditti, holding a residence on our borders, could prosecute a cruel and exterminating war upon our citizens, and then take refuge across an ideal line, where the laws of nations forbid us to approach them. Sir, let gentlemen tell me of another instance where your enemy has a right to perfect security against your approach. It would be a war of a peculiar character, where one side only gives the blows.

Why, then, should not General Jackson and his army cross? Will any gentleman point to me the clause in the Constitution or laws of the United States that forbids him. The Seminoles, being enemies and having a right in Florida beyond the control of Spain, the inference is irresistible that you have a right to pursue and fight them there in your own defence.

I lay Spain out of the question. Poor, miserable, degraded Spain, too weak and palsied to act or think! She has but the shadow of authority in Florida, and, so far from being able to control the Indians, or even her own subjects, the country, as to her, is a perfect derelict. I will ask this committee to go back with me to the year 1813, and from that period to the capture of Pensacola, to witness the Spanish officers exciting

the Indians to vengeance, furnishing them with the arms and munitions of war, tamely acquiescing in the most flagrant violations of their pretended neutrality, and suffering the territory to be prostituted to every banditti who might be disposed to annoy or distress the people of the United States.

Mr. Johnson [Va.].—I proceed to examine into the propriety of the course pursued on the trial and execution of Arbuthnot and Ambrister. It is laid down by Vattel, p. 416: "An enemy not to be killed after ceasing to resist." In the same page an exception is noted—except where the safety of the general, of his army, or of the prince is thereby conserved.

I can scarcely believe that it will be pretended that the safety of the general or his men required the execution of these prisoners. Did, then, the safety of the prince (that is, in this country, the people) require the execution of these men? Was it necessary to offer them up on the altar of public safety—to hold them up as a terrible example to future instigators and abettors of Indian wars? If so, their fate should have been referred to the people; that is, to their representatives—to the Congress of the United States. The commanding general had no right, no authority, to decide the question whether the safety of the people required the sacrifice of these captives. We are told—and very seriously told—that this execution of prisoners may be justified on the principles of retaliation. What, retaliate the cruelties and barbarities of savages? It is a doctrine unsupported by precedent and law, and is shocking to the principles of humanity. It may be said, as it was remarked the other day by a gentleman from Virginia (Mr. Nelson), that this is a sympathy for miscreants—a sympathy resulting from morbid sensibility—a sympathy for British subjects. It is not so, Mr. Chairman. I have no sympathy for British subjects. When I look at yon ruin (pointing to the Capitol), when I recollect the massacres at the River Raisin, Frenchtown, and many other places in the United States, during the late war, I recognize in the late British forces an enemy not less cruel and savage than the Seminole Indians—the outlawed Red Sticks. Yet did the highest officer in this Government, during the late war—the Commander-in-Chief of your army—the President of the United States—consider himself vested with authority to retaliate the acts of cruelty perpetrated by the enemy or those threatened? No.

What has been, since the period of our independence, the uniform and unvarying policy pursued by this Government toward the Indian tribes? Has it been a policy tempered by

mercy, brightened by generosity, and ameliorated by Christianity? Have we been constantly engaged in the humane work of civilizing them—of sending emissaries among them to preach the gospel—to distribute the copies of the Bible collected by different societies? Is this policy to be suddenly changed under the auspices of General Jackson? Shall we, at the close of a war of extermination, go through the ceremony of appointing committees to meet members from the Society of Friends, to devise the means of civilizing this unfortunate, misguided, and deluded race of beings?

Mr. Clay [Speaker].—In noticing the painful incidents of this war it was impossible not to inquire into its origin. He feared that would be found to be the famous treaty of Fort Jackson, concluded in August, 1814; and he asked the indulgence of the Chairman that the Clerk might read certain parts of that treaty. [The Clerk of the House having accordingly read as requested, Mr. C. proceeded.] He had never perused this instrument until within a few days past, and he had read it with the deepest mortification and regret. A more dictatorial spirit he had never seen displayed in any instrument. He would challenge an examination of all the records of diplomacy, not excepting even those in the most haughty period of imperious Rome, when she was carrying her arms into the barbarian nations that surrounded her; and he did not believe a solitary instance could be found of such an inexorable spirit of domination pervading a compact purporting to be a treaty of *peace*. It consisted of the most severe and humiliating demands—of the surrender of large territory—of the privilege of making roads through even what was retained—of the right of establishing trading-houses—of the obligation of delivering into our hands their prophets. And all this of a wretched people, reduced to the last extremity of distress, whose miserable existence we had to preserve by a voluntary stipulation to furnish them with bread! When even did conquering and desolating Rome fail to respect the altars and the gods of those whom she subjugated? Let me not be told that these prophets were impostors who deceived the Indians. They were *their* prophets—the Indians believed and venerated them, and it is not for us to dictate a religious belief to them. It does not belong to the holy character of the religion which we profess to carry its precepts, by force of the bayonet, into the bosoms of other people. Mild and gentle persuasion was the great instrument employed by the meek founder of our religion. We leave to the humane and benevolent efforts of the reverend professors of

Christianity to convert from barbarism those unhappy nations yet immersed in its gloom. But, sir, spare them their prophets! Spare their delusions! Spare their prejudices and superstitions! Spare them even their religion, such as it is, from open and cruel violence. When, sir, was that treaty concluded? On the very day, after the protocol was signed, of the first conference between the American and British commissioners, treating of peace, at Ghent. In the course of that negotiation pretensions so enormous were set up by the other party that, when they were promulgated in this country, there was one general burst of indignation throughout the continent. Faction itself was silenced, and the firm and unanimous determination of all parties was to fight until the last man fell in the ditch rather than submit to such ignominious terms.

What a contrast is exhibited between the contemporaneous scenes of Ghent and Fort Jackson! What a powerful argument would the British commissioners have been furnished with if they could have got hold of that treaty! The United States demand!—the United States demand!—is repeated five or six times. And what did the preamble itself disclose? That two-thirds of the Creek nation had been hostile and one-third only friendly to us. Now, he had heard that not one hostile chief signed the treaty. If the treaty really were made by a minority of the nation, it was not obligatory upon the whole nation. It was void, considered in the light of a national compact. And, if void, the Indians were entitled to the benefit of the provision of the ninth article of the Treaty of Ghent, by which we bound ourselves to make peace with any tribes with whom we might be at war on the ratification of the treaty, and restore to them their lands as they held them in 1811. I do not know how the honorable Senate, that body for which he had so high a respect, could have given their sanction to the treaty of Fort Jackson, so utterly irreconcilable as it is with those noble principles of generosity and magnanimity which he hoped to see this country always exhibit, and particularly toward the miserable remnant of the aborigines. It would have comported better with those principles to have imitated the benevolent policy of the founder of Pennsylvania, to have given to the Creeks, conquered as they were, even if they had made an unjust war upon us, the trifling consideration, to them an adequate compensation, which he paid for their lands. That treaty, I fear, was the main cause of the recent war. And, if so, it only added another melancholy proof to those with which history already abounds that hard and unconscionable terms, extorted by

the power of the sword and the right of conquest, served but to whet and stimulate revenge, and to give to old hostilities, smothered, not extinguished, by the pretended peace, greater expansion and more ferocity. A truce thus patched up with an unfortunate people, without the means of existence—without bread—is no real peace. The instant there is the slightest prospect of relief from such harsh and severe conditions the conquered party will fly to arms and spend the last drop of blood rather than live in such degraded bondage. Even if you again reduce him to submission, the expenses incurred by this second war, to say nothing of the human lives that are sacrificed, will be greater than what it would have cost you to have granted him liberal conditions in the first instance. This treaty—I repeat it—was probably the cause of the war. It led to those excesses on our Southern borders which began it. Who first commenced them it was, perhaps, difficult to ascertain. There was, however, a paper on this subject, communicated at the last session by the President, that told, in language so pathetic and feeling, an artless tale—a paper that carried such internal evidence, at least, of the belief of the authors of it that they were writing the truth that he would ask the favor of the committee to allow him to read it.

The following is a part of the letter from ten of the Seminole towns that Mr. Clay read:

To the commanding officer at Fort Hawkins.

Dear Sir: Since the last war, after you sent me word that we must quit the war, we, the red people, have come over on this side. The white people have carried all the red people's cattle off. After the war I sent to all my people to let white people alone and stay on this side of the river; and they did so, but the white people still continue to carry off their cattle. Barnard's son was here, and I inquired of him what was to be done—and he said we must go to the head man of the white people and complain. I did so, and there was no white head man, and there was no law in this case. The whites first began, and there is nothing said about that; but great complaint made about what the Indians do. This is now three years since the white people killed three Indians; since that they have killed three other Indians and taken their horses and what they had; and this summer they killed three more, and very lately they killed one more. We sent word to the white people that these murders were done, and the answer was that they

were people that were outlaws, and we ought to go and kill them. The white people killed our people first—the Indians then took satisfaction. There are yet three men that the red people have never taken satisfaction for. On that side of the river the white people have killed five Indians, but there is nothing said about that; and all that the Indians have done is brought up. All the mischief the white people have done ought to be told to their head man. When there is anything done you write to us, but never write to your head man what the white people do. When the red people send talks, or write, they always send the truth. The cattle that we were accused of taking were cattle that the white people took from us. Our young men went and brought them back, with the same marks and brands. There were some of our young men out hunting and they were killed; others went to take satisfaction, and the kettle of one of the men that was killed was found in the house where the woman and two children were killed; and they supposed it had been her husband who had killed the Indians, and took their satisfaction there.

Mr. Clay continued:

I should be very unwilling to assert, in regard to this war, that the fault was on our side—but I fear it is. I have heard that that very respectable man, now no more, who once filled the executive chair of Georgia, and who, having been agent of Indian affairs in that quarter, had the best opportunity of judging of the origin of this war, deliberately pronounced it as his opinion that the Indians were not in fault.

The first circumstance which, in the course of General Jackson's conduct, fixes our attention is the execution of the Indian chiefs. How did they come into our possession? Was it in the course of fair and open and honorable war? No; but by means of deception—by hoisting foreign colors on the staff from which the stars and stripes should alone have floated. Thus ensnared, the Indians were taken on shore, and, without ceremony and without delay, were hung. It was the first instance that I know of, in the annals of our country, in which retaliation, by executing Indian captives, had ever been deliberately practiced. The gentleman from Massachusetts may tell me, if he pleases, what he pleases about the tomahawk and scalping-knife; about Indian enormities, and foreign miscreants and incendiaries. I, too, hate them; from my very soul I abominate them. But I love my country and its Constitution;

I love liberty and safety, and fear military despotism more even than I hate these monsters. I deny your right thus to retaliate on the aboriginal proprietors of the country; and, unless I am utterly deceived, it may be shown that it does not exist. But, before I attempt this, allow me to make the gentleman from Massachusetts a little better acquainted with those people to whose feelings and sympathies he has appealed through their Representative. During the late war with Great Britain Colonel Campbell, under the command of my honorable friend from Ohio [General Harrison], was placed at the head of a detachment consisting chiefly of Kentucky volunteers, in order to destroy the Mississinaway towns. They proceeded and performed the duty and took some prisoners. And here is evidence of the manner in which they treated them. [Here Mr. C. read the general orders issued on the return of the detachment.[1]] I hope, sir, the honorable gentleman will be now able better to appreciate the character and conduct of my gallant countrymen than he appears hitherto to have done.

But, sir, I have said that you have no right to practice, under color of retaliation, enormities on the Indians. I will advance, in support of this position, as applicable to the origin of all law, the principle that, whatever has been the uniform usage coeval and coexistent with the subject to which it relates becomes its fixed law. Such was the foundation of all common law; and such, he believed, was the principal foundation of all public or international law. If, then, it could be shown that, from the first settlement of the colonies on this part of the American continent to the present time, we have constantly abstained from retaliating upon the Indians the excesses practiced by them toward us, we were morally bound by this invariable usage, and could not lawfully change it without the most cogent reasons. From the first settlement at Plymouth or at Jamestown it has not been our practice to destroy Indian captives, combatants, or noncombatants.

[1] The following is the extract which Mr. Clay read:

"It is with the sincerest pleasure that the general has heard that the most punctual obedience was paid to his orders, in not only saving all the women and children, but in sparing all the warriors who ceased to resist; and that, even when vigorously attacked by the enemy, the claims of mercy prevailed over every sense of their danger, and this heroic band respected the lives of their prisoners. Let an account of murdered innocence be opened in the records of Heaven against our enemies alone. The American soldier will follow the example of his government, and the sword of the one will not be raised against the fallen and the helpless, nor the gold of the other be paid for scalps of a massacred enemy."

When did this humane custom, by which, in consideration of their ignorance and our enlightened condition, the rigors of war were mitigated, begin? At a time when we were weak and they were comparatively strong; when they were the lords of the soil, and we were seeking, from the vices, from the corruptions, from the religious intolerance, and from the oppressions of Europe, to gain an asylum among them. And when is it proposed to change this custom, to substitute for it the bloody maxims of barbarous ages, and to interpolate the Indian public law with revolting cruelties? At a time when the situation of the two parties is totally changed—when we are powerful and they are weak: at a time when, to use a figure drawn from their own sublime eloquence, the poor children of the forest have been driven by the great wave which has flowed in from the Atlantic Ocean to almost the base of the Rocky Mountains, and, overwhelming them in its terrible progress, has left no other remains of hundreds of tribes now extinct than those which indicate the remote existence of their former companion, the mammoth of the New World! Yes, sir, it is at this auspicious period of our country, when we hold a proud and lofty station among the first nations of the world, that we are called upon to sanction a departure from the established laws and usages which have regulated our Indian hostilities. And does the honorable gentleman from Massachusetts expect, in this august body, this enlightened assembly of Christians and Americans, by glowing appeals to our passions, to make us forget our principles, our religion, our clemency, and our humanity?

Why is it we have not practiced toward the Indian tribes the right of retaliation, now for the first time asserted in regard to them? It was because it is a principle, proclaimed by reason and enforced by every respectable writer on the law of nations, that retaliation is justifiable only as calculated to produce effect in the war. Vengeance was a new motive for resorting to it. If retaliation will produce no effect on the enemy, we are bound to abstain from it by every consideration of humanity and of justice. Will it, then, produce effect on the Indian tribes? No; they care not about the execution of those of their warriors who are taken captive. They are considered as disgraced by the very circumstance of their captivity, and it is often mercy to the unhappy captive to deprive him of his existence. The poet evinced a profound knowledge of the Indian character when he put into the mouth of the son of a distinguished chief, about to be led to the stake and tortured by his victorious enemy, the words—

"Begin, ye tormentors! your threats are in vain:
The son of Alknomok will never complain."

THOMAS MOORE.

We are fighting a great moral battle for the benefit not only of our country but of all mankind. The eyes of the whole world are in fixed attention upon us. One, and the largest portion of it, is gazing with contempt, with jealousy, and with envy; the other portion with hope, with confidence, and with affection. Everywhere the black cloud of legitimacy is suspended over the world, save only one bright spot which breaks out from the political hemisphere of the West, to brighten, and animate, and gladden the human heart. Obscure that by the downfall of liberty here, and all mankind are enshrouded in one universal darkness. To you, Mr. Chairman, belongs the high privilege of transmitting unimpaired to posterity the fair character and the liberty of our country. Do you expect to execute this high trust by trampling, or suffering to be trampled down, law, justice, the Constitution, and the rights of other people? By exhibiting examples of inhumanity, and cruelty, and ambition? When the minions of despotism heard in Europe of the seizure of Pensacola, how did they chuckle and chide the admirers of our institutions, tauntingly pointing to the demonstration of a spirit of injustice and aggrandizement made by our country in the midst of amicable negotiation. Behold, said they, the conduct of those who are constantly reproaching kings. You saw how those admirers were astounded and hung their heads. You saw, too, when that illustrious man who presides over us adopted his pacific, moderate, and just course, how they once more lifted up their heads, with exultation and delight beaming in their countenances. And you saw how those minions themselves were finally compelled to unite in the general praises bestowed upon our Government. Beware how you forfeit this exalted character. Beware how you give a fatal sanction, in this infant period of our Republic, scarcely yet two score years old, to military insubordination. Remember that Greece had her Alexander, Rome had her Cæsar, England her Cromwell, France her Bonaparte, and that, if we would escape the rock on which they split, we must avoid their errors.

MR. JOHNSON [Ky.].—With regard to the treaty of Fort Jackson I shall enter into no long argument, but I differ exceedingly from my honorable colleague. Have we not a right to dictate terms to a conquered enemy? Was not the war which was terminated by that treaty an unprovoked war? Was

it not instigated against us, and without cause, on the part of the Indians? On whose head should the blood fall if you cannot control the Indians with the Bible? I wish to God you could, and toward that object I will do, and have done, as much in my sphere as anyone. There is at this moment, in the heart of my country, a school for the education of the Indians in the arts of civil life. But when you come into contact with them—when they flourish their tomahawk over your head—are you to meet them with the Bible in your hands, and invoke their obedience to that holy religion of which the Speaker tells us? I should be the last to raise the sword against them if the employment of such means would appease their fury. Experience had shown it would not; and it became necessary to meet and chastise them.

I now come to the consideration of the right of the President to make war on the savages; and on that point I contend that we have on the statute book a perpetual declaration of war against them. I hope gentlemen will take down the expression and attend to my explanation—I say we have a permanent and everlasting declaration of war—and why? The reason is very obvious. I shall not differ from gentlemen as to the policy and justice of observing the duties of humanity toward that unfortunate people. God forbid that a drop of Indian blood should be spilled except on the principles of civilized man. But the President would be wanting in his duty to his country and to his God if he did not use the strong arm of power in putting down the savages by the force he is authorized to employ, if they cannot be put down by the precepts of our holy religion; and Congress, had they not passed such a statute, would be wanting in duty to their country. Do the Indians ever declare war against their enemy? Do they embody themselves and engage in open conflict with their adversary, or do they come, like a thief in the night, and carry death to the unfortunate women, to the aged and infirm men, and the children whom they meet in their incursions? Is or is not that the universal practice? Let history answer the question. Should we, under these circumstances, have acted rightly to take no precaution, but fold our arms in listless apathy until roused by the Indian yell? Our predecessors too well knew their duty to do that. As early as 1787, and farther back if it were necessary to trace, provisions of the same nature as those now existing were enacted by the venerable Congress of the Confederation. By various statutes the same provisions had been continued to the present day. The statute gave to the

President a discretionary power to employ the forces of the United States, and to call forth the militia to repress Indian hostility; and gave it to him properly, on the principles of the Constitution.

Mr. Smyth.—I lay down, with regard to the savages, this rule of warfare. Whatever degree of force, whatever destruction, whatever punishment for violating the usages of war or by way of retaliation are found necessary to deter them from robbing our citizens and massacring our women and children; that force, destruction, and punishment they should be made to feel, and no more. So much we have an undoubted right to inflict on the principle of self-preservation. And, if we do not inflict so much, we fail in our sacred duty to preserve the people.

I find this opinion fully supported by the authority and example of the greatest man that this or any other country has produced. General Washington, who knew when to silence pity, if its exercise was injurious to his country, did not consider the usages of war or the principles of humanity as applicable to a war carried on for the punishment of the unprovoked and atrocious hostilities of savages.[1] In his order to General Sullivan, directing his operations in the Indian country, I find the following clauses:

"The expedition you are appointed to command is to be directed against the hostile tribes of the Six Nations of Indians, with their associates and adherents. The immediate objects are the total destruction and devastation of their settlements, and the capture of as many prisoners of every age and sex as possible."

"Our future security will be in their inability to injure us—the distance to which they are driven, and the terror with which the severity of the chastisement they receive will inspire them—peace without this would be fallacious and temporary."

"When we have effectually chastised them, we may then listen to peace; and endeavor to draw further advantage from their fears."

These orders were executed by General Sullivan, and Congress passed a vote of approbation of his conduct.

Had Brandt and Butler fallen into the hands of General Washington, they would, no doubt, have met the fate of Arbuthnot and Ambrister. So resolved was General Washington that a severe example should be made that he would not even listen to proposals of peace until it had been done. In the present case, also, the punishment was inflicted for example; to preserve the peace of the frontier; to preserve from the hatchet and scalping-knife women and children. Many will be

[1] Vattel, 340.

saved by the example; but, should only one be saved, Arbuthnot and Ambrister have not died in vain.

Mr. Mercer.—Who, sir, were the Indian captives condemned to death? It has been said of one of the Suwanee chiefs that he was the author of the massacre of Scott's detachment, destroyed in that Indian territory which our army was not only preparing to invade, but had, in fact, invaded; and the participation of this chief in the bloody massacre which closed this scene is unsustained by any proof whatever.

As to his unfortunate comrade, the Indian prophet, what are his imputed crimes? That he was himself the victim of superstition; that he deluded his wretched followers. Such was the guilt, sir, of all the augurs and soothsayers of the ancient republics, sometimes prætors, consuls, and dictators, not to Rome alone, but to a conquered world. A guilt in which lies still involved three-fourths of the human race; many of whom yet groan, in cities, in palaces and temples, beneath a superstition compared with which the religion of the wandering inhabitants of our Western wilds is simple, peaceful, and consolatory. Or did his guilt consist in returning home with a foreign commission, after having crossed the Atlantic in quest of aid to sustain the sinking fortune of his tribe? Has it, then, become a crime in our day to love our country; to plead her wrongs; to maintain her rights; or to die in her defence? Sir, had not the God I worship, a God of mercy as well as truth, taught me to forgive mine enemies, did he, as the Great Spirit whom the Seminole adores, allow me to indulge revenge; were I an Indian, I would swear eternal hatred to your race. What crimes have they committed against us that we have not, with superior skill, practiced upon them? Whither are they gone? How many of them have been sent to untimely graves? How many driven from their lawful possessions? Their tribes and their very names are almost extinct. My honorable colleague [Mr. Barbour] will not condemn in a poor Seminole Indian that love of country of which, if it be indeed a crime, no man is more guilty than himself. But it seems he was an Indian. The Suwanee chief, his comrade, was so too. Arbuthnot and Ambrister, who inspired their counsels and led them to combat, are to be regarded as themselves, and, under the law of retaliation, they were all liable to suffer death at the pleasure of General Jackson. And thus, Mr. Chairman, the clemency which has been observed for two centuries in all our conflicts with the aborigines of America is at length discovered to have been an impolitic abandonment of the rights which we derive

from the laws and usages of war. Nay, sir, the victories of all our former commanders, in all other Indian wars, are cast into the shade, in order to magnify the effect of this new policy. In the hard-fought battle of Point Pleasant, in which I have heard that three hundred Virginians fell, my colleague [Mr. Smyth] tells us that only eighteen Indian warriors were found dead on the field. Before the impetuous charge of the gallant Wayne but twenty fell. At Tippecanoe but thirty. On the banks of the Tallapoosa, General Jackson left eight hundred Indians dead. Sir, it is consolatory to humanity to look beyond these fields of slaughter to the peace which followed them, the only object of a just war. From the battle of Point Pleasant to the present day, Indian hostilities have ceased in Virginia. The victories of Wayne led to the treaty of Greenville, which was followed by a peace of eighteen years. The treaties of Hopewell, of New York, and of Colerain, of Georgia, preceded by no battles, were succeeded by a peace which, with the Creeks and Seminoles, it required, after the lapse of nineteen years, another British war to disturb; and which, with the Choctaw and Chickasaw Indians, endures to this moment. While the splendid victory of Tallapoosa and the treaty of Fort Jackson have not yet, it is said, secured to us peace, although aided by our new code of retaliation and its practical commentary, the execution, in cold blood, of four Indian captives.

Mr. Sawyer.—I beg leave to quote General Jackson's own words, for, as ably as he has been defended on this floor, I believe his own defence, considering all circumstances, is nearly as good as any that can be made for him. I will take the liberty of reading an extract from his letter of the 5th of May last, dated at Fort Gadsden, to the Secretary of War. This letter affords another proof that he had the heart to conceive, the hand to execute, and the talents to defend the best measures which the urgency of the occasion required.

"I hope the execution of these two unprincipled villains will prove an awful example to the world, and convince the government of Great Britain, as well as her subjects, that certain, if slow, retribution awaits those unchristian wretches, who, by false promises, delude and excite an Indian tribe to all the horrid deeds of savage war. It has been stated that the Indians at war with the United States have free access into Pensacola, that they are kept advised, from that quarter, of all our movements; that they are supplied from thence with ammunition and munitions of war; and that they are now collecting in a body, to the amount of four or five hundred warriors, in that town; that inroads from thence have been lately made on the Alabama, in one of which eighteen settlers fell by the tomahawk. These statements compel me to make a movement to

the west of the Appalachicola, and, should they prove correct, Pensacola must be occupied with an American force, the governor treated according to his deserts, or as policy may dictate. I shall leave strong garrisons in Forts St. Marks, Gadsden, and Scott, and in Pensacola, should it be necessary to possess it. It becomes my duty to state it as my confirmed opinion that, so long as Spain has not the power or will to enforce the treaties by which she is solemnly bound to preserve the Indians within her territory at peace with the United States, no security can be given to our Southern frontier without occupying a cordon of posts along the shore. The moment the American army retires from Florida the war hatchet will be again raised, and the same scenes of indiscriminate massacre, with which our frontier settlers have been visited, will be repeated, so long as the Indians within the territory of Spain are exposed to the delusion of false prophets and poison of foreign intrigue; so long as they can receive ammunition, munitions of war, from pretended traders and Spanish commandants, it will be impossible to restrain their outrages. The burning their towns, destroying their stock and provisions, will produce but temporary embarrassments. Resupplied by Spanish authorities, they may concentrate and disperse at will, and keep up a lasting and predatory warfare against the United States, as expensive to our Government as harassing to our troops. The savages, therefore, must be made dependent on us, and cannot be kept at peace without being persuaded of the certainty of chastisement being inflicted on the commission of the first offence. I trust, therefore, that the measures which have been pursued will meet with the approbation of the President of the United States; they have been adopted in pursuance of your instructions, and under a firm conviction that they alone were calculated to insure peace and security to the Georgian frontier."

MR. HOPKINSON.—The United States are at war with certain tribes of Indians inhabiting the Spanish territory. The real origin of this war is the same with all our Indian wars. It lies deep beyond the power of eradication, in the mighty wrongs we have heaped upon the miserable nations of these lands. I cannot refuse them my heartfelt sympathy. Reflect upon what they were, and look at them as they are. Great nations dwindled down into wandering tribes and powerful kings degraded to beggarly chiefs. Once the sole possessors of immeasurable wilds, it could not have entered into their imagination that there was a force on earth to disturb their possessions and overthrow their power. It entered not into their imagination that, from beyond that great water which to them was an impassable limit, there would come a race of beings to despoil them of their inheritance and sweep them from the earth. Three hundred years have rolled into the bosom of eternity since the white man put his foot on these silent shores; and every day, every hour, and every moment has been marked with some act of cruelty and oppression. Imposing on the credulity or the ignorance of the aborigines, and overawing their fears by the use of instruments of death of inconceivable terror, the

strangers gradually established themselves, increasing the work of destruction with the increase of their strength. The tide of civilization, for so we call it, fed from its inexhaustible sources in Europe, as well as by its own means of augmentation, swells rapidly and presses on the savage. He retreats from forest to forest, from mountain to mountain, hoping, at every remove, he has left enough for his invaders and may enjoy in peace his new abode, But in vain; it is only in the grave, the last retreat of man, that he will find repose. He recedes before the swelling waters; the cry of his complaint becomes more distant and feeble, and soon will be heard no more. I hear, sir, of beneficent plans for civilizing the Indians and securing their possessions to them. The great men who make these efforts will have the approbation of God and their own conscience; but this will be all their success. I consider the fate of the Indian as inevitably fixed. He must perish. The decree of extermination has long since gone forth; and the execution of it is in rapid progress. Avarice, sir, has counted their acres and power their force; and avarice and power march on together to their destruction. You talk of the scalping-knife; what is it to the liquid poison you pour down the throats of these wretched beings? You declaim against the murderous tomahawk; what is it, in comparison with your arms, your discipline, your numbers? The contest is in vain; and equally vain are the efforts of a handful of benevolent men against such a combination of force, stimulated by avarice and the temptations of wealth. When, in the documents on your table, I see that, in this triumphant march of General Jackson, he meets, from time to time (the only enemy he saw) groups of old men and women and children, gathering on the edge of a morass, their villages destroyed, their corn and provisions carried off, houseless in the depth of winter, looking for death alternately to famine and the sword, my heart sickens at a scene so charged with wretchedness. To rouse us from a sympathy so deep, so irresistible, we are told of the scalping-knife and the tomahawk; of our slaughtered women and children. We speak of these things as if women and children were unknown to the Indians—as if they have no such beings among them; no such near and dear relations; as if they belong only to us. It is not so. The poor Indian mother, crouching in her miserable wigwam or resting under the broad canopy of heaven, presses her naked infant to her bosom with as true and fond emotion as the fairest in our land; and her heart is torn with as keen anguish if it perish in her sight.

The war at an end; the enemy dispersed, exterminated, and broken down; having no longer the power, if he should have the will, to annoy us; the commanding general returning home because his presence can no longer be necessary; the position taken being fully adequate to put down the war should the foe have the temerity to renew it; and yet, with all this mass of facts testified to by the general himself, and this confidence of opinion expressed by himself, we are to be told of necessities; of dangers; of inroads and murders which shall justify us in one of the most high-handed measures that one nation can take against another. No, sir, these were not the motives; it was not because a few miserable, defeated, starving Red Sticks were fed by the Governor of Pensacola; it could not be because the enemy was kept advised from them of the movements of our army, after the war was over and all movement but toward their homes had ceased; it was not because the Indians had, as they always had, a free access into Pensacola that our general chose to wrest by military force this place from the hands of its owner, in violation of the laws of civilized nations; and, being an act of war, in violation of the Constitution of his country. It is not because Spain is not in a condition to insist upon her rights or resent the violation of them that the act is the more justified. The general did that which, in other circumstances, would have rightfully, on the part of the offended nation, involved us in a war; and it will hardly be said such a power, under our Constitution, is vested in any military commander. But, sir, the true motive of this bold step is exposed. The general has a confirmed opinion that, unless Spain performs her treaty with the United States, a cordon of posts along the seashore will be necessary; and he accordingly proceeds, without further consultation with his own Government, to occupy these posts. Here, then, we have a military officer undertaking to judge whether a treaty with a foreign power has been broken, and without inquiring what reason or excuse that power may have in explanation; without inquiring whether his own government has been reasonably satisfied on the subject; without examining what course the policy and interests of his own country may dictate in such a case, he proceeds to apply, of his own will and authority, the remedy he deems most proper; that is to wage immediate war on the other party; he takes into his hands the highest power the people can exercise themselves or grant to others—the power of putting the nation in jeopardy; of expending its blood and treasure and involving it in the countless calamities of war. The people of

the United States have intrusted this power only to their immediate representatives, and General Jackson has walked over our heads, and the heads of the people, in assuming it himself. This must not be.

MR. TYLER.—However great may have been the services of General Jackson, I cannot consent to weigh those services against the Constitution of the land. Other gentlemen will, no doubt, yield me the correctness of this position. Your liberties cannot be preserved by the fame of any man. The triumph of the hero may swell the pride of your country—elevate you in the estimation of foreign nations—give to you a character for chivalry and valor; but recollect, I beseech you, that the sheet anchor of our safety is to be found in the Constitution of our country. Say that you ornament these walls with the trophies of victory—that the flags of conquered nations wave over your head, what avails these symbols of your glory if your Constitution be destroyed? To this pillar, then, will I cling. *Measures* not *men*—and I beg gentlemen to recollect it—has ever been our favorite motto. Shall we abandon it now? Why do gentlemen point to the services of the hero in former wars? For his conduct there he has received a nation's plaudits and won our gratitude. We come to other acts. If our motto be just, we must look alone to the *act* not the *actor*. It is only then that we shall judge correctly. A republic, sir, should imitate the Roman Manlius, and disapprove the conduct of her dearest son if that son has erred. From what quarter do you expect your liberties to be successfully invaded? Not from the man whom you despise; against him you are always prepared to act—his example will not be dangerous. But, sir, you have more to fear from a nation's favorite; from him whose path has been a path of glory; who has won your gratitude and confidence—against his errors you have to guard, lest they should grow into precedents and become in the end the law of the land. It is the precedent growing out of the proceding in this case that I wish to guard against. It is this consideration, and this only, which will induce me to disapprove the conduct of General Jackson.

The execution of Ambrister and the two Indian chiefs I consider indefensible. The law of nations recognizes but one reason cogent enough to authorize a general to put to death his prisoners. And that is "where the safety of his men requires it." Was that safety implicated by suffering a wretch to live? Or did the continuance of the lives of his Indian captives threaten discomfiture and overthrow? It cannot be pretended.

The first was too insignificant to have excited such fears—the power of the last was broken and all their efforts defeated. The rifle and tomahawk had been struck from their hands, and they were prisoners, defenceless and disarmed. Sir, would it not have better comported with your national character if, instead of executing these captives, the General had said to them, "Go, I give you your liberty: go to your few surviving warriors and tell them that that nation against whose defenceless frontiers you have raised the murderous scalping-knife, with whom you have ever been at war, whose blood you have delighted to drink—that nation, so abused, so insulted, has no law to punish you; it restores you to your native forests, and has only to ask that you will abandon your enmities and instruct your warriors how to respect her rights." I cannot but think that this would better have accorded with the principles of humanity and the laws of nations.

Mr. Poindexter.—The honorable Speaker has said that we have no right to practice retaliation on the Indians; that we have foreborne to do so from the earliest settlement of the country, and that it has become the common law of the land, which we are bound not to violate. Sir, from what source does the gentleman derive the principle that a right, inherent in the nature of man, which he inhales with his first breath—which "grows with his growth and strengthens with his strength"—which has the fiat of God for its sanction and is incorporated in the code of all the nations of the earth, becomes extinct with regard to those who may forbear to exercise it, from motives of policy or humanity, for any number of years? That a common law is thereby entailed on the American people to the latest generations, by which they are required to bend beneath the tomahawk and scalping-knife of the savage, and submit to every cruelty and enormity, without the privilege of retaliating on the enemy the wrongs and injuries we have suffered by this wanton transgression of the rules of civilized warfare? We have, it is true, tolerated much of the inhuman conduct of the aborigines toward our frontier inhabitants. We have endeavored to teach them, by examples of humanity and magnanimity, the blessings and advantages of civilization; but instances are not wanting of the most severe retaliation on these monsters for their deeds of barbarity. If, however, there was not a solitary case on record of the exercise of the right, it remains inviolate and inviolable. No community has the power to relinquish it and bind posterity in the chains of slavish non-resistance. The gentleman's common law will not do for the

free men of the United States; it is unique and absurd. Sir, if the committee will pardon the digression, this novel idea of common law reminds me of an occurrence which is said to have happened in the early period of the settlement of the present polite and flourishing State of Kentucky: A man, in personal combat, deprived his antagonist of the sight of an eye by a practice familiar at that day, called *gouging;* the offender was prosecuted and indicted for the outrage; he employed counsel to defend him, to whom he confessed the fact. Well, sir, said the lawyer, what shall I say in your defence? Why, sir, said he, tell them it is the custom of the country! And I presume, if the honorable Speaker had presided on the trial, he would have said, "Gentlemen of the jury, it is the common law of Kentucky, and you will find a verdict for the defendant." But, sir, to be serious, let me bring the case home to the honorable Speaker himself. Suppose a band of these barbarians, stimulated and excited by some British incendiary, should, at the hour of midnight, when all nature is wrapt in darkness and repose, sound the infernal yell and enter the dwelling of that honorable gentleman, and in his presence pierce to the heart the wife of his bosom and the beloved and tender infant in her arms—objects so dear to a husband and a father—would he calmly fold his arms and say, well, 'tis hard! but it is the common law of the country, and I must submit! No, sir; his manly spirit would burn with indignant rage, and never slumber till the hand of retributive justice had avenged his wrongs.

I have no compassion for such monsters as Arbuthnot and Ambrister; their own country is ashamed to complain of their fate; the British minister here has disavowed their conduct; and we, sir, are the residuary legatees of all the grief and sorrow felt on the face of the globe for these two fallen murderers and robbers! For I call him a murderer who incites to murder.

I shall not attempt the panegyric of General Jackson; but if a grateful country might be allowed to speak of his merits—

Louisiana would say: "You have defended our capital against the veteran troops of the enemy, by whom it would have been sacked, and our dwellings enveloped in flames over the heads of our beloved families."

Georgia: "You have given peace to our defenceless frontier, and chastised our ferocious savage foe and the perfidious incendiaries and felons by whom they were excited and counseled to the perpetration of their cruel deeds. You have opened additional territory to our rich and growing population which they may now enjoy in peace and tranquillity."

The whole Western country: "You have preserved the great emporium of our vast commerce from the grasp of a powerful enemy; you have maintained for our use free navigation of the Mississippi, at the hazard of your life, health, and fortune."

The nation at large: "You have given glory and renown to the arms of your country throughout the civilized world, and have taught the tyrants of the earth the salutary lesson that, in the defence of their soil and independence, free men are invincible."

History will transmit these truths to generations yet unborn, and, should the propositions on your table be adopted, we, the Representatives of the people, subjoin: "Yes, most noble and valorous captain, you have achieved all this for your country; we bow down under the weight of the obligations which we owe you, and, as some small testimonial of your claim to the confidence and consideration of your fellow citizens, we, in their name, present you the following resolutions:

"*Resolved,* That you, Major-General Andrew Jackson, have violated the Constitution which you have sworn to support, and disobeyed the orders of your superior, the Commander-in-Chief of the Army and Navy of the United States.

"*Resolved,* That you, Major-General Andrew Jackson, have violated the laws of your country and the sacred principles of humanity, and thereby prostrated the national character, in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister, for the trifling and unimportant crime of exciting the savages to murder the defenceless citizens of the United States.

"Accept, we pray you, sir, of these resolves; go down to your grave in sorrow, and congratulate yourself that you have not served this great Republic in vain!"

Greece had her Miltiades, Rome her Belisarius, Carthage her Hannibal, and "may we, Mr. Chairman, profit by the example!"

By the treaty of Payne's Landing in 1832 the Seminoles agreed to move west of the Mississippi, but the treaty was repudiated by a considerable portion of the tribe (which in all numbered about 4,000 inclusive of 800 negroes) under the leadership of Osceola, who, on December 28, 1835, surprised and massacred the entire command (100 men) of Major Dade. The war continued until 1842, resulting in the loss of thousands of lives and the expenditure of $10,000,000. All but a few hundreds of the Seminoles were deported to the Indian Territory.

CHAPTER VII

Indian Rights

[Removal of Southern Tribes to the West]

President Jackson on the Removal of the Southern Indians to the West—Bill for This Purpose Introduced in Congress—Debate on It in the Senate between Theodore Frelinghuysen [N. J.] (opposed), and John Forsyth [Ga.] (in favor)—Appeal of the Cherokees to the Supreme Court against Oppressive Acts of Georgia (William Wirt, Attorney); Decision in Their Favor (Opinion of Chief Justice John Marshall); Defiance of the Decision by Georgia, with the Sympathy of President Jackson.

ANDREW JACKSON in his peaceful capacity as President showed a somewhat milder visage toward the Indians than that which he had presented as a general. Very clearly he recognized that the fundamental cause of the constantly recurring difficulties with the aborigines was the conflict of a primitive stage of social organization with an advanced stage, and that the latter was compelled by the very law of its organization to be judge in its own cause and so violate the principle of equity. He therefore advised in his first message to Congress (December, 1829) that the States which included in their borders Indian tribes (who were separate sovereignties by nature as well as by treaties with the Federal Government) should temper with mercy the unavoidable injustice of subjecting them to State control. At the same time he refused to recognize the title to land claimed by the hunter upon it as equal to that of its cultivator, although he did not offer any reasons for the difference.[1]

[1] Herbert Spencer, in his "Social Statics," Chapter IX, edition of 1850, argued that both titles were equally bad in ethics.

Indian Policy

President Jackson in His First Message

The condition and ulterior destiny of the Indian tribes within the limits of some of our States have become objects of much interest and importance. It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another, wholly incompatible with its success. Professing a desire to civilize and settle them, we have, at the same time, lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditure upon the subject, Government has constantly defeated its own policy, and the Indians, in general, receding further and further to the West, have retained their savage habits. A portion, however, of the Southern tribes, having mingled much with the whites and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the only sovereigns within their territories, extended their laws over the Indians, which induced the latter to call upon the United States for protection.

Under these circumstances the question presented was whether the general Government had a right to sustain those people in their pretensions. The Constitution declares that "no new States shall be formed or erected within the jurisdiction of any other State "without the consent of its legislature." If the general Government is not permitted to tolerate the erection of a confederate State within the territory of one of the members of this Union, against her consent, much less could it allow a foreign and independent government to establish itself there.

Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those States.

Our conduct toward these people is deeply interesting to

our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river, and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve, for a while, their once terrible names. Surrounded by the whites, with their arts of civilization, which, by destroying the resources of the savage, doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of the new States whose limits they could control. That step cannot be retraced. A State cannot be dismembered by Congress, or restricted in the exercise of her constitutional power. But the people of those States, and of every State, actuated by feelings of justice and regard for our national honor, submit to you the interesting question whether something cannot be done, consistently with the rights of the States, to preserve this much-injured race?

As a means of effecting this end, I suggest, for your consideration, the propriety for setting apart an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it: each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization; and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this Government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that, if they remain within the limits of the States, they must be subject to their laws. In

return for their obedience, as individuals, they will, without doubt, be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that, in this state of things, claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will, ere long, become merged in the mass of our population.

The President merely *advised* the Indians to exchange their lands for Western territory and to remove thither, but the facts that a bill was introduced in Congress early in the session to appropriate money for the removal of the Indians to what is now called the Indian Territory, and that he signed the bill when passed, caused the opponents of the measure to charge him with responsibility for the "inhuman policy" and even with instigating it.

The bill came before the Senate for discussion on April 9, 1830. Theodore Frelinghuysen [N. J.] vehemently opposed the measure as a contravention of the natural rights of the Indians, and John Forsyth [Ga.] upheld it on the ground of the sovereignty of the Government over the tribes and the maintenance of the supremacy of the white race. The bill was passed on May 26, 1830

"Nominated in the Bond"

Debate on Indian Rights, Senate, April 9-15, 1830

Senator Frelinghuysen said: I proceed to the discussion of those principles which, in my humble judgment, fully and clearly sustain the claims of the Indians to all their political and civil rights, as by them asserted. And here I insist that, by immemorial possession, as the original tenants of the soil, they hold a title beyond and superior to the British Crown and her colonies and to all adverse pretensions of our confederation and subsequent Union. God, in his providence, planted these tribes on this Western continent, so far as we know, before Great Britain herself had a political existence. I believe, sir, it is not now seriously denied that the Indians are men endowed with kindred faculties and powers with ourselves; that

they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished?

Where is the decree or ordinance that has stripped these early and first lords of the soil? Sir, no record of such measure can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's plea of expediency may have found it convenient at any or in all times to recede from the unchangeable principles of eternal justice, no argument can shake the political maxim that, where the Indian always has been, he enjoys an absolute right still to be, in the free exercise of his own modes of thought, government, and conduct.

In the light of natural law can a reason for a distinction exist in the mode of enjoying that which is my own? If I use it for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse, the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and in this ready way the question is despatched. Sir, as we trace the sources of this law we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Who ever represented them or their interests in any congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder that they should so largely partake of a mercenary and exclusive spirit toward the claims of the Indians.

The confiding Indian listened to our professions of friendship; we called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our Southern frontier: it is all that is left to them of their once boundless forests; and still, like the horse-leech, our insatiated cupidity cries, give! give!

Our ancestors found these people, far removed from the commotions of Europe, exercising all the rights and enjoying the privileges of free and independent sovereigns of this new world. They were not a wild and lawless horde of banditti, but lived under the restraints of government, patriarchal in its character, and energetic in its influence. They had chiefs, head men, and councils. The white men, the authors of all their wrongs, approached them as friends—they extended the olive branch; and, being then a feeble colony and at the mercy of the native tenants of the soil, by presents and professions propitiated their good will. The Indian yielded a slow but substantial confidence; granted to the colonists an abiding place; and suffered them to grow up to man's estate beside him. He never raised the claim of elder title: as the white man's wants increased he opened the hand of his bounty wider and wider. By and by conditions are changed. His people melt away; his lands are constantly coveted; millions after millions are ceded. The Indian bears it all meekly; he complains, indeed, as well he may; but suffers on; and now he finds that this neighbor, whom his kindness had nourished, has spread an adverse title over the last remains of his patrimony, barely adequate to his wants, and turns upon him and says, "Away! we cannot endure you so near us! These forests and rivers, these groves of your fathers, these firesides and hunting grounds are ours by the right of power and the force of numbers." Sir, let every treaty be blotted from our records, and in the judgment of natural and unchangeable truth and justice I ask who is the injured and who is the aggressor? Let conscience answer, and I fear not the result. Sir, let those who please denounce the public feeling on this subject as the morbid excitement of a false humanity; but I return with the inquiry whether I have not presented the case truly, with no feature of it overcharged or distorted? And, in view of it, who can help feeling, sir? Do the obligations of justice change with the color of the skin? Is it one of the prerogatives of the white man that he may disregard the dictates of moral principles when an Indian shall be concerned? No, sir. In that severe and impartial scrutiny which futurity will cast over this subject the righteous reward will be that those very causes which are now pleaded for the relaxed enforcement of the rules of equity urged upon us not only a rigid execution of the highest justice, to the very letter, but claimed at our hands a generous and magnanimous policy.

Standing here, then, on this unshaken basis, how is it pos-

sible that even a shadow of claim to soil or jurisdiction can be derived by forming a collateral issue between the State of Georgia and the general Government? Her complaint is made against the United States, for encroachments on her sovereignty. Sir, the Cherokees are no parties to this issue; they have no part in this controversy. They hold by better title than either Georgia or the Union. They have nothing to do with State sovereignty or United States sovereignty. They are above and beyond both. True, sir, they have made treaties with both, but not to acquire title or jurisdiction; these they had before—ages before the evil hour to them when their white brothers fled to them for an asylum. They treated to secure protection and guarantee for subsisting powers and privileges; and, so far as these conventions raise obligations, they are willing to meet, and always have met, and faithfully performed them; and now expect from a great people the like fidelity to plighted covenants.

Sir, if the contending parties were to exchange positions; place the white man where the Indian stands; load him with all these wrongs, and what path would his outraged feelings strike out for his career? A few pence of duty on tea, that invaded no fireside, excited no fears, disturbed no substantial interest whatever, awakened in the American colonies a spirit of firm resistance; and how was the tea tax met, sir? Just as it should be. There was lurking beneath this trifling imposition of duty a covert assumption of authority that led directly to oppressive exactions. "No taxation without representation" became our motto. We would neither pay the tax nor drink the tea. Our fathers buckled on their armor and, from the water's edge, repelled the encroachments of a misguided cabinet. We successfully and triumphantly contended for the very rights and privileges that our Indian neighbors now implore us to protect and to preserve to them. Sir, this thought invests the subject under debate with most singular and momentous interest. We, whom God has exalted to the very summit of prosperity—whose brief career forms the brightest page in history; the wonder and praise of the world; freedom's hope and her consolation; we, about to turn traitors to our principles and our fame—about to become the oppressors of the feeble and to cast away our birthright! Sir, I hope for better feelings.

It is a subject full of grateful satisfaction that, in our public intercourse with the Indians, ever since the first colonies of white men found an abode on these Western shores, we have distinctly recognized their title; treated with them as owners,

and, in all our acquisitions of territory, applied ourselves to these ancient proprietors, by purchase and cession alone, to obtain the right of soil. Sir, I challenge the record of any other or different pretension. When or where did any assembly or convention meet which proclaimed, or even suggested to these tribes, that the right of discovery contained a superior efficacy over all prior titles?

And our recognition was not confined to the soil merely. We regarded them as nations—far behind us, indeed, in civilization, but still we respected their forms of government—we conformed our conduct to their notions of civil policy. We were aware of the potency of any edict that sprang from the deliberations of the council fire; and when we desired lands, or peace, or alliances, to this source of power and energy, to this great lever of Indian government we addressed our proposals—to this alone did we look; and from this did we expect aid or relief.

Who can retain a single doubt as to the unquestioned political sovereignty of these tribes? It is very true that they were not absolutely independent. As they had become comparatively feeble, and as they were, in the mass, an uncivilized race, they chose to depend upon us for protection; but this did not destroy or affect their sovereignty. The rule of public law is clearly stated by Vattel—"one community may be bound to another by a very unequal alliance and still be a sovereign state. Though a weak state, in order to provide for its safety, should place itself under the protection of a more powerful one, yet, if it reserves to itself the right of governing its own body, it ought to be considered as an independent state." If the right of self-government is retained, the State preserves its political existence; and, permit me to ask, when did the Southern Indians relinquish this right? Sir, they have always exercised it, and were never disturbed in the enjoyment of it, until the late legislation of Georgia and the States of Alabama and Mississippi.

To shut up every avenue of escape—to compel us to be faithful—"treaties" are declared, by the charter of our Government, "to be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding." How could the inviolate character of a treaty be more effectually preserved? Let convulsions agitate the commonwealth—let the strifes of party shake the pillars of the political edifice—around the nation's faith barriers are raised, that may smile at the storm. And, sir, if these guards fail, if these defences

can be assailed and broken down, then may we indeed despair. Truth and honor have no citadel on earth—their sanctions are despised and forgotten, and the law of the strongest prevails.

With all the Southwestern tribes of Indians we have similar treaties; not only the Cherokees, but the Creeks, Choctaws, and Chickasaws, in the neighborhood of Georgia, Tennessee, Alabama, and Mississippi, hold our faith, repeatedly pledged to them, that we would respect their boundaries, repel aggressions, and protect and nourish them as our neighbors and friends; and to all these public and sacred compacts Georgia was a constant party. I will now refer the Senate to the law of that State, passed on the 19th December, 1829, as evidence of the faithlessness of Georgia to her plighted word. The title of the law would suffice for my charge without looking further into its sections. After stating its object of adding the territory in the occupancy of the Cherokee nation of Indians to the adjacent counties of Georgia, another distinct office of this oppressive edict of arbitrary power is avowed to be "to annul all laws and ordinances made by the Cherokee nation of Indians." And, sir, the act does annul them effectually. For the seventh section enacts, "that, after the first day of June next, all laws, ordinances, orders, and regulations of any kind whatever made, passed, or enacted by the Cherokee Indians, either in general council, or in any other way whatever, or by any authority whatever, of said tribe, be, and the same are hereby, declared to be null and void and of no effect, as if the same had never existed." Sir, here we find a whole people outlawed—laws, customs, rules, government, all, by one short clause, abrogated and declared to be void as if they never had been. History furnishes no example of such high-handed usurpation—the dismemberment and partition of Poland was a deed of humane legislation compared with this. The succeeding clauses are no less offensive; they provide that "if any person shall prevent by threats, menaces, or other means, or endeavor to prevent any Indian of said nation from emigrating, or enrolling as an emigrant, he shall be liable to indictment and confinement in the common jail, or at hard labor in the penitentiary, not exceeding four years, at the discretion of the court; and if any person shall deter, or offer to deter, any Indian, head man, chief, or warrior of said nation, from selling or ceding to the United States, for the use of Georgia, the whole or any part of said territory, or prevent, or offer to prevent, any such persons from meeting in council or treaty any commissioner or commissioners on the part of the United States, for any purpose whatever,

he shall be guilty of a high misdemeanor, and liable, on conviction, to confinement at hard labor in the penitentiary, for not less than four, nor longer than six years, at the discretion of the court." It is a crime in Georgia for a man to prevent the sale of his country, a crime to warn a chief or head man that the agents of the United States are instructed "to move upon him in the line of his prejudices," that they are coming to bribe him to meet in treaty with the commissioner. By the way, sir, it seems these treaties are very lawful, when made for the use of Georgia.

It is not surprising that our agents advertised the War Department that, if the general Government refused to interfere, and the Indians were left to the law of the States, they would soon exchange their lands and remove. To compel, by harsh and cruel penalties, such exchange is the broad purpose of this act of Georgia. But the law of Georgia is not yet satisfied. The last section declares "that no Indian, or descendant of any Indian, residing within the Creek or Cherokee nation of Indians, shall be deemed a competent witness in any court of this State, to which a white person may be a party, except such white person resides within the said nation." It did not suffice to rob these people of the last vestige of their own political rights and liberties; the work was not complete until they were shut out of the protection of Georgia laws. For, sir, after the first day of June next, a gang of lawless white men may break into the Cherokee country, plunder their habitations, murder the mother with the children, and all in the sight of the wretched husband and father, and no law of Georgia will reach the atrocity. It is vain to tell us, sir, that murder may be traced by circumstantial probabilities. The charge against this State is, you have, by force and violence, stripped these people of the protection of their government, and now refuse to cast over them the shield of your own. The outrage of the deed is that you leave the poor Indian helpless and defenceless, and in this cruel way hope to banish him from his home. Sir, if this law be enforced, I do religiously believe that it will awaken tones of feeling that will go up to God, and call down the thunders of his wrath.

The end, however, is to justify the means. "The removal of the Indian tribes to the west of the Mississippi is demanded by the dictates of humanity." This is a word of conciliating import. But it often makes its way to the heart under very doubtful titles, and its present claims deserve to be rigidly questioned. Who urges this plea? They who covet the Indian lands —who wish to rid themselves of a neighbor that they despise,

and whose State pride is enlisted in rounding off their territories.

Senator Forsyth.—The Senator from New Jersey no doubt hopes that his zeal and industry in the Indian cause will be crowned with success; that he will be able to persuade the Senate, and his friends in the House of Representatives, to interfere, and compel the President to take new views of the relative power of the State and general governments, and that under these new views the physical force of the country will be used, if necessary, to arrest the progress of Georgia. The expectation the gentleman has expressed, that Georgia will yield, in the event of this desirable change in the executive course, is entirely vain. The gentleman must not indulge it; with a full and fair examination of what is right and proper, Georgia has taken her course and will pursue it. The alternative to which the Senator looks, of coercion, must be the result. While I entertain no fears that the gentleman's hopes will be realized, I consider it a matter of conscience, before entering upon the discussion of the general subject of the bill, to relieve the Senator from any apprehension that it may become necessary to cut white throats in Georgia to preserve inviolate the national faith, and to perform our treaty engagements to the Indians.

I propose, sir, for his relief, to show that, considering this as a treaty question, arising under a fair exercise of the treaty-making power with a foreign government, entirely unconnected with any disputes about the relative power of the State government, and the Government of the United States, Georgia stands perfectly justified, upon his own principles, in the steps she has chosen to take with regard to those Cherokees who reside within her territorial limits. The gentleman asserts that the Creeks and Cherokees are acknowledged to be independent nations, by treaties made, first with Georgia, and lastly with the United States; that the independence of those tribes is guaranteed by the United States; that treaties with the United States are the supreme laws of the land, and must be executed, although in collision with State constitutions and State laws. The independence of the tribes rests on this argument—that the formation of a treaty is, between the parties, an acknowledgment of mutual independence. I will not stop to show the numerous exceptions to this rule; insisting, however, that the gentleman shall admit, what I presume nobody will deny, that the two parties to a treaty, independent when it was made, may, by the terms of that instrument, change their characters, and assume those of sovereign and dependent.

Every professional man who remembers his Blackstone knows that legislation is the highest act of sovereignty. Now, sir, by the ninth article of the treaty of Hopewell, of the 28th November, 1785, a treaty which begins with these words: "The United States give peace to all the Cherokees, and receive them into their favor and protection"—strange words to be used to an unconquered and independent nation!—the Cherokees surrender to Congress the power of legislating for them at discretion.

So much for the independence of the Cherokee nation. It may be asked, however, what has this treaty to do with the question between Georgia and the Cherokee Government? It does not follow that, because the United States have sovereignty over the Cherokees, that the State has it. The compact made by the United States with Georgia, in 1802, furnishes the satisfactory answer to this inquiry. The United States, having acquired, by the ninth article of the treaty of Hopewell, the power of legislation over the Cherokees, had the goodness to transfer it to the State. Gentlemen may amuse themselves with finding fault with this transfer by the United States of a power granted to them, and intended to be used by the United States only. They may prove it, if they choose, an act of injustice to the Cherokees—a violation of faith. We will not take the trouble to interfere with such questions. The United States obtained, by treaty, the power to legislate over the Cherokees, and transferred it to Georgia. The justice and propriety of this transfer must be settled by the United States and the Cherokees. In this settlement Georgia has her burden to bear, as one of the members of the Union; but no more than her fair proportion. If any pecuniary sacrifices are required to do justice to the injured, let them be made: if a sacrifice of blood is demanded as a propitiation for this sin, to avert the judgment of Heaven, let the victim be selected. Justice demands that it be furnished by the whole country, and not by Georgia; and if the honorable Senator from New Jersey will fix upon one between the Delaware and the Hudson, he will escape all imputations of being actuated by any motive but the love of justice—pure justice. For us it is enough to have shown that what we claim is in our bond, and, until the gentleman can rail off the seal, our claim must be allowed, though it should extend to the penalty of a pound of flesh.

The Cherokees appealed to the Supreme Court against the oppressive acts of Georgia and the support

of the State's position by the act of Congress. Their advocate was the able and brilliant William Wirt, ex-Attorney-General. The complaint was not accepted by the Court on the ground of non-jurisdiction, since it described the Cherokees as a "foreign state." However Chief Justice John Marshall declared that, in the opinion of the majority of the court, the Cherokees were "a distinct political society, separated from others, and capable of managing its own affairs and governing itself," and that the courts were bound by those acts which recognized this character of the tribe.

To this opinion of the Supreme Court, as well as to a "writ of error" served by the Court in the case of a Cherokee murderer who had been condemned to death by the Superior Court of the State, Georgia paid no attention. She hanged the accused Cherokee and began a system of harassing the tribe by imprisonments on trumped-up charges, forcible expulsion on various legal pretexts from certain of their lands, and by harsh treatment of Northern missionaries to the Indians. One of these who had failed to leave the Territory within the time set for him to do so was condemned to four years' imprisonment at hard labor. His case (*Worcester* vs. *State of Georgia,* Peters vi, pp. 521 *et seq.;* Curtis x, pp. 215 *et seq.*) came before the Supreme Court, which declared all the claims made by Georgia on the ground of her "sovereignty" to be unconstitutional and the sentence of Worcester to be null and void.

The State court of Georgia refused to accept the decision of the Federal court, or to grant a writ of *habeas corpus* which was served upon it, and kept Worcester and a fellow missionary in prison for a year, when they were pardoned by Governor Lumpkin.

During this contention between Georgia and the Federal judiciary President Jackson gave no indication of his later determination to enforce Federal authority when it came into conflict with State. Indeed, it is related that he said: "John Marshall has made his decision; now let him enforce it!" Had a "Jackson man" been in the place of the Chief Justice, instead of one

who was firmly opposed to the President personally and to his policy of increasing the executive powers at the expense of the judicial, Jackson would probably have not been so indifferent. As it was, his inaction in this case was brought up against him in the debate on the so-called "Force Bill" [see Vol. V, page 92 ss.], with the insinuation that he was at the earlier period secretly encouraging the State.

CHAPTER VIII

Reform of Our Indian Policy

[granting land in severalty, etc.]

Outbreak of Minnesota Indians [1863]—Representative Ignatius Donnelly [Minn.] on "Reform of the Indian System"—Philanthropic Indian Policy of President Ulysses S. Grant—Message of President Rutherford B. Hayes Recommending Grants to Indians of Land in Severalty—Debate in the Senate on Bill of Richard Coke [Tex.] to Purchase Lands of the Disaffected Colorado Utes, and to Remove These Indians Elsewhere; Discussion Develops into a General Debate on Indian Policy: Sen. Coke Supports Grants of Land in Severalty; Henry M. Teller [Col.] Opposes Such Grants, and Attacks the Mistaken Philanthropy of the Proposed Policy; N. P. Hill [Col.] Supports the Bill; John T. Morgan [Ala.] Advises Subjecting Indians to the Common Laws of the Land; Henry L. Dawes [Mass.] Advocates an Entirely New Policy, with Education as a Basis; Preston B. Plumb [Kan.] Opposes Education; James G. Blaine [Me.] Replies to Plumb; Bill Is Enacted.

DURING the Civil War there occurred an uprising of Minnesota Indians (1863), which was suppressed by the United States Army. This brought forward the questions of whether our general system of treating the Indians was not radically wrong, and whether an entirely new policy should not be adopted.

On February 7, 1865, Ignatius Donnelly [Minn.] delivered the following speech in the House of Representatives:

Reform of the Indian System

Ignatius Donnelly, M. C.

Since the 4th of March, 1789, the Government has appropriated, directly for the benefit of the Indians, the enormous sum of $89,155,098.32.

Where now is all this wealth? Has it reached the Indians? Have its accumulations descended from father to son? Do we find it represented to-day among the tribes by comfortable homes and overflowing granaries? No. Upon our Western prairies are scattered this miserable, degraded, impoverished people, an everlasting reproach to our Christian nation and a disgrace to humanity. Where, then, are these great sums? They have gone to fill the coffers of those who stood between the Government and the Indian, and deceived the one while they robbed the other.

Mr. Chairman, I feel that it is my duty to speak of these things. The evil results of this pernicious system have descended upon my own State in fire and blood. An innocent and an unoffending population of white settlers have paid the penalty for years of misgovernment with their lives; and, although the scenes of devastation and ruin and horror have passed away from my State, I trust forever, the system still lives, and is already preparing new stores of suffering and calamity for other communities. When I have looked upon the humble homestead of the frontiersman in ashes, and beheld the corpse of its owner lying gashed and bloody beside it, I could not but trace home the terrible responsibility for all this evil to this Capitol, and to that system which, taking charge of a savage race, retained them in barbarism, made no proper efforts for their civilization, and, at last, turned them loose like wild beasts to glut their brutal passions and infuriated rage upon an unsuspecting people.

I assert, unhesitatingly and upon mature reflection, that not even our white race could rise from barbarism to civilization against the pressure of such a system as that under and by means of which it is proposed to civilize the Indians.

Let us look at some of its details.

One of the Red Lake Chippewa chiefs of Minnesota said but two years since, when solicited to part with the lands of his tribe: "When we sell our lands we dig our graves."

The savage had summed up the question in a sentence. The Indian is a hunter, and requires large areas of land in which to find his support. Deprive him of these lands, fill them with a white population, which drives out the wild game, and at the same time give him no instruction to enable him to compete in the arts of agriculture with the white man, and he becomes, perforce, a vagabond, a thief, and, it may be, even an assassin.

The civilization of the Indian becomes, therefore, a matter

of the first necessity to the comfort and safety of his white neighbor. Injustice to him is injury to ourselves.

> "This sword's hilt is the sharpest, and cuts through
> The hand that wields it."

But what is the course of the Government? It concentrates upon a small strip of land the population for whose sustenance the whole of the ceded territory was before necessary. It surrounds this fragment this island of barbarism, with a dense civilized white population. The savage must either remain upon his reservation and starve or invade the precincts of the white man and beg and steal. The strain is too great for human nature. Collisions follow, and both white and red are speedily involved in common suffering and ruin, equally victims of a pernicious system.

But it may be said that the Indian can become an agriculturist on his reservation.

Civilization is a tender plant. Centuries of contact with the Roman power left our own ancestors still savages. When, at last, the spark of civilization was warmed into a little flame, how many slow and weary ages did it take to light up the horizon with its blaze? The lapse of thousands of years extends between the nomad of eastern Europe, who carried the scalp of his enemy at his saddle-bow, and the highly refined citizen of England or America. Shall we, then, hope that, by the mere power of the human will and the force of a few legislative enactments, we shall, in a fortnight, turn a band of savages, collected on their reservation like cattle in an inclosure, into civilized men?

The Government seems to have possessed some faint conception of what was required of it. It employs a farmer for the tribe, it hires a blacksmith, and it furnishes some agricultural implements. These are, it is true, glimpses of the truth: but there it stops. What is the result? The Indian who has industry and energy enough to cultivate a field and raise a crop lies at the mercy of every roaming vagabond of the tribe, who, returning bootless from his hunting excursion, descends upon his store of maize and potatoes, and reënacts

> "The good old rule, the simple plan,
> That they shall take who have the power,
> And they shall keep who can."

There is no military or police force to protect industry against robbery. What white man would overcome all the

prejudices of education, all the habits of years, all the teachings of superstition, and endure the cold of winter and the heat of summer to find, at last, the results of his labor swept away from him by some idle and savage neighbor?

Nor is this all. This insecurity extends to the very fields the Indian cultivates. It has been the policy of the Government to withhold from him that encouragement to labor which accompanies possession of the soil. If it is true, as believed by some, that a system of periodical redistribution of the land among all the members of the clan arrested the growth of civilization in the British islands for centuries, what shall we say of this system which deprives the Indian of his field, not periodically, but at the bidding of a distant and unseen power, or which leaves him a mere occupant and squatter, open at any moment to invasion by his more powerful white neighbors? Again, I ask, what white man could be induced to labor to enhance the value of his fields if the very increase of their value tended only to hurry him more rapidly from them? Who is he that toils willingly for the advantage of another?

But even this is not all. It was said by some one of old: "If vice were on the whole profitable, then the wise man would be the villain." The essence of virtue is that it meets with its reward. Hence, any system of government that rewards equally vice and virtue, indolence and industry, is corrupt and rotten, and can breed only the most disastrous consequences. And yet this is the system adopted by us in our treatment of the Indians! The annuities are distributed among the members of the tribe without any regard whatever to the conduct of the recipients. The ruffian who robs his industrious neighbor draws an equal share with the poor wretch he has despoiled. Nay, more, he may go outside of the reservation and prey upon the adjacent white population, and the claims of the white man for the damages he inflicts are paid by the agent out of the total fund of the tribe; so that the many who are innocent suffer for the one who is guilty. In such a state of society the highest premiums are offered for crime and disorder; and it may well be believed that the most sagacious would find it to their interest to become the most vicious.

I need not here enlarge upon that other evil, and parent of many evils, the unjust treatment of the Indians by their agents. I do not assert that all those who occupy or have occupied such positions have proved themselves dishonest; but I do believe that, under the present system, the temptations are too strong for ordinary human virtue. The agent finds himself far away

from white society, in the midst of a barbarous population, sunk in ignorance and debauchery and regardless of their own interests; while through his hands pass large sums of money intended for their benefit. He is asked to protect those who cannot protect themselves; to deal honestly by those who are unable to bring him to account; and to feel his responsibility to morality and justice in an almost irresponsible position. Until we can find among the followers of the great parties of the day a sufficient number of pure-minded and disinterested philanthropists to fill all these agencies, and to endure exile, discomfort, and small salaries for honesty and righteousness' sake we must expect this evil to continue. The evil is in the system, not in the men who represent it. If the reproach can be addressed to our Government which was made to Tiberius: "It is you that are to blame for these things, that have committed your flocks, not to shepherds, but to wolves"; the deeper reproach can also be uttered against us, that we have for years permitted a system which, by its own force, has created those wolves even out of the most trusted of our shepherds.

What should be the course adopted by the Government toward the Indians?

In the first place, the whole system of treaties should be abrogated. We have filled a thousand octavo pages of our statutes with such useless compacts. We need no such plea to justify us in taking the lands of the Indians. If one hundred human beings can support themselves on a tract of land where one savage finds a precarious subsistence, the one hundred have a right to go there and take possession of and cultivate it. The right of man to life and to the earth as a means of life is paramount to all else. But, in seizing the Indian's territory, the new-comers must not consign him to starvation; they must share the land with him, and teach him those arts by which a small portion of it will sustain him as fully as the whole did formerly.

In the next place, whatever land is given to the Indian should be given him by irrevocable patent; so that he can never be disturbed in his possession by the pressure of an advancing population. It should also be guarded in such manner that he cannot, for many years, sell or incumber it. The Government must treat him in this respect as its helpless and dependent ward.

In the next place, it would be well that each reservation should be located near to or surrounding a military post, so as to secure at all times a perfect administration of justice

through the military authorities, and full protection to the industrious and deserving from the vicious and depraved.

In the next place, there should be erected for each family a comfortable log house; and a field should be broken sufficient for their support upon the land patented to them by the Government. They should be furnished with sufficient tools, seed, and working cattle for its cultivation. The aid of the Government should then be given liberally to the most deserving, leaving the worthless to work or starve. A few successful farmers would civilize a whole community, even as among ourselves a few cultivated persons will refine an entire neighborhood.

In the next place, while it is recollected that the knowledge of a civilized language does not constitute civilization, nevertheless the English language should be introduced among them; and the education of their children should at the same time be made compulsory.

It should be recollected that civilization consists of certain habits of life, productive of comfort and ease; upon these may repose a higher structure of generous thoughts and ennobling religious impulses. Christianity does not consist in the holding of certain points of doctrinal belief, nor in the employment of any particular routine of expression, but in that adaptation of the whole inner nature of the man to the purity and elevation of its great principles. Hence it can never be the religion of savages. To leave the Indian in his barbarian state and, at the same time, seek to force into his mind the sublime doctrines of the Sermon on the Mount is to attempt nature in an inverted order. *The religious influence of the nation should, therefore, first lend itself to a reformation of the general system.* Having prepared the soil it can then proceed with some hope of success to the process of the cultivation of the individual.

But how, it may be asked, are we to avoid the corruption so generally admitted?

I answer, by some such system of checks as is used in all other departments to insure honesty. Why cannot the law provide that the various goods distributed among the Indians shall be dealt out by the military officer of the post, or by the quartermaster of the post, taking their receipts, witnessed by the agent? The report of the military officer could thus be compared with the report of the agent, and fraud could only follow by collusion between them. The military officer, holding his place for life, would have much less inducement to fraud than the agent who anticipates removal in a short period of time.

It might also be well to locate the reservations of the Indians outside of the organized States, and as far as possible from the white settlements. In this way their new customs and usages will have attained some solidity before they are brought into contact with the whites. When the wave of population rolls around the reservation, the white pioneer will find the red man a farmer like himself, occupying land held like his own by irrevocable patent, and possessing some share of intelligence and education with which to understand and defend his rights. No longer vicious and thieving, he will recognize in him a quiet and peaceable neighbor, and will feel no desire and be under no necessity to drive him from his home.

I would further suggest that, while a tract of one or two hundred acres of land should be given to each family, the tribe should be gathered together in villages, with a house for each family surrounded by five or ten acres of cultivated land. An Indian family will not ordinarily use more than that amount. When the energy of any individual oversteps this limit he can cultivate his separate farm. It requires the highest types of the highest races to encounter a life of isolation and solitude upon large farms on the frontier. The weaker races are gregarious. Moreover, thus assembled they are more susceptible of control and instruction.

In fact, this system of concentration could, in course of time, be applied to all the Indians within the limits of the United States. Their total number is but 314,622. They could be concentrated, if civilized, upon an area no larger than two or three of our counties; they could be speedily made self-sustaining; and, instead of inflicting injuries on our frontiers to a degree vastly disproportionate to their numbers, they could be converted into harmless agriculturists and peaceful citizens.

But the question may be asked: Is the Indian capable of civilization? I answer unhesitatingly, yes.

Here the speaker quoted extensively from "The Conquest of Mexico," by William H. Prescott, to show the high state of civilization attained by the Mexican Indians.

It may be urged that the Aztecs and the ordinary Indians of our Western prairies are two distinct races. This is not so. They are but different tribes of the same race. The construction of their languages, as well as their physical conformation, evidences that all the varieties of the red man on both the con-

tinents are ethnologically members of the same race. The Aztecs were a wild tribe who descended upon the more civilized Toltecs, and in a few centuries passed from a condition analogous to that of our Western Indians to the one in which Cortes found them. If, then, it was possible for the red man to create, of his own force, a civilization, can it be doubted that it is in the power of a superior race, under just and wise laws, to communicate civilization to him?

We of the northern races of Europe expelled the Indian as we colonized the country; but in the regions of the continent settled by the Latin races this has not been the case. In Mexico, in Central America, and in South America, the aboriginal population continued in the occupancy of the land, and, from the time of their conquest, they have been steadily absorbing by intermarriage the European blood among them, so that at this day those countries possess less of white blood than they did a century since. As the native population awakens from the torpidity of subjugation and begins to feel the power of superior numbers, it is seeking to regain political ascendency. The Creole population does not increase in numbers; the Indian, on the contrary, is advancing with rapid strides. To-day, in Peru proper, the Indians are more than three times the entire population of every other kind. From a condition of slavery they have risen into freedom. Formerly excluded from the schools, even as our own slaves were excluded in the South, all the institutions of learning are now thrown open to them, and they are entering in large numbers the colleges of the country.

While we find Mexico electing, in the person of Juarez, an Indian to its presidency, we are at the same time informed that secret movements are on foot to reëstablish the sovereignty of the ancient race in Peru, Bolivia, Ecuador, and Chili.

Let us not be blind to these great movements; they are God's solution of the vexed questions of race which now agitate the world. Who shall say that the Indian shall not, through the instrumentality of our institutions and under the protection of our Government, establish once more upon this continent the civilization of the Montezumas and the Incas, kindled into new splendor by the genius of universal liberty, and softened into refined beauty by the touch of Christianity? The custodians of a civilization which we did not originate, we have no right to withhold it from those races, whatever may be their color, with whom we may come in contact; nor can the nation find a nobler task than that of so bending its energies that this entire New World, from one extremity to the other, shall exult,

through all its diversities of climate and all its zone of color, in one continuous and unending display of human industry and happiness. In that not distant day, when vast communities of black men along the Gulf, and still larger communities of red men in Mexico and South America, shall be united to us by all the affiliations of commerce and all the sympathy of kindred institutions, let us not have to reproach ourselves with having destroyed or permitted the destruction of any portion of the people of this continent. Let it not be said of us that, while we were reflecting civilization and liberty upon the world, we, at the same time, exterminated the aboriginal population of our own country.

President Ulysses S. Grant inaugurated a philanthropic policy toward the Indians, the direction of which he placed largely in the hands of humanitarians.

In his first annual message to Congress, in December, 1869, he said:

A System to Preserve and Not Extinguish the Race

President Grant on Indian Policy

From the foundation of the Government to the present the management of the original inhabitants of this continent, the Indians, has been a subject of embarrassment and expense, and has been attended with continuous robberies, murders, and wars. From my own experience upon the frontiers and in Indian countries I do not hold either legislation or the conduct of the whites who come most in contact with the Indians blameless for these hostilities. The past, however, cannot be undone, and the question must be met as we now find it.

I have attempted a new policy toward these wards of the nation—they cannot be regarded in any other light than as wards—with fair results so far as tried, and which, I hope, will be attended ultimately with great success. The Society of Friends is well known as having succeeded in living in peace with the Indians in the early settlement of Pennsylvania, while their white neighbors of other sects in other sections were constantly embroiled. They are also known for their opposition to all strife, violence, and war, and are generally noted for their strict integrity and fair dealings. These considerations induced me to give the management of a few reservations of Indians

to them, and to throw the burden of selection of agents upon the society itself. The result has proven most satisfactory.

For superintendents and Indian agents not on the reservations officers of the army were selected. The reasons for this are numerous. Where Indian agents are sent there or near there troops must be sent also. The agent and the commander of troops are independent of each other, and are subject to orders from different departments of the Government. The army officer holds a position for life; the agent one at the will of the President. The former is personally interested in living in harmony with the Indian, and in establishing a permanent peace to the end that some portion of his life may be spent within the limits of civilized society. The latter has no such personal interest. Another reason is an economic one; and still another, the hold which the Government has upon a life officer to secure a faithful discharge of duties in carrying out a given policy.

The building of railroads, and the access thereby given to all the agricultural and mineral regions of the country, is rapidly bringing civilized settlements into contact with all the tribes of Indians. No matter what ought to be the relations between such settlements and the aborigines, the fact is they do not harmonize well, and one or the other has to give way in the end. A system which looks to the extinction of a race is too horrible for a nation to adopt without entailing upon itself the wrath of all Christendom, and engendering in the citizen a disregard for human life and the rights of others dangerous to society. I see no substitute for such a system except in placing all the Indians on large reservations as rapidly as it can be done, and giving them absolute protection there. As soon as they are fitted for it they should be induced to take their lands in severalty and to set up territorial governments for their own protection.

The results of this policy were set forth by his successor, Rutherford B. Hayes, with recommendations for its extension, in his third annual message of December 1, 1879.

Land in Severalty for the Indians

President Hayes

After reporting outbreaks of the White River Utes in Colorado and of the Apaches of New Mexico under

Chief Victoria, resulting in bloodshed and destruction of property, the President said:

While these occurrences, in which a comparatively small number of Indians were engaged, are most deplorable, a vast majority of our Indian population have fully justified the expectations of those who believe that by humane and peaceful influences the Indian can be led to abandon the habits of savage life and to develop a capacity for useful and civilized occupations. What they have already accomplished in the pursuit of agricultural and mechanical work, the remarkable success which has attended the experiment of employing as freighters a class of Indians hitherto counted among the wildest and most intractable, and the general and urgent desire expressed by them for the education of their children, may be taken as sufficient proof that they will be found capable of accomplishing much more if they continue to be wisely and fairly guided. The "Indian policy" sketched in the report of the Secretary of the Interior [Carl Schurz], the object of which is to make liberal provision for the education of Indian youth, to settle the Indians upon farm-lots in severalty, to give them title in fee to their farms inalienable for a certain number of years, and, when their wants are thus provided for, to dispose by sale of the lands on their reservations not occupied and used by them, a fund to be formed out of the proceeds for the benefit of the Indians, which will gradually relieve the Government of the expenses now provided for by annual appropriations, must commend itself as just and beneficial to the Indians, and as also calculated to remove those obstructions which the existence of large reservations presents to the settlement and development of the country. I therefore earnestly recommend the enactment of a law enabling the Government to give Indians a title in fee, inalienable for twenty-five years, to the farm lands assigned to them by allotment. I also repeat the recommendation made in my first annual message, that a law be passed admitting Indians who can give satisfactory proof of having, by their own labor, supported their families for a number of years, and who are willing to detach themselves from their tribal relations, to the benefit of the homestead act, and to grant them patents containing the same provision of inalienability for a certain period.

The experiment of sending a number of Indian children, of both sexes, to the Hampton Normal and Agricultural Institute, in Virginia, to receive an elementary English education and

practical instruction in farming and other useful industries, has led to results so promising that it was thought expedient to turn over the cavalry barracks at Carlisle, in Pennsylvania, to the Interior Department for the establishment of an Indian school on a larger scale. This school has now one hundred and fifty-eight pupils, selected from various tribes, and is in full operation. Arrangements are also made for the education of a number of Indian boys and girls belonging to tribes on the Pacific slope in a similar manner, at Forest Grove, in Oregon. These institutions will commend themselves to the liberality of Congress and to the philanthropic munificence of the American people.

Last spring information was received of the organization of an extensive movement in the Western States, the object of which was the occupation by unauthorized persons of certain lands in the Indian Territory ceded by the Cherokees to the Government for the purpose of settlement by other Indian tribes.

On the 29th of April I issued a proclamation warning all persons against participation in such an attempt, and by the cooperation of a military force the invasion was promptly checked. It is my purpose to protect the rights of the Indian inhabitants of that Territory to the full extent of the executive power. But it would be unwise to ignore the fact that a Territory so large and so fertile, with a population so sparse and with so great a wealth of unused resources, will be found more exposed to the repetition of such attempts as happened this year, when the surrounding States are more densely settled and the westward movement of our population looks still more eagerly for fresh lands to occupy. Under such circumstances the difficulty of maintaining the Indian Territory in its present state will greatly increase, and the Indian tribes inhabiting it would do well to prepare for such a contingency. I therefore fully approve of the advice given to them by the Secretary of the Interior on a recent occasion, to divide among themselves in severalty as large a quantity of their lands as they can cultivate; to acquire individual title in fee, instead of their present tribal ownership in common, and to consider in what manner the balance of their lands may be disposed of by the Government for their benefit. By adopting such a policy they would more certainly secure for themselves the value of their possessions, and at the same time promote their progress in civilization and prosperity, than by endeavoring to perpetuate the present state of things in the Territory.

The question whether a change in the control of the Indian

service from the Interior to the War Department should be made, was in the Forty-fifth Congress referred to a joint committee of both Houses for inquiry and report. Since then, the committee having reported, the question has been decided in the negative by a vote in the House of Representatives.

In view of the fact that further uncertainty on this point will be calculated to obstruct other much needed legislation, to weaken the discipline of the service, and to unsettle salutary measures now in progress for the government and improvement of the Indians, I respectfully recommend that the decision arrived at by Congress at its last session be permitted to stand.

On March 22, 1880, Richard Coke [Tex.], chairman of the Committee on Indian Affairs, introduced in the Senate a bill to purchase the lands offered by the disaffected Ute Indians of Colorado, the Indians agreeing to move to unoccupied lands elsewhere. It came up for discussion on April 2. The discussion at once took on the form of a general debate on Indian policy.

Our Indian Policy

Senate, April 2-12, 1880

Said Senator Coke:

The policy of the bill is to break up this large reservation, to individualize the Indians upon allotments of land; to break up their tribal relations and pass them under the jurisdiction of the Constitution and laws of the United States and the laws of the States and Territories in which the lands are situated, to aid them with stock and with agricultural implements, and by building houses upon their allotments of lands, to become self-supporting, to be cultivators of the soil; in a word, to place them on the highway to American citizenship, and to aid them in arriving at that conclusion as rapidly as can be done.

The bill is in many respects a departure from the ancient and established policy of the Government with reference to the Indian tribes. The advance of settlements in the West has been so rapid that it has been found inexpedient and impolitic, as leading to collisions between the whites and Indians, to continue the system of locking or attempting to lock up large tracts of land within their exclusive occupancy. The whites cannot be restrained from intrusion upon these large reservations. The

Indians will not use them except for hunting purposes and the whites will not permit them to remain unused.

This bill simply recognizes the logic of events, which shows that it is impossible to preserve peace between the Indians and the whites with these immense bodies of land attempted to be locked up as Indian reservations.

I will state that this bill is regarded by the Secretary of the Interior as of the very first importance, and it is hoped that it will be acted on at once by the Senate and passed. It is necessary in view of the approach of spring, the time for farming operations, if we intend that these Indians shall do anything during the ensuing agricultural season, that they shall go on at once.

It is necessary for an additional reason that the reservation which is ceded by this agreement is being invaded at all points or intruded upon by whites who are locating ranches and staking off mining claims, and, unless the cession is completed, under existing treaties with the Ute Indians it is protected against this intrusion, and this must necessarily lead to collisions with the Indians.

Henry M. Teller [Col.] opposed the bill.

Mr. President, we have now arrived at a stage in the public mind when the question is asked in every portion of the country, what shall we do with the Indians? The people are dissatisfied with the conduct of Indian affairs and demand a radical change. It is demanded alike in the interest of the whites and of the Indians. The continued Indian wars, terminating in disaster to both races, treaties and agreements made to be broken on both sides, have convinced the people that there is a defect in the present system. The men who have studied this problem the most are the most outspoken in their condemnation of the system and its management. Is it possible to adopt a system that shall do justice to the Indian and white man alike, that shall put the Indian on the road toward civilization and Christianity? If this can be done, all will admit that it is the duty of the dominant race to take all necessary steps to accomplish so desirable an end. That it is a difficult task, the almost unbroken line of failures for nearly three hundred years sufficiently demonstrates.

The early settlers of this country attempted this task, devoting much time and money to the education of this people, and not less than four of our principal schools were organized for

the education of Indians, and Indians alone. I need not say that the attempts to civilize Indians by first educating them failed, and that the efforts of the worthy men to make Christians of these pagans not only failed, but brought destruction on the objects of their solicitude. The powerful tribes with which they fought and treated and fought and treated again have in many instances no living representative left.

The early history of the country is full of the conflicts between the whites and Indians, and as the lines of settlement swept westward toward the setting sun the conflict increased in intensity. The history of the country may be said to be one continued history of Indian wars, for not a year passed but in some part of the land the conflict was carried on; burned houses, wasted fields, murdered settlers, indignities on the dead, and worse ones on the living are recorded in every chapter of our history.

Is it strange that the men who have carried the lines of settlement westward and have come in contact daily with the Indians, feeding them one day and fighting them the next, studying their character in the school of experience, knowing their many vices and few virtues, and who of all men are interested in a peaceful solution of this problem, should demand of the men to whom this solution is intrusted more than a passing acquaintance with the subject?

Mr. President, would it not be thought essential that the men to whom this great work was intrusted should be learned in the history of the Indian race, should have a knowledge of their character, laws, customs, or religion; should even have studied the history of the past efforts at civilization? Yet we have relied and still rely on agents ignorant of all these things to accomplish the greatest work ever given to man to do for his fellow, that is, to bring a savage into a civilized state.

Theories worn out and disproved, systems tried and abandoned long ago, are at once adopted by these neophytes and we are promised an immediate solution of this problem. Flouring mills are to be built in the wilderness hundreds of miles from grain fields; reapers and mowers are to be sent by the car load for the use of Indians whose very religion it is to despise manual labor and who will choose death in preference to the degradation of work; houses are to be built for dwellers in tents whose religion makes it a crime to remain in a house where there has been a death, and when the first death occurs the house must be burned or abandoned.

I am told, although I do not know how true it is, that the

honorable Secretary of the Interior has discovered a system which once adopted on the part of the Government will work wonders with the savage Indian. I do not know the title of the bill prepared, but I do understand the principle on which it is based. This system will be presented to us in a few days, and for the lack of other title it might be entitled: An easy solution of the Indian problem in one lesson. What is this system that is to work such wonders? Land in severalty. Give, says the honorable Secretary, to each Indian, great and small, from one hundred and sixty to three hundred and twenty acres of land, mark it on a map, fix its boundaries in a book, build a house on it, tell the Indian it is his, and the great work is accomplished! It is the lack of land in severalty that has kept the Indian a savage for centuries! The problem that has disturbed the people of Europe and America for three hundred years is solved in a day, and how simple it is!

Mr. President, this is called by the honorable Secretary the "new system." This system is not without merit, but it is not a new system and not original with the honorable Secretary of the Interior. In 1646, John Eliot, the apostle to the Indians, procured the allotment of land in severalty to certain Massachusetts Indians, but they remained savages still. It has been a feature in every administration of Indian affairs since this Government was founded, and within the last thirty-six years we have provided in not less than sixty treaties and agreements that land should be allotted to the Indians in severalty. In all of these the Indians might have taken lands, and in nearly all of them they pledged themselves to take the lands in severalty; but the record shows that very few did so take land, and those who did make selections did not as a general thing remain on the land. Land in severalty as a means of civilization has proved a failure.

Since 1868 the Ute Indians might have taken land in severalty; their treaty so provided; but not one application was made. If Indians can be induced to take lands in severalty and reside on the same, one step at least has been taken toward civilization. But it is not the first nor the second step and will not be taken by the Indian until he has made some progress in civilization.

The social organization of all the Indians is by clans or families, each clan consisting of a body of relatives. Two or more clans compose a band, and several bands a tribe; several tribes a confederation. The only permanent and stable organization is that of the clan. The tribes and confederacies may dissolve

and fall apart, but the clan never. The only dissolution of a clan is by the death of its members.

The right of property as recognized by an Indian is the right in his clan. Property in severalty is unknown to the wild Indian. If a hunter kills a deer or a buffalo, it belongs to the clan and not to the hunter. His rights are no greater in it than those of any other member of the clan. All right to the soil and the productions thereof inheres in the clan, and he who takes land in severalty or cultivates the common soil, claiming the productions thereof for himself alone, is guilty of a crime against Indian society and one not likely to be forgiven. It has been well said that Indian virtues consist chiefly in the recognition of clan rights, and crimes in Indian society consist chiefly in a violation of those rights.

In dealing with Indians it should never be forgotten that the institutions of civilized society are crimes in Indian society, and the moral sentiment of the Indian against such recognized crimes is not less severe than the moral sentiment of civilized people against recognized crimes. The murder of an enemy or the robbery of a foe is not a crime in Indian society, but the violation of a clanship right is. The destruction of the clan is to the Indian mind the destruction of the Indian himself, and he therefore instinctively rebels against any movement that tends to weaken his clan. To adopt the habits, customs, and laws of the white man is, in his judgment, to cease to be an Indian, and the meanest Indian in the land would not exchange his place with that of the most favored white.

Thus, when we compel an Indian to take land in severalty, we compel him to commit a crime against Indian society, and, as he believes, to aid in his own destruction.

We have not been able (save in a limited way) to induce the most civilized Indians to take land in severalty. The Indians of the Indian Territory resist with great energy all attempts to induce them to take land in severalty, and the Indians in the State of New York, with surrounding civilization, refused to take land in severalty until after 1842. Many of them refuse to take it to this day.

The ideas entertained by Indians for centuries will not be abandoned in a day by the adoption of a new system on the part of the Government, or an old one labeled a new one.

A few years since [early in Grant's administration] the attention of the whole country was directed toward this Indian question. The system then pursued was with one voice pronounced defective. We then adopted an addition to the already

cumbersome machinery of the Indian Bureau, by creating a board of Indian commissioners, composed of men noted for their philanthropy and intelligence; and, that their motives might not be suspected, we required them to give their time and attention to the Government without price. In the main they have been good men; but they have been inefficient, failing to discover some of the most glaring outrages of the Indian Bureau in time to save the credit of the nation.

It was thought by many at the time that with the appointment of this board the Indian trouble would cease. It promised as much good as the present new system. Every new system will have its advocates, and the less a man knows of the difficulties of dealing with the Indians the more ambitious he is to introduce a new system and the more confident he is of its success.

Mr. President, the great trouble in our dealing with the Indian is our ignorance of his laws, customs, character, and religion. We insist on treating him as if he was a civilized man, when he ought to be treated as a savage, full of the superstitions and weaknesses that belong to savage life. This error is shown in this agreement and bill before us. The Secretary tells us it is a fair and intelligent settlement between the whites and Indians, or, in other words, between civilization and savage society. And he would fain make us believe that he has discovered a way to destroy a prejudice, the growth of centuries, in a day, and force the savage mind to adopt the ideas, customs, and laws of civilized life at one step. It cannot be done either by the new system or the old.

What has called forth this effort on the part of the Secretary of the Interior? Why does he appear before the committees of the House and Senate and urge this bill?

He says to avert a war, to save money and blood. In my judgment it is to save the reputation of his department; it is to cover up, under the plea of keeping the peace, the stupidity and ignorance that have signalized the conduct of the Indian Office during the last three years. The honorable Secretary of the Interior cannot be unmindful of the fact that from all parts of the country where Indians are located complaints are made by both whites and Indians of mismanagement. Rose-colored reports, depicting the astonishing rapidity with which the Indians are progressing in civilization, will not cover up or disguise the fact that within the last three years the most disgraceful chapter of Indian history has been written.

The removal and treatment of the Poncas in the Indian Ter-

ritory; of the Nez Percés in Idaho and subsequently in the Indian Territory; the murdered settlers in Kansas whose death is charged to lie close to the door of the Indian Bureau; the conflict with the Northern Cheyennes; the killing of Thornburgh and his brave troops in Colorado; the murder of the philanthropic Meeker and his associates; the treatment of the captive women whose husbands and fathers were victims of savage hate; murdered citizens in Colorado, Wyoming, and New Mexico—these are incidents in the history of Indian affairs as administered by the present officials that have attracted the attention of the whole country. Both whites and Indians have suffered by this mismanagement.

Mr. President, peace will not come with this bill. There can be no peace with the Indians until the Government shall do justice to both whites and Indians alike.

When the officials to whose charge the administration of Indian affairs is intrusted shall become acquainted with the character, customs, laws, and religion of the Indians, and shall be moved to do justice to the Indians and whites alike, then this problem will be solved. Injustice to the whites will as surely end in the destruction of the Indians as if that injustice was practiced on the Indians themselves.

This bill is just neither to the Indians nor the whites; and, if it becomes a law, the Indians will be the greatest sufferers in the end.

It is unjust to the Indians because it provides no punishment for those guilty of crimes, makes no distinction between those who kept peace with us and those who fought us; because it gives them a false and exaggerated idea of their powers and rights. We treat with them without either punishment or rebuke. It is a reward for their crimes, and they will so understand it. They are the wards of the Government, it is said, but we fail to exercise the full powers of guardian over a ward when such exercise is clearly demanded in the interest of the ward.

It is unjust to the people of Colorado, because it leaves these Indians who fought Thornburgh and killed Meeker and his associates unpunished; and, flushed with victory on the battlefield and in diplomacy, they will be incited by the very mercy of the Government to commit other and greater crimes against our people.

We ought not to forget that we are dealing with savages—brutal, bloody savages—and we never should deal with savages as we deal with civilized people. Precautions against savages

should be taken that are not required in dealing with civilized people.

It is unjust to the people of Colorado and the Indian alike in that it proposes to settle the Indians in Colorado under circumstances of great hardship to both whites and Indians. No wisdom is shown in the selection of the place where it is proposed to make savages learn to labor; and it is safe to say that no class of white men, situated as these Indians will be, would succeed.

If we propose to make a pastoral people of them, we do not give them enough land. If we propose to make farmers of them, we give them too much, and have selected a most unsuitable place to try the experiment. If it is intended that the Government shall support these Indians, we ought to put them where the supplies can be procured at less cost than in their present location, and where they will not be, as they now are, a continual menace to the peace of the people of Colorado.

The people of Colorado are interested in this experiment. If it succeeds they will be safe from savage hate and ferocity; but, if it fails, who can depict the disasters that may follow such failure? It will fail. All the circumstances connected with and surrounding this experiment make it morally certain to fail. Under the most favorable circumstances it would be likely to fail. What shall we say of the probability of failure with the temper of the Indians unfavorable, with all the natural obstacles it must encounter? If it fails, what will become of the Indian? Let the friends of this bill answer.

The people of Colorado are neither bloodthirsty nor cruel. That they are bitter against these Indians I do not deny; but it is because of the wrongs they have suffered at their hands, and they believe there will be no permanent peace while the Indians remain in the State. And no man in Colorado is firmer in that conviction than I am. It is forced on us by our knowledge of the character of these Indians and our lack of confidence in the administration of Indian affairs. The want of information on the part of the Indian Bureau exhibited in this bill is sufficient to warrant the people in distrusting the ability of the Indian Bureau to deal with this subject.

The fundamental idea in dealing with the Indian should be that he is a savage. This bill ignores that fact and treats him as having made some progress in civilization when in fact he has made none. The natural order in which men rise from a savage state to a civilized one is, first, pastoral and then agricultural. This bill proposes to make them agriculturists first,

and that, too, with natural obstacles to contend with that might well deter the most energetic Anglo-Saxon.

This bill appropriates over $400,000, and yet not a dollar of this is for hoes, plows, or harrows, and not one dollar for an irrigating ditch, when every man who has the slightest information on the subject understands that not a pound of farm produce can be raised in that section of the country until there is an expenditure of from fifty to one hundred thousand dollars for irrigating purposes. And yet the honorable chairman of the committee says, acting under the advice, as I know, of the Secretary of the Interior, that it is important that these men should be put upon this land at once, that they may commence their spring farming. If there ever was a fair specimen of stupidity on the part of public officials, this comes fairly within the rule as exhibited by the Interior Department when they urge the consideration of this bill on that ground.

The people of Colorado believe that these Indians have by their misconduct forfeited all treaty rights, and the warrant for that belief they find in the treaty itself. The Indians who fought Thornburgh, murdered Meeker and his associates, outraged the female captives, were shielded and protected by the other Indians, who to this hour have refused to make known the name of a single one of the culprits. They believe, therefore, it was the duty of the Government to have declared the treaty at an end, and with a firm hand to have punished the offenders, if they could have been identified, and to have taken the Indians and put them on land suitable for pastoral and agricultural pursuits, where they would not necessarily come in contact with the whites; that they should be made to feel the restraints of law, disarmed of their firearms, and should, with the firm but fostering hand of the Government, be made to become first a pastoral and then an agricultural people.

The people of Colorado believe that this cannot be done where they are to be located under this bill. These Indians, unable longer to support themselves by the chase, will depend on the Government for support, will in the end become worse than they are now. They will occupy all the agricultural land in the vicinity of their location, and will not have the advantages of the example of industrious farmers, from whom they might learn valuable lessons, as they might in some other parts of the country. They will be surrounded by mining camps, and amid the temptations that are inseparable from such camps. They are not adapted to that kind of labor, and could not, if they would, work in the mines. If they raise cattle, they must

be kept on their own land, which is insufficient to support them as a pastoral people. Their future, therefore, is not promising.

Must the State of Colorado be cursed, then, by the presence of these people whose future promises no improvement? If there was no other place for them, the people of Colorado would not complain. If the proposed location was better than any other, the hardship of having them left there would not appear so great; but there are fairer and better fields in the almost immediate neighborhood of the proposed location that are out of the State of Colorado and better adapted to their wants and use, whether they remain savages or follow the pursuits of civilized life. Why not consult the interests of Indians and whites alike, and send them to the Uintah reservation, not more than seventy-five miles distant? It is an Indian reservation belonging to the Government and not to the Indians, and there are no treaties with other Indians to interfere. It is sufficient in size for five times as many Indians as can ever be congregated on the land. It is inhabited only by four hundred Indians, speaking the same language and belonging to the same tribe. It is well watered, well timbered, easily irrigated, away from mines and mining camps. Why not send them there?

It is said by the Interior Department that they would not go to Uintah. Has it come to this, that a few hundred Indians, having murdered their agent and other employees, mutilated the dead, outraged the living, defeated our troops in battle, holding them in check for five long days, shall now dictate to us the terms of this agreement?

It is said this is cheaper than to have punished them. Is it cheaper in the end? In my judgment we should have demanded submission to our terms, and, if we had shown that we intended to compel submission, we could have avoided a war. The exhibition of firmness on the part of the Government would have commanded the respect of the savages. What must be the effect on the savage minds of the course pursued by the Government, making demands accompanied by threats of punishment if not complied with, and, on the refusal of the Indians to comply with our demands, allowing them to dictate the terms to us?

We are told that it is a great triumph of negotiations. Let us see what we demanded and what we got. To understand what we got we must know the condition of the title of the Indians as well as the obligation of the Government toward these Indians.

Mr. President, the region of country occupied by the Ute

Indians came to the United States by the treaty with Mexico. It was occupied at that time in part by these Indians and in part by other Indians. We made our first treaty with these Indians in 1849, at Santa Fé. They were then not living in the region now known as Colorado at all. It is doubtful whether they had ever been in the region that they now inhabit.

So then, Mr. President, these Indians had no title to this land at all. They stand on a very different footing from the Indians of Nebraska and the Indians of Iowa and Minnesota; and, but for the ignorance of the department that has control and management of this affair, we never should be met by this complication at all.

The honorable Secretary says we get a large amount of mining land and of valuable mining property, and that we should take that into consideration; that in a mile square there is money enough, perhaps, to pay the whole of the fund which is to be set apart to pay the annuity. To whom does this mineral land belong? Will any Senator say that it belongs to the Indians? It belongs to the Government of the United States. Under the decision of the Supreme Court, repeated again and again, with particular emphasis in 19 Wallace, they have no right to mine a single pound of ore in that mineral land. It is not theirs, it is ours, and, under the rule there laid down, the United States has the right, without the violation of any treaty, to provide that any prospector or settler may go upon it and extract the ore.

It is proposed to give them eight hundred thousand acres of land, and to give them that in the mountain regions of Colorado, surrounded on every side by mines, to be surrounded on every side by mining camps in the next six months; and, when you shall have destroyed the tribal relations, as the Senator from Texas says you will, when you shall have taken them out from underneath the protecting clauses of the national statute with regard to the sale of liquor and other things, it is expected that they will immediately move on to civilization! It is preposterous; it is hopeless; it is useless; it is an insane effort that no man who has the good of the Indians at heart and a thorough knowledge of the facts would ever be guilty of making.

Not only is the country where these Indians are to go to be surrounded by mining camps and miners, but the very land upon which they are expected to farm is mining land, rich in placer diggings, the coveted land now, not of the people of

Colorado, but the coveted land of the people of Iowa and of Illinois, and the people clear back to the Atlantic Coast. It is the men who are going to Colorado who are to go upon these lands, and not the men there now who are so much concerned. It is coveted, I say, by the people who are going in there, as they have a right to covet it. It ought not to be locked up from the honest hand of toil. It ought to be open to every man to go there and unearth and bring forth its hidden treasures. It is an outrage upon the whole people of the country to put these wild Indians, who are the purest type to-day of the native savage existing on the continent, upon this land and surround them with all the temptations that there must be, and expect us to live in peace and harmony with them, especially after the Government has admitted its doubt whether it could cope with them in battle, and has shown its inability to cope with them in diplomacy.

N. P. Hill [Col.] supported the bill because it would avert a costly and bloody war with Indians in mountain fastnesses and hasten the settlement and development of their lands by the whites.

I am in favor of the bill because it inaugurates a new line of policy in dealing with the Indians. It breaks up the tribal relation, which has always been a curse to the Indians of the United States. It gives to each Indian property which will be owned and held by him separately and individually. It holds out inducements for a civilized mode of life. It abolishes all Indian reservations in the State and subjects all Indians residing in the State to the jurisdiction of the courts. It is true the Indians give up eleven million acres of land which it is claimed they own under the stipulations of a treaty. But this land has always been useless to them, and always will be useless. It has always stood in the way of their progress in the pursuits of civilized life. They will remain savages and barbarians so long as they can roam at will over a tract of seventeen thousand square miles of mountainous country. Their settlement in severalty upon agricultural lands would contribute more to their welfare than any donation of money or land, however liberal, which the Government could make. I am in favor of the bill because its defeat would confront us with the following plain alternative: either to keep the Utes in possession of the whole reservation, instead of about one-twentieth part of it,

or to drive them out by war after they have offered to give it up peaceably.

I am not overcharged with sympathy for the Ute Indians. They are a worthless set of vagabonds as a whole. But the policy of exterminating them could not be entertained by an enlightened nation. As between a war with them, with all its attendant evils, and the peaceable methods which will be reached by the operations of this bill, there seems to be but one choice.

The lands, he said, are cheap at the price proposed. There may be single acres of this tract which in the next few years will produce more in minerals than the cost of the entire reservation. If the Indians owned the land it could not be said to be a dear purchase. If they did not own it, it would still be difficult to convince Congress of that fact.

On April 5 John T. Morgan [Ala.] opposed the bill. He would pass a law stating that, whereas the Utes had not taken advantage of the privilege offered in the treaty of 1868 to take lands in severalty, and whereas that they do so was the essential purpose of the treaty, they must now make their selections and become subject to all the laws affecting citizens of the United States.

Let us say to these Indians: We will place ourselves in the stead of the government that we have destroyed by this act of Congress. We will assume its trusts and exercise its powers with reference to you. We will enact laws by which you are to be governed. We will, if you choose, employ your tribal traditions and laws and customs and agencies to administer what you call or consider justice between yourselves until we choose to supplant them with some better system.

It seems to me that the door now stands wide open for the pursuit of a policy like this. It would be far better to let the Indians understand that we have dethroned these rulers, that men like Ouray and many others among them, who have ruled these Indians against their will and with an arbitrary and a cruel hand, have no longer this power to wreck and destroy them in reference to their property rights; for there are not in this whole world more absolute despotisms than exist between the rulers of the Indian tribes and the Indians themselves. There are thousands and tens of thousands of the Indians who, if they had dared to break loose from their rulers, would have

become free thinkers and independent, honest laboring men. The act of Congress of March 3, 1871, destroys and dethrones these tyrants and will allow the Indian people to come forward and exercise their right of individual manhood under the laws and Constitution of the United States and under the protection of our Government.

Henry L. Dawes [Mass.] opposed the entire Indian policy of the Government.

We have always treated with the Indians, up to the statute which the Senator from Alabama has alluded to, as independent tribes, capable of negotiating with us and having some sort of right in the soil we found them in the occupation of, that we would purchase of them, and not extinguish by violence, as we perhaps might have done. But when we purchased it of them we purchased it of a savage race, having no knowledge of our language, without ability to treat or to understand what they were treating about, and neither the tribes themselves nor the people of the United States, till within a few years, ever stopped to consider the future of the Indian. We, on our side, have always treated with him, up to within these few years, on the idea that we would make the best possible bargain with him; and the Indian, on the other hand, having no thought for his morrow, considered only the color of the trinkets which we put off on him for vast tracts of country, out of which great and independent States have sprung up in this Union. It is only when the question has forced itself upon us so that it was impossible for us to ignore it that we have stopped to consider in our treatment with the Indian what shall be done with him in the future; whether it is not incumbent upon us, who have taken away his possessions and his means of support, to make some provision for him if he makes none for himself in the future. And not a little has that question been pressed upon us in the form that he whom we have thus treated, multiplying daily upon our hands, is a savage who knows no law or restraint but a chain; and the Indian himself has come to have some faint glimmering of what is before him, as the very walls of the continent have approached him on the one side and on the other, with apparent certain destruction awaiting him.

But we come to this question after long years of such treatment of the Indian that he has lost faith in us. He no longer, if he ever did, believes that we intend to keep our promises with him; he has been too often deceived, he has too often trusted

Cartoon by Thomas Nast

From the collection of the New York Public Library

only to find that engagements with him are kept while they are of advantage to us, and no longer; and when we approach him he suspects that some lurking advantage is to be gained over him in the future, which he cannot quite understand, least of all can he protect himself against.

The Senator from Colorado [Mr. Teller] talked of the Indian's character, of his faithlessness, of the outrages he has committed upon the white people on the borders. I am not disposed to criticize the Senator. I do not know that the Senator or his State particularly is to be held accountable in any way for any infraction of good faith on our part toward these Indians.

SENATOR TELLER.—There has never been a Ute Indian killed by any citizen of Colorado since the country was settled. We have invariably respected their rights; we have respected the obligations of the Government as made with them; and I believe that I may say here that pretty nearly the only white man in the United States who has attempted to enforce the treaties of the United States with them is my humble self. I followed this Secretary of the Interior from the time he came into office until the outbreak last summer, to have the money paid that the Senator has said was unjustly withheld, and I repeated over and over again to him that it was a cause of complaint, and that it put our people in jeopardy that it was not paid.

SENATOR DAWES.—Why, Mr. President, I had it not in my mind to intimate that either the people of Colorado or the State itself or the Senator was to blame——

SENATOR TELLER.—I know; but I want to add one other statement that, since the country was settled, at least fifty white men have been killed by these Indians; innumerable houses have been burned; innumerable farms on the edge of the reservation and off it have been destroyed; and yet the people of Colorado have never retaliated.

SENATOR DAWES.—The Senator cannot but know that such is the character of this savage that he visits the wrongs he receives from the strong upon the weak; such is his nature and such is the limit of his knowledge of men and of government that he only knows that it was white men who broke faith with him, and it is white men upon whom he visits his revenge. But the very State in which the outrage upon the peaceable agent at White River and his family and employees was inflicted by these savages, the very existence of the State itself, is a gross and palpable violation of the plighted faith of this Government, which in a solemn treaty with the Cherokee

Nation pledged itself sacredly never to permit any territorial or State government to be erected upon their Western border, but that the free, unobstructed passage and control and jurisdiction westward, as far as the jurisdiction of the United States should extend, should be forever kept for the Cherokees. And yet, in violation of that treaty obligation, the State of Colorado is erected right across that western boundary of the Cherokee Nation, in obedience to that law of growth and progress in civilization in this land, stronger than all human laws and human treaties; but the Indian does not understand that.

SENATOR TELLER.—I should like to ask the Senator whether he thinks that the Ute Indians ever heard of that treaty, and if he does not know that when the treaty was made this very ground in controversy, every acre of it, was a part and parcel of the Republic of Mexico.

SENATOR DAWES.—I know this last statement and I think it likely the other is true; but I know that the treaties stipulated that the territory as far as the jurisdiction of the United States should thereafter extend should be kept open. And, as to the Utes ever knowing about that treaty, it is not necessary for the argument that I am making here that they should understand that treaty. They understand, and every Indian understands, that, when the white man approaches him with treaties in his hand, something is to be gained on the one side and something is surely to be lost on the other. No tribe of Indians ever entered into a treaty with the United States that did not result in putting fetters upon them. They have been lassoed into imprisonment and confinement within limits that the necessities of growth in this Government required, and no sooner have we made treaties than we have gone to work deliberately to violate them.

But it is not treaty obligations alone of which the Indian has to complain. Why, sir, the treatment of Indian agents, and the army, and the whole department with the Indian for long back, is covered with blots and stains, and bad faith, and aggravations to the Indian and provocation to violence on his part. While we have been deliberating over this very measure in our Committee on Indian Affairs, a peaceable Indian chief, who never raised his hand in violence upon a white man, whose home had been ceded to him by words of grant on the part of the United States as solemn and effective as a warranty deed, in consideration of his good behavior and peaceable deportment toward the United States—this is the language of the grant—who had been driven at the point of the bayonet from that

home into the malaria of the Indian Territory, has there been enticed by false pretences into the Indian agent's own house, an agent of this modern civilization, and there shot down upon the floor in cold and cowardly murder by the soldiers of the United States under the direction of an Indian agent!

Sir, the Northern Cheyennes, taken by the army from their home and the graves of their fathers, among the cool mountain streams of the Northwest, down to the torrid jungles and malaria of the Indian Territory, there to fall before the ravages of disease, when they broke away and wandered through the wilds of western Kansas, seeking their old home, were taken by the armed soldiers of the United States and shut up in midwinter, in January, in a guardhouse, when the thermometer was ten degrees below zero, without clothing to protect them from the inclemency of the weather. They were told by the officer whose official report I have here, "You shall have neither food nor drink nor fuel till you consent to go back to your doom in the Indian Territory," and there they were kept without either food or fuel or drink four or five days—the officer reports four, the Indians say it was seven—in what an officer calls "the freezing-out process"; and then, when the chief was called out of the guardroom under pretence of a conference, armed soldiers were placed in side rooms, out of sight, and when he and his fellows came into a room for a peaceable conference they were seized and put in irons, and those in the guardhouse, breaking out, with the resolution to die in flight for their homes rather than to die in the Indian Territory, the victims of disease, were fired upon with shot and shell, and every male member of the band but those in irons and two others, with thirty women and children, were laid corpses in the process.

Sir, I have before me the process pursued toward men supposed to be guilty of the murder of a young man from Massachusetts upon a stage route in Arizona. When an officer of the army called the Indians into council, having previously arranged with a halfbreed that, like Judas, he should go among his brethren and betray the men he was willing to say were guilty, and when that process was gone through with, under the pretence of a council with friendly Indians, soldiers, at a given signal, shot them all dead.

Does anybody wonder, when these instances multiply around us every day, when flags of truce, like that under which General Canby fell at the hands of the Modocs, are violated by our own soldiers when they treat with the Indians; when the whole

history of the dispensing of the Indian annuities and of the Indian appropriations is one long history of plunder; when we make our promises with no apparent intention of keeping them, is it to be wondered at that the Indian question has come upon us with difficulties almost passing solution?

Sir, before we can do anything toward making something out of the Indian we must do justice to him. The process of extermination, I think, is substantially abandoned by our people. It has proved a failure at least, with all the advantages under which it has been tried and the fidelity with which it has been pursued, sparing no expense of Indian warfare or cruel treatment, transferring the Indian from place to place, taking him from the cold regions of the North to the almost inhospitable and uninhabitable regions of the Indian Territory, there to die by hundreds; still the truth stares us in the face that there are more of them to-day than there were yesterday.

Sir, it seems to be agreed that this policy which we have pursued so faithfully has got to be abandoned, and I thank God that it has.

Then we have to deal with the Indians by some other process. One process is like that shadowed forth in the argument of the Senator from Alabama [John T. Morgan], that we shall violently break up their tribal relations and scatter them, wild and savage and uneducated, abroad in the community, subject to the laws and enjoying all the rights and privileges of citizens of the United States, having no other restraint upon them than the feeble and ineffectual restraint that comes from bringing them into a court of justice to plead to an indictment they cannot understand for the violation of a law they do not know the meaning of.

Sir, the Senator from Colorado [Mr. Teller] well described the strength of the cords which bind the Indians in their bands. I venture to say there is not power enough in the United States to violently and against their will rend those cords. If there were no question of humanity in it, it is an impossibility. You cannot, with an army larger in number than all the bands themselves, rend asunder by violence those cords and attachments which bind them one to another in families, any more than you could invade the homes of the civilized, scatter them, and think vainly that thereby you had broken asunder all the ties that bind man to his family and to his kindred.

You might just as well turn loose the inmates of an insane asylum and impose upon them the restraints of law, and require at their hands obedience to the obligations of citizenship,

as to undertake by this process to make of these Indians self-supporting citizens, obedient to the law of the land.

Then, sir, if you can neither exterminate them nor, by the puny, ineffectual attempt at an enactment here at your desk, disintegrate and scatter them around through the forty-five millions of people we have here in this land, what next? Sir, you ought to improve them, make something of them, undertake to relieve yourselves of this burden which comes upon you as a just retribution for the long line of treatment in the past which finds no justification in any standard of justice or of right between the powerful and the weak. No one expects that you can make much out of the adult Indians. You cannot teach them much how to work and support themselves. Industrious habits do not come by the force of enactments. Industrious habits are the result of long years of training, beginning with early life. You have them, too, without the ability to speak our language, to understand those with whom they are obliged to treat daily in order to obtain the merest necessities of life. Take one of them, allot him in severalty, which seems now to be the panacea for all evils, one hundred and sixty acres of land, and surround him, as this bill and the other propose, with the enterprising Western pioneers who purchase the real estate, the one hundred and sixty acres on each side of him, and what then? He goes out to support himself. He cannot understand his white neighbors. He only knows from sad experience, because he cannot forget that he never treats with that color without having the worst of it. How long would he live and support himself?

I had an interesting conversation a few days since with a chief of one of these tribes, as intellectual a man, as clear-headed, and as honest and truthful a man, according to the department and everybody else, as anyone could be, a man who realized the condition of the Indians, a man who made a study, as well as he could, of what, so far as his tribe was concerned, was the best solution of this question. I asked him if he could have for each male member of his tribe one hundred and sixty acres of land allotted in severalty, with the condition that it could not be alienated for twenty-five years, what he would say to that. It was a great while before he could be made to comprehend what I meant, with an earnest desire to understand the full meaning of these words; and when at last he seemed fully to comprehend them, shaking his head, he said: "It would not do us any good; it might our children; but we do not understand your language; we do not know how to treat

with white men; they always get the better of us; they would pluck us as you do a bird." Then I put the question in another form: "Suppose you were allotted, and a good, honest Indian agent"—my friend from Illinois [David Davis] almost laughs when I say that—"a good, honest Indian agent were put over you to keep off the white people and let you develop yourselves?" "We don't know how to work very well; we were never taught to work; if our children could be brought up to understand your language and to understand what comes of work, to understand that what they earned to-day is theirs, and they can hold it against the world, they could take these lands and they could take care of themselves and of us, but we cannot do it."

There is more philosophy in that Indian's statement of the question than all that has been developed in the Indian policy of the Government for the last quarter of a century. Take their children; above all, take their girls into schools in which they may be taught the English language and English ways and English habits and ideas. They bring up the families; they take care of the children; from them the children learn to talk and learn to think and learn to act; and yet, in all the schools established in Indian agencies for the education of the Indian, the Indian girl is hardly thought of. Take the boy and make something of him; not keep him till he forgets his race and his parentage, but keep him until there shall be inspired in him a missionary spirit to go forth among those of his blood and attempt to make something of them. Appropriate this $125,000 which in this bill you pledge yourselves to distribute every year *per capita* around among these people to the education each year of these four thousand Ute Indians, and, by the time this experiment shall have failed and the Indian question, so far as Colorado is concerned, shall have come back upon us with increased force, you will have raised up among those Indians a restraining and at the same time an elevating influence that shall quicken in the whole tribe a desire to acquire, and with it shall come also the desire to protect and keep their daily earnings, and with that come the necessity and the desire for peace, and with peace comes respect for law, and that is the simple, natural process and the only one, it seems to me, Mr. President, which opens up to us with any hope of success.

It is a long and tedious process out of this difficulty; it is beset with embarrassments and discouragements on every side; but those who understand best and appreciate more fully than

I do all these difficulties have themselves the strongest confidence in its ultimate success. Certainly, sir, these puny efforts on the part of the Government to deal with the Indian question, these homeopathic doses, are idle and are folly in the extreme. If I could see any good to come from this bill, recognizing as I do the imperative necessity of action in respect to these Utes, recognizing, as I am free to do, the earnest desire on the part of the Indian Department to do the best possible thing, I should like to support it. I know that with great propriety and with necessity the department turns to Congress; for it is Congress, and Congress alone, that can solve this question; but I fear that by no such processes as those we are considering to-day, involving, as they do (and which I do not think the Senate quite realize), an enormous expenditure of public moneys with so little return, can the great result I desire be accomplished.

On April 9 Preston B. Plumb [Kan.] replied to Senator Dawes.

I object to any anticipations that may be derived from the bill of the kind spoken of by the Senator from Massachusetts in the way of education under the direction of the President at Carlisle Barracks, or Hampton Roads, or the Uintah Valley, or anywhere else on the supposition that that can ever be of any perceptible service to the Indian race in making the Indians better qualified, by making them useful and self-supporting citizens of the United States. That result never will be reached. They may go out on the plains, they may take charge of a herd of cattle, they may in some degree adapt themselves to agriculture of an inferior kind; but, when it comes to the competition for which we seek to prepare them by education, and without which education will be of no use to them, they will inevitably go to the wall. They can only stand anywhere on the face of the earth by the protection of government, and not at all in competition with the white man.

Mr. President, an eminent citizen of the Senator's own State —I think it was Oliver Wendell Holmes—characterizes and settles definitely the status of the Indian when he speaks of him as simply a member of a provisional race. He is simply here to get out of the way at the proper time; he was not expected to be here in the way of the white race. In no way did he ever become a factor of civilization; in no way did he ever become enduring either by amalgamation or otherwise.

Within fifty years there will not be probably one single full-blooded Indian on the American continent; and within a hundred years there will not be a single person living who, in his features or in his blood, will bear the impress of a single characteristic of the Indian character. He will be entirely gone. The only question to be considered is what shall we do as a matter of humanity to take hold of these people whose lot has thus been provisionally cast among us?

James G. Blaine [Me.] replied to Senator Plumb.

I think the Senator felicitates himself quite too freely when he says that in fifty years from this time we shall not see within the area of the United States the face of an Indian, nor one that has Indian blood in his veins. If the statistics of the Indian Department are correct, there are to-day nearly or quite as many Indians within the area of the United States as there were when Columbus discovered America. I believe there never has been a census of the Indians made upon any assignable basis of fact that gave a number beyond one hundred thousand greater than that which is now known to exist.

I believe the Indian question is one that is going to exist very many years beyond the time when the Senator from Kansas, in his sanguine feeling, thinks it will cease to trouble us. It will not depart. Three hundred thousand men, living in a healthy climate, expanding all the time under the area that is given to them, do not die out very soon. I remember a distinguished Senator of the United States, who went South in what we call the "Andy Johnson" days, when we were troubled a good deal about the matter of reconstruction, and he came back and said: "You are troubling yourselves a great deal about this question of the negro; freedom is going to destroy him; you will not have any negroes in twenty years." When asked why we were not going to have any, his reply was, "Why, the smallpox, every form of disease, is coming in to ravage them and destroy them," and he was certain the negro was not to be known on the face of the earth within a very short time. I think the census of 1880 will show a pretty large and healthy increase of that troublesome member of society, as some gentlemen regard him. And when we attempt to deal with the Indian question on the theory that they are going to disappear we are proceeding upon a foundation that is not true. We shall have to deal with them as an ever-present question, which our descendants will confront as we have been

confronting it for nearly four centuries in this country; and it will be here for four centuries more, I venture to prophesy to the honorable Senator from Kansas, and with all the more confidence, as neither of us will ever be able to contradict the other on the ultimate solution of it.

The Senate passed the bill on April 12, 1880, by a vote of 37 to 16. The House passed it on June 7 by a vote of 174 to 15. President Hayes signed it on June 16.

CHAPTER IX

Woman Suffrage

[DEBATES CONNECTED WITH THE FIFTEENTH AMENDMENT]

Memorial to the Senate in Behalf of Woman Suffrage by Mrs. Gerrit Smith [N. Y.] *et al.* Debate: John B. Henderson [Mo.], Willard Saulsbury [Del.], Charles Sumner [Mass.], Richard Yates [Ill.]; Memorial Is Tabled—Thomas E. Noell [Mo.] Offers Resolutions in Favor of Woman Suffrage—Charles A. Eldridge [Wis.] Presents Memorial from the American Equal Rights Association in Favor of Woman Suffrage—Debate: Mr. Eldridge, Rufus P. Spalding [O.], Mr. Noell—Petition of Victoria C. Woodhull [N. Y.] for Supplementary Legislation Making Operative Her Right to Vote under the Constitution and the Fifteenth Amendment; Tabled—Henry Wilson [Mass.] Introduces Bill for Woman Suffrage in the Territories; Referred—Petition from the American Woman Suffrage Association for Woman Suffrage in the District of Columbia and a Constitutional Amendment Removing Sex as a Political Disability—Speech of Stevenson Archer [Md.] in the House on "The Reaction from Woman Suffrage"—Petition of Dr. Mary E. Walker [D. C.] on Woman Suffrage.

IN the great contest to secure equal manhood suffrage, culminating in the passage of the Fifteenth Amendment, we have seen that the question of extending the elective franchise to women played an important part. Many advocates of votes for women, however, were not sincere, being, indeed, opponents of any extension of the suffrage, and presenting the proposition merely to convict the advocates of negro suffrage of inconsistency.

So determined were some of the friends of the negro to secure to him his vote that they refused to increase the opposition to the measure by considering the case of the woman. Of these Senator Charles Sumner [Mass.] was the most eminent. During the debates of 1865-66 on

negro suffrage in the District of Columbia [see Chapter I] Senator Sumner presented, with an apology, a memorial from a number of ladies of various States praying that suffrage be granted to women. To rebuke him for the apology the wife of Gerrit Smith [N. Y.], the Abolitionist, and twenty-seven other ladies, most of them from the same State, sent another memorial to the Senate. This was presented on February 21, 1866, by John B. Henderson [Mo.]. He read the letter of Mrs. Smith which accompanied the petition.

"I send you a petition, signed by twenty-eight intelligent women of this State, who are native-born Americans—read, write, and pay taxes, and now claim representation! I was surprised to-day to find Mr. Sumner presenting a petition, with an apology, from the women of the Republic. After his definition of a true republic, and his lofty peans to 'equal rights' and the ballot, one would hardly expect him to ignore the claims of fifteen million educated taxpayers, now taking their places by the side of man in art, science, literature, and government. I trust, sir, you will present this petition in a manner more creditable to yourself and respectful to those who desire to speak through you.

"Remember, the right of petition is our only right in the government; and, when three joint resolutions are before the House to introduce the word 'male' into the Federal Constitution, 'it is the proper time' for the women of the nation to be heard, Mr. Sumner to the contrary notwithstanding."

Senator Henderson remarked:

The right of petition is a sacred right, and, whatever may be thought of giving the ballot to women, the right to ask it of the Government cannot be denied them. I present this petition without any apology. Indeed, I present it with pleasure. It is respectful in its terms, and is signed by ladies occupying so high a place in the moral, social, and intellectual world that it challenges at our hands at least a respectful consideration. The distinguished Senators from Massachusetts and from Illinois must make their own defense against the assumed inconsistency of their position. They are abundantly able to give reasons for their faith in all things; whether they can give reasons satisfactory to the ladies in this case I do not know. The Senators may possibly argue that, if women vote at all, the right should not be exercised before the age of twenty-one; that they are generally married at or before that age, and that, when married, they become, or ought to become, merged in their husbands; that the act of one must be regarded as the act of

the other; that the good of society demands this unity for purposes of social order; that political differences should not be permitted to disturb the peace of a relation so sacred. The honorable Senators will be able to find authority for this position not only in the common law, approved as it is by the wisdom and experience of ages, but in the declaration of the first man, on the occasion of the first marriage, when he said, "This is now bone of my bone and flesh of my flesh."

It may be answered, however, that the wife, though one with her husband, at least constitutes his better half, and, if the married man be entitled to but one vote, the unmarried man should be satisfied with less than half a vote. [Laughter.] Having some doubts myself whether, beyond a certain age, to which I have not yet arrived, such a man should be entitled to a vote, or even half a vote, I leave the difficulty to be settled by my friend from Massachusetts and the fair petitioners. The petitioners claim that, as we are proposing to enfranchise four million emancipated slaves, equal and impartial justice alike demands the suffrage for fifteen million women. At first view the proposition can scarcely be met with denial, yet reasons "thick as blackberries" and strong as truth itself may be urged in favor of the ballot in the one case which cannot be urged in the other.

Willard Saulsbury [Del.].—I rise to a point of order. My point of order is that a man who has lived an old bachelor as long as the Senator from Missouri has no right to talk about women's rights. [Laughter.]

Senator Henderson.—I had no idea that that was a point of order, sir. Whatever may be said theoretically about the elective franchise as a natural right, in practice, at least, it has always been denied in the most liberal States to more than half the population. It is withheld from those whose crimes prove them devoid of respect for social order, and generally from those whose ignorance or imbecility unfits them for an intelligent appreciation of the duties of citizens and the blessings of good government. To women the suffrage has been denied in almost all governments, not for the reasons just stated but because it is wholly unnecessary as a means of their protection. In the government of nature the weaker animals and insects, dependent on themselves for safety and life, are provided with means of defense. The bee has its sting and the despised serpent its deadly poison. So, in the governments of men, the weak must be provided with power to inspire fear, at least, in the strong, if not to command their respect.

Political power was claimed originally by the people as a means of protecting themselves against the usurpations of those in power, whose interests or caprices might lead to their oppression. Hence came the republican system. But it was never thought the interests or caprices of men could lead to a denial of the civil rights or social supremacy of woman. All races of men are unjust to other races. They are unjust because of pride. That very pride makes them just to the women of their own race. There may be men who have prejudice against race; they are less than men who have prejudice against sex. The social position of woman in the United States is such that no civil right can be denied her. The women here have entire charge of the social and moral world. Hence woman must be educated. First impressions are those which bend the mind to noble or ignoble action, and these impressions are made by mothers.

To have intelligent voters we must have intelligent mothers. To have free men we must have free women. The voter from this source receives his moral and intellectual training. Woman makes the voter, and should not descend from her lofty sphere to engage in the angry contests of her creatures. She makes statesmen, and her gentle influence, like the finger of the angel pointing the path of duty, would be lost in the controversies of political strife. She makes the soldier, infuses courage and patriotism in his youthful heart, and hovers like an invisible spirit over the field of battle, urging him on to victory or death in defense of the right. Hence woman takes no musket to the battlefield. Here, as in politics, her personal presence would detract from her power. Galileo, Newton, and Laplace could not fitly discuss the laws of planetary motion with ignorant rustics at a country inn. The learned divine who descends from the theological seminary to wrangle upon doctrinal points with the illiterate, stubborn teacher of a small country flock must lose half his influence for good. Our Government is built as our Capitol is built. The strong and brawny arms of men, like granite blocks, support its arches; but woman, lovely woman, the true goddess of Liberty, crowns its dome.

Senator Sumner.—Before this petition passes out of sight I wish to make one observation, and only one. The Senator from Missouri began by an allusion to myself and to a remark which fell from me when I presented the other day a petition from women of the United States praying for the ballot. I took occasion then to remark that, in my opinion, the petition at that time was not judicious. That was all that I said. I did

not undertake to express any opinion on the great question whether women should vote or should not vote. I did venture to say that, in my opinion, it was not judicious for them at this moment to bring forward their claims so as to compromise in any way the great question of equal rights for an enfranchised race now before Congress.

The Senator has quoted a letter suggesting that I did not present the petition in a creditable way. I have now to felicitate my excellent friend on the creditable way in which he has perfomed his duty. [Laughter.]

Richard Yates [Ill.].—Allow me to say that I think the two gentlemen, one of whom has arrived at the age of forty-nine and the other sixty-three, have no right to discuss the question of women's rights in the Senate. [Laughter.]

At the suggestion of Senator Henderson the petition was laid on the table without demur. During the next session, however woman suffrage was to find earnest advocates—indeed, it formed a chief part of the debate on the question of suffrage in the District of Columbia.

Equality of Suffrage

House of Representatives, February 4-18, 1867

On February 4, 1867, Thomas E. Noell [Mo.], an administration Republican, offered in the House of Representatives resolutions in favor of equality of suffrage. They were partly in earnest and partly ironical, the final resolution being intended as a hit to the "progressive" State of Massachusetts. In this Representative Noell was probably imitating the attitude of Edgar Cowan [Pa.], the eminent administration Republican of the Senate [see page 26]. Omitting a proposition to abolish disfranchisement on account of sex in the District of Columbia the resolutions read:

Resolved, That governments were made for the people, and not the people for the government; that every adult citizen of sound mind in any State or Territory has the right to a voice in the formation of the constitution of said State, and in the representation and laws of said State, and that any State

which disfranchises any class of its citizens on account of sex is not republican in form and should be overturned by Congress.

Resolved, That the Committee on the Judiciary are instructed to report a bill calling a convention and authorizing every adult citizen of sound mind in the State of Massachusetts to vote for delegates to said convention for the purpose of making a constitution for said State republican in form.

On Friday the 11th, the resolutions came before the House for discussion. Mr. Noell not being present, Charles A. Eldridge [Wis.] presented a memorial from the American Equal Rights Association, signed by Lucretia Mott, president; Theodore Tilton, Frederick Douglass, Elizabeth Cady Stanton, vice-presidents, and Susan B. Anthony, secretary. The clerk read the petition:

The undersigned respectfully but earnestly protest against any change in the Constitution of the United States, or legislation by Congress which shall longer violate the principle of republican government by proscriptive distinctions in rights of suffrage and citizenship on account of color or sex.

Your memorialists would respectfully represent that neither the colored man's loyalty, bravery on the battlefield, and general good conduct, nor woman's heroic devotion to liberty and her country, in peace and war, have yet availed to admit them to equal citizenship, even in this enlightened and republican nation.

We believe that humanity is one in all those intellectual, moral, and spiritual attributes out of which grow human responsibilities. The Scripture declaration is: "So God created man in his own image; male and female created he them." And all divine legislation throughout the realm of nature recognizes the perfect equality of the two conditions. For male and female are but different conditions.

Neither color nor sex is ever discharged from obedience to law, natural or moral, written or unwritten. The commands, thou shalt not steal, nor kill, nor commit adultery, know nothing of sex in their demands; nothing in their penalty. And hence we believe that all human legislation which is at variance with the divine code is essentially unrighteous and unjust.

Woman and the colored man are taxed to support many literary and humane institutions, into which they never come,

except in the poorly paid capacity of menial servants. Woman has been fined, whipped, branded with red-hot irons, imprisoned, and hung; but when was woman ever tried by a jury of her peers?

Though the nation declared from the beginning that "all just governments derive their powers from the consent of the governed," the consent of woman was never asked to a single statute, however nearly it affected her dearest womanly interests or happiness. In the despotisms of the Old World, of ancient and modern times, woman, profligate, prostitute, weak, cruel, tyrannical, or otherwise, from Semiramis and Messalina to Catharine of Russia and Margaret of Anjou, have swayed, unchallenged, imperial scepters; while in this republican and Christian land, in the nineteenth century, woman, intelligent, refined in every ennobling gift and grace, may not even vote on the appropriation of her own property or the disposal and destiny of her own children. Literally she has no rights which man is bound to respect; and her civil privileges she holds only by sufferance. For the power that gave can take away, and of that power she is no part. In most of the States these unjust distinctions apply to woman and to the colored man alike.

Your memorialists fully believe that the time has come when such injustice should cease.

Woman and the colored man are loyal, patriotic, property-holding, tax-paying, liberty-loving citizens, and we cannot believe that sex or complexion should be any ground for civil or political degradation.

In our Government one-half the citizens are disfranchised by their sex, and about one-eighth by the color of their skin; and thus a large majority have no voice in enacting or executing the laws they are taxed to support and compelled to obey with the same fidelity as the more favored class, whose usurped prerogative it is to rule.

Against such outrages on the very name of republican freedom your memorialists do and must ever protest. And is not our protest preëminently as just against the tyranny of "taxation without representation" as was that thundered from Bunker Hill when our revolutionary fathers fired the shot that shook the world?

And your memorialists especially remember, at this time, that our country is still reeling under the shock of a terrible civil war, the legitimate result and righteous retribution of the vilest slave system ever suffered among men. And in restoring the foundations of our nationality your memorialists most re-

spectfully and earnestly pray that all discriminations on account of sex or race may be removed, and that our Government may be republican in fact as well as form; a government by the people, and the whole people; for the people, and the whole people.

During the reading of the long memorial Rufus P. Spalding [O.] moved, amid the laughter of the House, that Mr. Eldridge have leave to print the remainder. On this being ruled out of order because Mr. Eldridge had the floor for an hour, Mr. Spalding, amid renewed laughter, insisted that Mr. Eldridge, evidently as a punishment for boring the House, be made to read the petition himself. Mr. Eldridge explained that gallantry to the ladies was alone prompting him in the matter, for he was no upholder of their cause and, now that Mr. Noell had returned, he would yield the floor to him as one "who will advocate their cause, as he has always done by his acts and words." [Laughter.]

Mr. Noell then occupied the rest of the day with his speech, which he completed on February 18.

The Enfranchisement of Women

Thomas E. Noell, M.C.

Mr. Speaker, I have been asked frequently if I were sincere in advocating woman suffrage. If my principles are sound, why inquire my motive? People must believe that politicians are sincere, for they look to them for earnest advice. But politics is a farce. The actors in the play smile at each other behind the scenes and congratulate themselves that they have "knocked" the people. We discuss interminably the difference between tweedle-dum and tweedle-dee. The *Congressional Globe* of last session had more wind in it than Ulysses' bags. A little seriousness of purpose would act as a great carminative to that journal.

Mr. Noell began his serio-comic dissertation with a discussion of the origin of civilization.

Who civilized the world? Neither Guizot nor Buckle nor Hallam can answer this question. We must glean along the waste stubble fields, whence history has garnered her stores, for facts to aid us in solving this question. We derived our civilization from Rome; the latter derived her civilization from Greece; and this last country derived her civilization from Egypt. Who civilized Egypt? The women!

It was shortly after the great flood, when the world was hung out in the universe to dry, that Egypt, which was to civilize the world, civilized herself, and the women civilized Egypt. The periodical overflowings of the Nile caused the people to meet together in the high places. The men and women mingled together, everyone bending his or her energy to minister to the general welfare during the overflow. Here the native genius of the women displayed itself in devising conveniences and comforts and in the various ways in which genius must assert itself when the conventionalities of society are broken down. The dull, plodding, thick-headed men of Egypt —the most talented men in the world—found that they knew nothing compared to the knowledge of the women. For their own interest they constituted the women the controlling class. We have no Nile to overflow and break down the conventionalities of society; but we are threatened by a destructive overflow of the *Niger*, and I think it is time to bring the women into the high places.

The women of Egypt were the traders and merchants. They enriched that country and gave a start to the arts and sciences. They were the heads of families. When the parents grew old the daughters and not the sons were bound by law to support them. In the marriage contract the woman promised to support her husband, and the husband in turn promised to obey his wife. The Egyptian women traded in Tyre and Sidon; the Arabian merchants carried on traffic between the Hindoos and the Egyptian women.

When the little corporal of Lodi crossed into Egypt to build by conquest the fabric of an oriental dream, well might his soul expand as he said: "Soldiers of France, from yonder pyramids forty centuries look down upon you!" Napoleon did not say anything of the mummies of illustrious females, through whose eyes, now empty, gluey sockets, once beamed the civilization of the world. Napoleon, like all warriors, held that only one function belonged to women—to bred men for the ranks. Some one asked him who was the greatest woman in France; he replied, "She who has borne the most children."

The women taught mankind to wear fine clothes. Adam was not made with breeches on. As a symbol of power, Eve was

entitled to them. She was the controlling genius in Eden. The devil knew which one to tempt. Fine dressing was the first impulse to commerce. Babylon, with her fifty miles of wall and her hundred gates of brass, her stately palaces and hanging gardens, was built by a woman. Its fabrics of scarlet and fine linen, rich vestments and embroidery, were the handiwork of women. Carthage was founded by a Phœnician woman, and the traders of that city used to transport the jewels and fabrics of the East to the barbarians of the West.

Sumptuary laws were passed against women. In the time of Romulus women were forbidden to taste wine, and several husbands killed their wives for violating this custom. The women, to be above suspicion, used to kiss every man who called on them. If the Congressional Temperance Society will inaugurate that custom we will all join it.

The speaker proceeded to discuss the position of women in the Dark Ages, and the rise of chivalry.

Defenseless women were liable to be ravished by any robber ruffian who captured one. To prevent this they were shut up in strong castles, where they were guarded from the spoiler. Afterward it was sufficient for any valiant chieftain to declare a woman under his protection, and that he would avenge any insult to her. This gave rise to orders of chivalry and knighthood, and a woman might demand protection from any knight, and he was bound in honor to extend it to her. The pride of the men being flattered by this tribute to their power, the sentiment of chivalry became enthusiastic. The women cultivated their charms assiduously to make themselves objects of devotion. They decorated their persons with costly ornaments and gave fresh encouragement to the hitherto persecuted peddlers.

The women had always been the chief patrons of the peddlers. It makes a man aguish to see a peddler come to his house. He always tries to send him off before his wife gets a glimpse of him. If the biographies of all these strolling peddlers were written, I do not think a single example could be found where one had unpacked his bundle and showed his wares and fabrics in the presence of a woman without finding a purchaser. The courage displayed by those strollers in those barbarous days appealed to woman's nobler feelings and excited her sympathy. Women are never commonplace. Most women, when they read the lives of old Jack Sheppard, Dare-Devil Dick, or John A. Murrell, wish that their husbands were

just like these heroes. Every girl of sixteen, poetically inclined, wishes she was a bandit's bride. Desdemona married a negro because of the dangers he had incurred. The Sabine women so admired the pluck of their Roman ravishers that they pleaded for and remained with them. This heroic instinct caused the ladies to take the peddlers under the wings of their protection.

Costly fabrics and jewels from the farthest ends of the world were eagerly sought for, and every lord desired his lady to appear more beautiful than any other woman in the world, and was ready to run his sword through any man who doubted that she was the most beautiful: a kind of demonstration entirely satisfactory in those days and at this time. These ornaments were costly and could not be had unless paid for at great expense. Household expenditures increased fearfully. The barons could not afford to consume all their crude produce in supporting retainers; so the retainers were dismissed and the armies disbanded, and peace necessarily ensued. Thus the women of the middle ages instilled refinement and love of virtue and true valor into the men, built up society on a solid foundation, scattered the standing armies that filled every castle, gave an impetus to commerce, and established the arts of peace; for women, since the days of Delilah, have been averse to men's belligerent propensities.

Notwithstanding woman has been the lovely instrument through which civilization has been imparted to the world, she has received but little benefit from that civilization. From what is our system of housing and hampering women derived but the barbarous customs of duennas and eunuchs?

It is said that women do not ask to vote. Is that any reason why we should withhold from them a right which is a prime necessity with her? The Scripture teaches us to sit modestly down toward the foot of the table and wait to be invited up to a more honorable position.

Did the negroes ask to be emancipated? Take away the Freedman's Bureau to-day and leave to a vote of the people, white and black, and they would almost unanimously vote to reëstablish slavery. Social power and physical power control sentiments and expressions. The gentleman from Massachusetts [Nathaniel P. Banks] said wisely that universal suffrage would not make the South loyal, because the negroes would vote as the whites wished. Women do not ask to vote, because they know that they would be cried down as strong-minded. It is supposed that none but long-haired men and strong-minded women are in favor of this measure of justice. Therefore

women say they do not wish to vote. They are afraid to kick against the goads.

They are taught from childhood that they must be deceitful. The whole system of their education leads them to suppression of truth. A woman's no proverbially means yes. The first deceit which a girl learns is the concealment of her age, preparing for future contingencies. They know that men and owls like spring chickens; and to cater to men's craving for tender meat, girls never get older than sixteen. If a well-bred girl is asked to marry she invariably says, "No"; but her sweetheart knows by her drooping eyes and heaving bosom that she means yes.

There is a deep tragedy underlying most marriages, and that is that prudent mothers bargain off their daughters for so many shekels. Women are an expensive and useless commodity which must be disposed of to the best advantage. Like oysters, they cannot be kept fresh. They must be sold in reasonable time or pickled in vinegar. This bartering of intelligent human beings to the highest bidder is the case of bickerings and heartburnings, and unhappy homes. This causes *ennui*, dissipation, extravagance, and crime.

Women are repressed in every way. They must follow certain fashions or they become the subjects of animadversion. Their high aspirations are subdued by careful teaching. The mind of a woman is regarded as a secondary consideration. The study of cosmetics engages her whole attention. She learns geography only at the watering places. She learns French in order to perplex the male sex by throwing gibberish in their teeth. She learns to soak lithographs in turpentine and daub them over with variegated colors, not so brilliant as those of the rainbow but much more solid, and then she asks you how you like her painting. She learns to make wax flowers, making a wonderful improvement on nature, there being no withered petals nor worm-eaten leaves in wax flowers. She learns from her botany that charming dialect known as the language of flowers. If you give a young lady a flower she invariably blushes and asks you "Do you mean it?"

If in a pleasant walk through the woods on a May morning a sweet nymph, over whose head thirty summers have shed their brightness, should hand you a violet, she means that she is too young to leave her mother.

If a buxom maid hands you a "touch-me-not" she intimates that she is a frail thing, and mutely beseeches you not to crush her. If a laughing girl, with a rosy, pouting mouth, gives

you a tulip, she means "kiss me if you can"; and I would not give much for a man that could not.

The art of divination has always been appropriated by the women. The sibylline books were written by a woman. The oracle of Delphi was a woman. No astonishing occurrence was ever related to a woman that she did not invariably reply, "I told you so." Among the gypsies the women tell the fortunes. In the New England States a century ago nearly every door had a horseshoe nailed over it to guard it from the spells and enchantments of the old women who were regarded as witches. If a woman were old and ugly, this was *prima facie* evidence that she was a witch, and it required but an idiot's tale to send her to the gallows. Our Puritan forefathers were as merciless in exterminating old women as their descendants are in exterminating rebels.

I have enumerated some of the accomplishments of girls who are expected to move in good society. Their education teaches them deceit, seductiveness, and vanity. The idea of her being a helpmeet is long discarded by society. This idea must be generated by a higher civilization than we now enjoy. Women are, as a class, burdens on society. Their lives are devoted, not to high purposes or useful pursuits, but to creating a comeliness of person in themselves which will entice men of inflammatory feelings from the freedom of single blessedness. We are amazed at the harems of the East. We do not reflect that there may be harems with only one woman in them. When Artemus Ward was in Utah one of the elders died, and all his wives flocked around the waxworks man and besought him to marry them. He replied that they were pretty enough, and individually he would not object to marrying any of them, but that it was the muchness of the thing that he objected to. That is the difference between our system and that of the East. What baser prostitution than for a woman to marry a man for his money, when she had as lief take a toad in her bosom as to enfold her arms about him?

What spectacle more humiliating than to see, at a ball, young ladies sitting like "the four and twenty tailors, all in a row," decked in costly jewels and rich laces, eager as so many roaring lions seeking whom they may devour? Their dressing makes them caricatures on humanity. Fashion! What folly and misery does not that word invoke. Paris leads the fashion in dress and Eugénie leads the fashion in Paris. She is *passé*, therefore shall all Christendom wear large hoops; she has a bald spot on the crown of her head, therefore shall all

shave tonsures on their heads. In the time of the elder Bonaparte there was great lack of population owing to the wars, and all the energies of society were devoted to supplying the deficiency. It was the fashion for women to appear matronly, so they stuffed their waists to attain fashionable proportions and look as interesting as possible. Now the women have a propensity for being squeezed in that locality—hence small waists. What if our great grandmothers could walk out from their pictures on the walls and appear in fashionable circles, would not all the young ladies snicker and say, "Grandmother, what makes your waist so big; grandmother, what makes your hair so prim; grandmother, what makes your back so straight?" But would not the old ladies be surprised in turn at the dress of their great-granddaughters? When they saw the long trails, the tilting hoops, the embroidered petticoats, the laced waists, the cotton busts, the red-topped boots, the sawdust legs, the rats and mice and braids and crimps, the jet chains and frizzles; but, above all, when the old ladies saw the wonderful waterfalls of our girls they would go back into their pictures and giggle forever.

I have briefly alluded to the position and aspirations of women who are above want. It is this class of well-bred fools who do not wish to take upon themselves the burden of thinking. Their first business is to catch husbands, or, if they have succeeded, their lives are devoted to playing the part of nambypambies. The mind demands some excitement, and, for want of something sensible to entertain themselves, women fly to dissipation. Some put in their time reading novels, others gad around among their neighbors, and the majority, like Mrs. Toodles, go to auction. The subordinate position occupied by old women is not a matter of surprise to me when I consider how they are reared.

We laugh at women concealing their ages. How heroically they struggle to retain the only source of power left to them! Gray hairs on a man's head are only the spring flowers of a green old age, but on a woman's head they are the waifs of a desert island, toward which she is irresistibly drifting; an island bleak and barren and lonely. Not for her the social converse, not for her the power of intellect, not for her the pleasures of literature; not for her the teachings of philosophy; she is a dethroned queen, who must forever weep in the darkness of a mental dungeon for the kingdom she has lost.

Our Puritan ancestors did practical charity to their grandmothers when they hung them as witches.

What shall we say of the condition of the lower million? While the upper ten need the ballot to teach them that they are mortal and are to be the helpmeets of men in politics as well as household affairs, the lower million need it to give them an equal chance with their fellow mortals in their life struggle, their labor for bread. All over the North we sing the plaintive strains of suffering negrodom, but the Song of the Shirt is not fashionable.

As population increases, some get rich, but the pauper class increases tenfold. In London live the merchant princes of the world in costly palaces; but in the dark alleys and squalid hovels, the garrets and cellars of that great human anthill, dwell a class of wretches who are walking illustrations of poverty, misery, and vice. We, too, have a pauper class growing up in the United States, which has been fearfully increased of late years by the calamities of war and the fluctuation of money values. Our pauper class must for two hundred years consist exclusively of women and invalids. The extent and cheapness of land are such that every able-bodied man can get good wages. The invalid can be supported by public charities. But who shall provide for poor women?

> "Old King Cole was a merry old soul,
> A merry old soul was he,
> He had a little girl and he kicked her out of doors
> Because she was a *she!*"

What shall be done with the women? The world has been asking that question more than three thousand years. The answer might readily suggest itself. Let the women have an equal chance to take care of themselves. If they fail, then let us devise a means. Women have been bartered as merchandise, housed up in harems, made to perform such drudgery as men would not do, until men have an abiding faith in their own superiority in all lucrative employments. God made woman free and gave her the gift of understanding, and gave her hands to work. Let us not, out of an excess of love, tie her hands and let her starve.

An Irish farrier once sent a bill to Lord Donahue: "For doctoring your honor's mare to death, £3 5s." Are we not guarding the women to death? Ordinarily a woman has but one means of livelihood—that is her needle. Oh, the pains of stifled breasts and aching eyes and dizzy heads that daily ascend, a voiceless prayer of millions of sewing-women, to the throne of Him who created woman for some purpose. Think

not that the dumb prayer of myriad aches is unheeded. A tree grows up in strength and beauty; a poisonous worm is gnawing at its roots; slowly will the tree wither, its leaves fall off, its fruit turn bitter, until at last it is dead as if blasted by the shivering stroke of a thunderbolt. We cannot violate the laws of nature with impunity. If women are raised higher or dragged lower than nature intended, evil must befall. Let one of my radical friends who is voting against women's franchise go out on Pennsylvania Avenue, and before he walks five squares he will see a Babylonian woman, dressed in scarlet and fine linen, and burned with fire more scorching than the blazing faggots of a Hindoo widow's pyre; a fire which corrodes the body and sears the soul; a fire which raged in Sodom and Gomorrah long before the skies rained brimstone, and before Lot's wife had crystallized into a salty monument of woman's curiosity.

These scarlet women are the holocausts of society. They are mostly uneducated. They have all been pretty girls, and have been innocent babes. Take one of the most depraved of these wretches and trace back her life, and you will probably find that it was not want of virtue but want of bread which dragged her down the fatal abyss of crime. The child has grown up and is left in the world with no capital but her beauty. Brainless and breadless she must henceforth do battle for herself. Bread alone does not satisfy; she must dress, for her business is to catch a man. Before she is aware of it she is in debt. Then the struggle and humiliation commence. There is no honest labor for her to do, but hard drudgery, poorly paid. The seducer comes to her with an offer of bread and clothes and undying love. In a fatal moment of weakness her virtue is conquered, and she submits to his embrace. She is henceforth to be banished from society, and rushes down to lower sinks of infamy, until the last step, where all good Christians consign her, to hell! Her seducer moves in good society, attends church, and marries and is an exemplary man in every way. Does it not strike you that there is something wrong somewhere?

If women were allowed to clerk in stores and perform any labor which they have the capacity to perform, there would be more independence among them, and they would be less subject to the temptations of evil. Virtue is instinctive with woman. When she falls, the blame, in nine cases out of ten, does not rest with herself. The question of the education and employment of women is one of the gravest in the world. On this

question we are in the same condition which the barbarous ages left us.

I have shown you that the Radical party was a "whited sepulcher." That it had no republicanism in it; that it sought to enfranchise the negro for commercial and financial schemes. This will not satisfy the people. Woman suffrage is a grand principle pervading society in all its ramifications, and will increase in importance till the millennial day, when "seven women shall lay hold of one man."

What harm will it do to allow women to vote? Those who do not choose to vote may remain at home. I have been told that this would corrupt society and make women rude. Is there anything corrupting in a man's going to the polls with his wife and his daughters, and all of them putting their ballots into a box? The very fact that women were to be at the polls would close every drinking saloon and keep every community orderly on that day. Women attend Fourth of July orations and public speaking in every decent community, and if there is any person who forgets the proprieties that are due to their presence there are twenty stalwart arms to put him out or take him to jail.

Can Charles Sumner consistently ask for the enfranchisement of the negroes when a majority of the adult citizens of Massachusetts of sound mind and good character are disfranchised? The election of two negroes to the legislature of Massachusetts does not wipe out the stain from her escutcheon. And who are the disfranchised? The gamblers? No. The drinkers of whiskey? No. The smokers and chewers of tobacco? No. The criminals and convicts? No. The politicians and other vagrant non-producers? No. It is the frugal, industrious, and virtuous class which is disfranchised.

We are asked to disfranchise the white rebel because he is an aristocrat, and to enfranchise the negro to break down this aristocracy. But the aristocratic manufacturer of Massachusetts, who sports a gold-headed cane and wears a broadcloth coat with a tail much resembling a codfish, shall vote, while the poor factory girl who wears her life away with dreary, unpromoted toil has no voice in the Government.

The husband and wife are one in law, and he is that one, her lord and master. He may give her a thrashing every morning, and, if arrested and tried for beating her, he pleads *molliter manus imposuit*,[1] and comes clear, for she is his slave in law. She may be intelligent and thrifty, striving hard to earn a

[1] "He has laid his hand on lightly."

livelihood for her children, whom, under no circumstances, can a mother abandon. But her drunken sot of a husband can drive her about from pillar to post and prevent anyone from even giving her shelter. How often do we see the advertisements in the newspapers, "I warn all persons not to harbor my wife"? If she works hard to accumulate property or earn a support for herself and her children, he must take the proceeds, for he is entitled to her wages, and money paid to her without his authority is no payment in law. She cannot dispose of her separate property, make a will, nor even a dying donation without his written consent. These barbarous statute laws are being modified in some States, but are not the social laws against women still more oppressive?

In no State are the statute laws as liberal toward women as they should be. Why? Look at the materials of which elections are composed! The saloon influence is the acknowledged strongest power in every community. Look at the workings of that influence (always hating and hated by women) in the last election. The Radicals had the money. They held the public offices and were supported by all the moneyed powers in the North. A Radical canvasser buys half a gallon of radical whiskey (which has paid a radical tax for the distillery of two dollars per gallon for the whiskey, and is, notwithstanding this tax, sold at $1.75 per gallon, radical poison); with this bottled lightning he drenches the voter, and this sovereign and lord of creation goes reeling up to the polls as drunk as a fiddler's dog, to vote "according to the spirit that is in him." Do you not think his poor starving wife could vote as wisely?

You shut woman out from all the easy and honorable ways of earning a livelihood. If a woman is highly educated she may teach school; if not, she must be a sewing-woman, a beer-jerker, or a harlot! If she clerks in a store she is an exception, and must meet the scornful criticism of the world. Nice young men, counter-jumpers, the tulips and daisies of society, who labor under the heavy responsibility of supporting small mustaches, are the proper persons to measure ribbon, sell hose, and corsets, and vote! How many sunny-haired girls grow up to find that their freedom of labor is curtailed, their ambition hopeless? They find it necessary to cultivate the baser and more artful part of their natures in order to catch a man. She must have a man to protect her from that beast of prey called society. Whence arises this dread among women of becoming old maids? They are willing to mate themselves with men far inferior to them in every way. Many a woman of genius,

whose heart beat high with ambition, has examined, in the agony of her slavery, "Oh, that I were a man!"

If a poor man has a family of daughters, his life is a misery to him, and his heart aches when he asks himself, "What will become of my children when I die?" The wealthiest men in the land have commenced life as poor boys. Every young man has a fair prospect for a fortune; but what woman ever made a fortune, or ever rose by her own exertion from poverty, except by the wages of sin?

But we are told to wait. This will complicate questions. What more simple than to follow a principle to its corollaries? It is said that woman suffrage will bring odium on negro suffrage! Have the women got so low down in the scale of humanity that their privileges would bring odium upon the enjoyment of the same privileges by the untutored African? If so, shame upon this barbarous people who have reduced them! Why should we wait? There are thousands of women, widows and orphans of men who have fallen in battle, starving and freezing for want of the ballot. There are thousands of virtuous women who are on the brink of crime for want of bread. There are thousands who are now in the meshes of Satan and cry loudly for help; for bread! Why wait and refuse to discuss measures when such grave results hang upon the issue?

It would be superfluous to discuss woman's capacity to vote. She is the natural superior of man in every way. A poet says of nature:

> "Her 'prentice han' she tried on man,
> And then she made the lasses O."

I grant that she is not now as intellectual as man. She has not the education. She has never been taught to think. The women know as much about law as the majority of doctors; and much more about medicine than lawyers. What lawyer could have ever invented catnip tea?

Let us allow women the chance to use their learning and they will soon become educated. Let us allow women to be useful to themselves and to society and they will cease to be so helpless and will be more courted. Why is it that a barbarian woman is a subject of purchase, the man being willing to trade his cattle or his other goods for a wife? It is because they are useful. Why is it that, when society has become civilized, every inducement and penalty is needed to force men to marry, and women are willing and anxious to marry without?

Why is it that with the increase and wealth of a country woman only becomes more burdensome on society? The new demands for labor springing out of the diversification and division of labor find no place and offer no wages to woman. Men's wages increase, but women are still helpless burdens on the community. In my district this is not the case. We have not only the prettiest girls in the world but the most useful women. The men find great difficulty in getting married, for the girls are independent and can earn a livelihood without marrying.

But look around in your cities and you will see a great contrast. There the women are like ravenous wolves or cunning man-traps. A man has to "bevare of the vidders!" A poor man is in continual trepidation lest he should fascinate one of them. If he is married he brings his nose to the grindstone. She can be of no earthly use to him in business, her ideas run in a different current from his, and she can have no social relations to him except to ask him the news and detail to him the gossip and slander of the day.

I know that success in my undertaking to enfranchise the women is not likely. The gentleman from Pennsylvania [Thaddeus Stevens]—the modern sea-green incorruptible—is an old bachelor. He knows that if women were in power the scepter would pass from Israel. When the great archangel of radicalism is hostile to the female cause, what may we expect of his imps?

Then the clerks in cities who compose the voting class will be hostile to this measure. If women were allowed to clerk in stores these counter-jumpers would lose their places. They fear the competition. The saloon influence, the strongest power in the land, is hostile to woman suffrage. A woman whose husband and sons have been poisoned would not show much quarter to the dealer of poisons. As long as the men vote right the women would be slow to obtrude themselves upon the public. But in great public emergencies they would step forward and save the nation.

When France was beleaguered by foes and was about to fall under the dominion of a foreign scepter, the dark-eyed Maid of Orleans buckled on her armor and headed her nation's hosts and saved her country. And at a later day, when terror reigned in the republic, and a radical party, drunk with blood, had struck down religion and law, when every fireside was invaded, and the busy guillotine chopped off the heads of conservatives all day and all night, day after day, until men were struck dumb with fear, the blue-eyed Maid of Caen came down to

Paris, and Charlotte Corday struck her dagger to the heart of the chief of the infernal triumvirate and turned back the red waves of the surging revolution. Women are timid and averse to destroying anything; but when danger is so great that the stoutest hearts of men are appalled a woman's courage rises to the full height of her divine nature, and she is always ready to sacrifice herself for the good of others.

Let me say generally that men are fast losing sight of the great principles of patriotism and justice. They are generally controlled by implacable hatred and prejudice or by sectional selfishness and greed. Women could not do half so badly as the men.

Though I have no hope of practical results from this Congress, I confidently expect that the Forty-first Congress will come here pledged to give the women their rights. If the prominent women of the United States withdraw their support from the Radical party, it will fall, to rise no more. If you provoke opposition from such women as Mrs. Mott, Mrs. Stanton, Anna Dickinson, Lucy Stone, and Fannie Gage, they will drive your radical orators from every stump in the North. Who get up your organizations and societies; who raise your funds; who get up your sanitary fairs? The women! It was through them that millions of dollars have been raised for the men of the Radical party to spend. I tell you, gentlemen, that every woman of talent throughout the North is impressed with the conviction that she is injured by this forced repression and social ostracism. These ladies say truthfully that genius and talent have no sex.

Intelligence is gradually restoring to women the rights that are withheld from her by force. The world is fast learning that war costs more than peace. The gentleman from Minnesota [William Windom] demonstrated to us that it cost this Government over two million dollars to kill an Indian, and with that amount we could support the whole Indian race for a longer time than it takes to make the longest campaign. Killing is the most costly amusement which mankind enjoys. Let the women vote and we will have no more war. A woman would bear a great deal before she would plunge the country into war, for she is more injured by war than any other portion of society. Among the Romans the women were not taxed for war debts. On one occasion, in a great distress for money, a tax was laid upon the property of women. Hortensia and four thousand Roman matrons appealed to the prætor. She made a speech against war, and against the injustice of taxing women for war, that

has come down in history as a remarkable piece of eloquence. The prætor struck women's names from the tax list.

The women are oppressed because they have submitted without a murmur. But that time is now past, and from this time on this question will be agitated. Our forefathers submitted to the imposition of unjust taxation without representation until the burdens became so onerous that they passed non-intercourse resolutions and threw off the yoke of Great Britain. Let the women imitate our forefathers and have nothing to do with men who deny them their rights, and these self-constituted lords of creation will soon be humbled as the British lion was.

Constitutional Right of Women to Vote

Upon the passage of the Fifteenth Amendment it was claimed by many woman suffragists that under the Constitution, fortified by this amendment, women could claim the right to vote.

On December 19, 1870, Mrs. Victoria C. Woodhull, of New York City, presented a petition to Congress claiming her right to vote under the Constitution in general and this amendment in particular, and asking that proper legislation be enacted to enable women to exercise this right.

The memorial . . . showeth . . . that she is a citizen of New York and the United States, over 21 years of age; that since the adoption of the fifteenth article of amendments to the Constitution neither the State of New York, nor any other State, nor any Territory has passed any law to deny or abridge the right of any citizen of the United States to vote, as established by the said article, neither on account of sex or otherwise; that nevertheless the right to vote is denied to women citizens of the United States by the operation of election laws in the several States and Territories which were enacted prior to the adoption of the said fourteenth and fifteenth articles, and which are inconsistent with the Constitution, as amended by them, and therefore the said laws are void and of no effect, but which, being still enforced by the said States and Territories, render the Constitution inoperative as regards the right of women citizens to vote; and whereas article six, section two, declares "that the Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made

and which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding"; and whereas no distinction between citizens is made in the Constitution of the United States on account of sex, but as the fourteenth article of amendments to it provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"; "nor deny to any person within its jurisdiction the equal protection of the laws"; and whereas Congress has power "to make laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States," and to make or alter all regulations in regard to the times and manner of holding elections for Senators and Representatives, and especially to enforce by appropriate legislation the provisions of the said fourteenth article; and whereas the continuance of the enforcement of said local election laws denying and abridging the right of citizens to vote on account of sex is a grievance to your memorialist and to various other citizens of the United States being women; therefore, your memorialist would respectfully petition your honorable bodies to make such law as in the wisdom of Congress shall be necessary and proper for carrying into execution the right vested by the Constitution in the citizens of the United States to vote without regard to sex.

The memorial was tabled. Mrs. Woodhull became a candidate for President in 1872.

On January 18, 1872, Henry Wilson [Mass.] introduced in the Senate a bill to give women the right to vote and to hold office in the Territories. It was referred to the Committee on Territories.

On February 17 George F. Hoar [Mass.] presented in the House a memorial from Lucy Stone, president of the American Woman Suffrage Association; Julia Ward Howe, chairman of the executive committee, and other officers, praying that the right to vote and hold office be granted to women in the District of Columbia, and that an amendment to the Constitution be made to prohibit political distinctions on account of sex throughout the Union. Among the officers of the association may be mentioned Thomas Wentworth Higginson, Mary A. Liv-

ermore, George William Curtis, George W. Julian, William Lloyd Garrison, James Freeman Clarke, and Moses Coit Tyler.

On May 20, 1872, Stevenson Archer [Md.] made an extended speech in the House against woman suffrage, which is notable in that it recommends and, to a certain extent, records, an organized movement among women against the grant of suffrage to their sex.

The Reaction from Woman Suffrage

Stevenson Archer, M.C.

The advocates of woman suffrage say that woman will go forth from her home panoplied in purity, and after correcting the political evils of the day will bring back with her all the domestic virtues unsullied. A most preposterous proposition, carrying absurdity on its face, even if history did not give it, a thousand times, the lie direct. The political corruptions that defile our fair land cannot be exorcised by the enchantment of woman's smile or by the magic of her touch. It might as well be affirmed that Proserpine was not polluted by being carried off to the infernal regions; that not a smirch befouled her snowy robe or her damask cheek during all the long time she abode in that smoky prison house of dismal horrors. This rape was a grievous blow to her mother Ceres, who dearly loved her daughter. She sought her in vain all over Sicily, and when night came she relighted Mount Etna, which had become extinct, and by its glare continued her search throughout the world. So shall disconsolate Virtue in our land grieve for the loss of her daughters; and she, too, shall search in vain to find them as they were. She, too, will relight the great mountain torch of Christianity, which shall by that time be quite extinguished; and it may be that by its light she will be able to find what Ceres found, her daughter's veil (that is, her modesty) torn and rent; and she may also meet with a Hecate, as Ceres did, to tell her the dreadful secret that the devil had her daughter in his keeping. Ceres, who had the earth in her special care, smote it with barrenness and desolation, so that it should yield no more until her child should be restored to her arms. And just so, as long as our women shall remain groping in the tainted atmosphere of politics and unrestored to weeping virtue, the delicious fruits of domestic peace and happiness will be denied us;

the homes of America will, indeed, be as barren places, and so must remain, for there will be no redemption; that of the cross will have failed, and there is no other. As the great Maro sang:

> "Facilis descensus Averni;
> Sed revocare gradum, superasque evadere ad auras,
> Hoc opus, hic labor est;"

which, freely translated, means, "It is easy enough to go down into hell; but to get back—there's the rub!"

But there is still a class of women who are as much more worthy as they are now more numerous than the other two classes, and who will make a noble struggle against the ruinous innovation; such a struggle as shall deserve a better fate than failure; yet fail it will in spite of all that can be done. A time will come when there will be but one thing remaining to be done to save the country; no, not to save it, but to prolong for a little while its wretched existence. That one thing will be that these women who have so long kept away from the pollution of the hustings shall march up at last and deposit their votes, and counteract the pernicious effects produced by the votes of a million women, who by this time, wholly unchristianized themselves, will be doing all they can to unchristianize the entire people. And when this noble class are once forced from the cradle and hearth into publicity and kept there, their career from that time forth must inevitably be down, down. These descending steps are as easy to imagine from what has gone before as they would be sad to trace.

It is impossible to read the vile talk of the present advocates of woman suffrage in their conventions, or to pursue the vile writing in any one of their numerous ably conducted journals, and not conclude—and that without the least hesitation—that the constant tendency of their teachings is to undermine Christianity. The *Women's Journal* says that the Young Women's Christian Association of Massachusetts are the right wing of the woman suffrage army. When Wendell Phillips wound up one of his peace-making speeches with the gentle expression, "God damn the Commonwealth of Massachusetts!" because that State for once would not chime in with some of his lovely schemes, that well-known woman's rights advocate, Lydia M. Child, clapped him so vehemently that she broke her wedding ring. And Mrs. Elizabeth Cady Stanton, who relates the delicate incident in *The Revolution*, says that such an oath is not one iota more objectionable than to say, "By George!" and that even her own sweet and gentle nature is often so deeply stirred

by the wrongs of her sex that to think "damn it!" is no unusual thing with her.

Hear also the language of yet another of their leading organs, and while you tremble for your country and for Christianity shudder at the shocking sentiment: "When all the women are Victoria Woodhulls, and all the men Theodore Tiltons, then, and not till then, will the millennium have arrived." Why, if we knew nothing of the precedents of this precious pair, the single fact that the she-male's biography of the he-male was lately suppressed in Germany for its unendurable nastiness should be enough to damn them both with all decent people. That biography was such a mass of moral putrefaction, from cover to cover, that it was feared it might contaminate the whole German Empire. And this same Victoria Woodhull is the woman's candidate for the presidency of the United States!

The dissolution of the marriage relations at the pleasure or caprice of either party is openly advocated by these revolutionists, and this alone would wipe out the Christian religion from the face of the earth. Just such looseness of the marriage tie did more to destroy Rome than all the Goths and Huns that ever swooped down upon her with fire and sword.

This laxity of the marriage bond is a necessary result of the woman's rights movement, and would soon evolve itself out of that movement without any special advocacy of it in the revolutionary journals and speeches. For what man would bind himself to dwell for life beneath the same roof with a masculine woman?

But perhaps the most melancholy effect of such a state of things is yet to be told. The children—Heaven pity the children when "free love" shall hold high carnival over this land!—boys and girls alike will then have no kind hand to guide them. The father will care not for them, for he cannot know which are his, and which are some other man's. The mother will be mostly from home, at the hustings, drinking, swearing, and brawling. The children will give full head to their instincts and do whatever sin they please, whatever their natural depravity, let loose and spurred on by passion, shall prompt them. The family will have become, in fact, a family of mere animals. That institution which is the foundation of society and of the State—the only foundation on which either can ever rest secure—will be uprooted, and the whole social and political superstructure must fall in hideous ruin. The family is to civilization and Christianity what the Coliseum, according to the old prediction, was to Rome:

THE AGE OF BRASS
From the collection of the New York Historical Society

"While stands the Coliseum, Rome shall stand;
When falls the Coliseum, Rome shall fall;
And when Rome falls—the world."

These deluded women are exceedingly fond of quoting Plato's "Commonwealth" to prove their position. Well, let them accept the conditions he prescribes. Let woman go forth to the bloody field conquering and to conquer. Let us have modern Semiramises and Zenobias. Let her, if she so elect, imitate that Amazon queen Penthesilea, who, with more valor than discretion, essayed to cope in mortal strife with the terrible Achilles under the walls of Troy, and paid the forfeit of her life.

But these women have no notion of going to war. Not they! They say over and over again that the good Lord has in his infinite wisdom (and mercy they might well add) so constituted them that they are wholly unfit for the hardships and perils of horrid war. Oh, no, not that; anything but that. They will send forth (and will do it cheerfully) their fathers and husbands and sons, when danger threatens the dear country, but themselves will stay at home and vote, and manage the entire governmental machinery. And here would, indeed, be presented an anomaly in government. Not only would those who had charge of the affairs of the nation be wholly unrepresented in the army sent forth to defend that nation, but it would otherwise be to the eternal interest of those governing, since they would have no dangers to encounter, to bring on a war whenever they wished to get into power; and, worse still, it would be to their interest to keep that war up until enough men were killed to enable them to carry all the elections, and so continue in power.

Moreover, it is a well-known fact that even now when a nation becomes involved in war the women are the last to give up, although it rends their very heart-strings to lose those dear to them. The nation which should go to war with women swaying the councils and men alone in the field, where would be the end of bloodshed? It would be the Kilkenny cats tragedy acted over again. Now, although I have never heard the sex of those famous cats explicitly and authoritatively stated in any official report of the battle, yet the universal opinion has gone abroad that they were male cats; and it is my firm conviction that they would never have fought that terrible battle—ending, as we all know, in two pitiful tails—had not the female cats been inciting them on.

There is an instance in our own history to which these

women often point with a triumphant air as a precedent for extending suffrage to their sex. The instance is the extension of suffrage to the women in New Jersey in the year 1790. This privilege remained with them from that time until 1807. The newly enfranchised, however, voted on but three occasions during that period. How many on the first two of these occasions availed themselves of the hitherto masculine prerogative does not, so far as I can learn, appear outside the unpublished records. The last occasion, however, was too memorable a one not to be transmitted to us in all its novel particulars; and it is as instructive as memorable. In the last-named year a vote of the people of Essex County was taken on the question of erecting a new courthouse and jail. Whether or not all the women turned out may be judged of by the fact that the female vote cast exceeded alone the whole lawful vote of both sexes in the county. The men, if we may judge by the sequel, were very much alarmed as well as disgusted; for the cowardly and ungracious monsters enacted a bill at the very next session of the legislature restricting the right of suffrage forever thereafter to "free white male citizens," and the New Jersey women kept mum on the sore subject of politics thenceforth for half a century. While the strong-minded of the present day frequently cite the above instance of the enfranchisement of their sex, with the view of influencing public opinion in their favor, they always fail to add that the right was abrogated by reason of the disgraceful conduct of those on whom it had been conferred.

Now, if women could virtually stuff ballot boxes in deciding such a trivial question as the building of a jail or courthouse, and that, too, right at the beginning of the movement, when it is fairly presumable they were on their best behavior, as everyone promoted to a new and untried situation is, or ought to be, the question arises, what infamous practices would they not be capable of when momentous issues were at stake, and when after a little while their modesty should have been entirely and hopelessly deflowered by being jostled throughout long and bitter campaigns, by the hard-fisted "roughs," and the unscrupulous and veteran tricksters whom they must needs encounter at every turn, and from whom they would soon take lessons in the exquisite art of low intrigues and barefaced bribery?

Let deluded woman beware how she comes down from that lofty pedestal which she now occupies, how she casts off the almost celestial garments in which her weakness and her virtue, the only sure guaranties of his love and protection, have clothed her in the eyes of man. Let her beware how she comes down

from that proud position, and, standing on the same level with man in all things, challenges him to a contest for supremacy. As a mere animal he is the stronger, and in such a struggle as that she must go to the wall. She can rule him now and do with him even as she will, always with the proviso that she keep within that sphere to which revelation and her own nature assign her. Let her reflect that man when in that primitive state to which her rebellion from this sphere will bring them both again becomes not only an animal but a savage animal. Let her contemplate the indescribably wretched condition of the Comanche squaw.

Let each true woman of the nation exert herself and avert the impending danger. Nor, in order to do so, need she leave for a single moment her proud throne—for proud it is, though seemingly so humble—beside the hearthstone, from which, knowingly or not, she rules her little world. And inasmuch as the great world is made up of such little worlds, the true women already rule that great world, and this, too, while they keep politics afar. May it ever be so! But, that it may, let them not be idle; let them make known throughout the length and breadth of the land, not only the vast majority of their numbers over the innovators, but let them, in the modest way that they know so well, put forth their sentiments in language so plain that he who runs may read, and particularly the demagogue who "runs" for an office, and is perhaps at this very moment currying favor with the strong-minded sisterhood, telling them how he will favor them now if they will but do the same for him when they shall have been enfranchised by his aid. Let them write, and scatter abroad in the land, words of such burning eloquence as shall make him—yes, hardened demagogue though he is—tremble in his shoes and think again before he sells his influence to the devil. Let them write such words, too, as shall make the soft-shell wing of the woman suffrage party (those who sympathize with the movement but remain decently at home—there is no penetrable point in the hard-shell portion) blush that they should ever have favored their erring sisters, even in thought.

That there are true women among us who can write thus effectively is proved by the following memorial presented about a year ago to the legislature of Ohio, as an antidote to one of the opposite stamp:

"We acknowledge no inferiority to men. We claim to have no less ability to perform the duties which God has imposed upon us than they have to perform those imposed upon them.

"We believe that God has wisely and well adapted each sex to the proper performance of the duties of each.

"We believe our trusts to be as important and as sacred as any that exist on earth.

"We feel that our present duties fill up the whole measure of our time and ability, and that they are such as none but ourselves can perform.

"Their importance requires us to protest against all efforts to compel us to assume the obligations which cannot be separated from suffrage, but which cannot be performed by us without the sacrifice of the highest interests of our families and of society.

"It is our fathers, brothers, husbands, and sons who represent us at the ballot box. Our fathers and brothers love us. Our husbands are our choice, and one with us. Our sons are what we make them.

"We are content that they represent us in the cornfield, the battlefield, and at the ballot box; and we represent them in the schoolroom, at the fireside, and at the cradle, believing our representation even at the ballot box to be thus more full and impartial than it could possibly be were all women allowed to vote.

"We do, therefore, respectfully protest against any legislation to establish 'woman suffrage' in our land or in any part of it."

So long as our women shall stand upon such a platform as that there is hope for the country. Demagogues may agitate, traitors may plot, usurpers triumph for a little season; corruptions may eat up much of her substance; but her million homes linked together in the triple bonds of purity, virtue, and a common Christianity are a million imperishable points whence shall go forth, at all times and in all seasons, an influence that shall preserve the whole social, political, and religious fabric from destruction.

Apropos of the allusion of Mr. Archer to the voting of the women of New Jersey, it is in place here to cite a later petition to Congress by Mary E. Walker, M.D.

Petition of Dr. Walker

Whereas the women of New Jersey exercised the rights, duties, and privileges of the elective franchise before the Constitution of the United States was adopted, and continued to exercise the same until 1844, long after the framers of the Constitution as well as the adopters were all dead, clearly proving that the fathers intended to make this country a *perfect* republic instead of a *limited* one: Therefore,

Your memorialist, in behalf of the women citizens of the United States, asks your honorable body to pass the following

bill to protect women citizens from State laws that are clearly in conflict with the Constitution of the United States of America.

BILL TO PROTECT WOMAN IN HER FRANCHISE

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled. That the penalties made and provided for the hindering or preventing men citizens from the free exercise of the elective franchise on election days shall be in full force in regard to women citizens in all the States and Territories of the United States.

MARY E. WALKER, M.D.

WASHINGTON, D. C., *January* 15, 1877.

CHAPTER X

WOMAN SUFFRAGE

[RECENT DEBATES]

Status of Woman Suffrage in the Various States—Resolutions for Woman Suffrage Amendment to the Constitution Submitted in the House by John E. Raker [Cal.], A. W. Lafferty [Ore.], Edward T. Taylor [Col.], Victor L. Berger [Wis.], *et al.*; Referred to Committee on Judiciary, Consisting of Henry D. Clayton [Ala.], Chairman, Martin W. Littleton [N. Y.], Edwin W. Higgins [Conn.], John W. Davis [W. Va.], *et al.*—Debate in the Committee Hearing: in Favor of the Resolution, Miss Jane Addams [Ill.], Miss Leonora Reilly [N. Y.], Mr. Raker, Mrs. Jean Nelson Penfield [N. Y.], Mr. Taylor, Mr. Lafferty, Mrs. William Kent [Cal.], Mrs. Ida Husted Harper [N. Y.], Mr. Berger, Miss Mary E. McDowell [Ill.], Miss Caroline A. Lowe [Mo.], James L. Laidlaw [N. Y.], Mrs. Elsie Cole Phillips [Wis.]; Opposed, Mrs. Grace Duffield Goodwin [D. C.], Miss Ella C. Bréhaut [D. C.], Mrs. Francis W. Goddard [Col.], Judge Moses Hallett [Col.].

IN many States of the Union a limited suffrage has been exercised for some time by women. As far back as 1838 Kentucky gave school suffrage to widows with children of school age. In 1861 Kansas gave it to all women, and her example was followed: in 1875, by Michigan and Minnesota; in 1876, by Colorado; in 1878, by New Hampshire and Oregon; in 1879, by Massachusetts; in 1880, by New York, Mississippi, and Vermont; in 1883, by Nebraska, and in 1887 by North Dakota, South Dakota, Montana, Arizona and New Jersey. In 1891 school suffrage was given to women by Illinois; in 1893, by Connecticut; in 1894, by Ohio. In 1894 Iowa gave bond suffrage to women. In 1897 Kansas granted municipal suffrage to women. In 1898 Delaware gave school suffrage to tax-paying women; Louisiana gave to the same class the right to vote upon all questions submitted

to taxpayers, and Minnesota gave women the right to vote for library trustees. In 1900 Wisconsin gave women school suffrage. In 1901 New York gave tax-paying women in all towns and villages the right to vote on questions of local taxation. Kansas gave bond suffrage to women in 1903. In 1907 the new State of Oklahoma continued school suffrage to women, already granted in the Territory. In 1908 Michigan gave all women who pay taxes the right to vote upon questions of local taxation and the granting of franchises. In 1910 New Mexico gave school suffrage to women. On July 1, 1913, an act of the legislature of Illinois went into effect giving women the right to vote for Presidential electors and statutory officers.

Women are equal guardians with the fathers over their children in Colorado, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New York, Oregon, Pennsylvania, and Washington. The guardianship laws of Utah and Idaho, although not equal by express definition, are practically so interpreted.

FULL SUFFRAGE TO WOMEN

In nine States women have full suffrage: Wyoming, Colorado, Idaho, Utah, Washington, California, Arizona, Kansas, and Oregon. In token of this fact the flag of the woman suffrage movement in the United States bears nine stars, each of which has been added upon a new State granting the suffrage.

WYOMING is the pioneer equal suffrage State in America, full political equality having been the basis of its government as long as it has had a government at all. The words "equal rights" form the motto on its State seal. The very first legislative council, after its organization as a Territory, passed, in 1869, a bill providing that women should have the same rights as men to vote and hold office, and when it was admitted as a State in 1890, before any other State had given women the vote, equal suffrage was made a part of its constitution.

During the early days of woman's enfranchisement in Wyoming several attempts were made at securing a repeal, but they all failed. At the time statehood was applied for a determined opposition was made in Congress to the admission of a Territory with a woman

THE WOMAN TRUMPETER

By courtesy of the "Woman's Political Union," New York City

suffrage clause in its constitution. So violent was the feeling that the territorial delegate in Congress, Joseph M. Carey, afterward governor of the State, telegraphed the legislature that he feared statehood would not be granted if the suffrage clause were not abandoned. The legislature, which was then in session, telegraphed back: "We will remain out of the Union a hundred years rather than come in without woman suffrage."

During the forty-three years that the measure has been in effect every governor has testified to its good effects, including the territorial governors, who are appointed by the President and are not, therefore, dependent upon votes.

In 1893, and again in 1899, the House of Representa-

tives adopted resolutions declaring that woman suffrage had been an unmixed advantage to the State. In 1901 the legislature as a whole unanimously adopted similar resolutions and added an appeal to other States to adopt the measure as one tending toward the amelioration of all evil social conditions.

It has been repeatedly stated by various officials that from 80 per cent. to 90 per cent. of the women eligible cast their ballots.

Though eligible to all offices few women in Wyoming have held the higher positions. One woman has served as a member of the House of Representatives in the legislature, and numbers as state superintendent of schools, county clerk, recorder, treasurer, etc., and as justices of the peace. In territorial days women served very generally on juries—to the satisfaction of the judges, who expressed their opinions on such service. Later the practice fell into disuse through the desire of a chief justice that women be not interfered with in the performance of domestic duties. However, women are still summoned in special cases.

It is claimed that women have exerted considerable influence upon legislation in Wyoming. They have helped to secure measures making gambling illegal; giving women absolute rights over their own property; providing that men and women teachers shall receive equal pay for equal work; raising the age of protection of young girls to 18; providing penalties for child neglect, abuse, or cruelty; forbidding the employment of children in certain industries; making it unlawful to give or sell liquor or tobacco to children; establishing kindergartens and a State industrial school; providing for the care of dependent children and infirm, indigent, or incompetent persons; making State pure food regulations conform with the national law; and providing for the initiative and referendum, the commission form of government, direct primaries, accounting for campaign expenses on the part of candidates for political offices, and the headless ballot.

Colorado conferred suffrage upon women in 1893 by

enactment of a law which was submitted to the voters and carried by a majority of only a little over 6,000. In 1890, after women had been exercising the privilege for seven years, the measure carried as a constitutional amendment by a majority of 17,000. From 75 to 85 per cent. of the women eligible to vote exercise the franchise.

In 1899 the Colorado legislature passed, by a vote of 45 to 3 in the House and 30 to 1 in the Senate, a resolution declaring that during the time that equal suffrage had been in operation women had used the vote as generally as men, with the result that better candidates had been selected for office, election methods had been purified, and the character of legislation improved, civic intelligence increased, and womanhood developed; and recommending the adoption of the measure by all the States and Territories of the Union.

Women have held office more extensively in Colorado than in any of the other suffrage States. From 1900 to 1912 from one to four women have served in each legislature, and on one occasion a woman Representative distinguished herself by acting as Speaker of the House during a stormy session that would have confused any but the most expert parliamentarian. The report of the investigation into the workings of equal suffrage in Colorado by Dr. Helen Sumner states that the women members have averaged above the men members in intelligence, although there has never been a woman member who equaled the most brilliant man, and that the character of the legislation which they have introduced has averaged higher than that introduced by the men. Most of them have been married women or widows with grown or half-grown children.

From the first year of their eligibility women have held the office of State superintendent of schools. Dr. Sumner says: "The women who have held the office of State superintendent of public instruction in Colorado have made better records than the men who formerly held the office."

The offices of county superintendent of schools usually go to women, and women are frequently elected

county clerks, treasurers, coroners, assessors, clerks of district and county court, auditors, etc. They also hold several city offices. They are eligible to sit on juries, but it has never become customary to impanel them except in special cases.

Women have been able to influence legislation extensively, despite, it is alleged, the opposition to the measures proposed by them on the part of certain powerful commercial interests that dominate the political life of the State. Their most notable achievement was the retention in office of Judge Ben B. Lindsey, of the Denver Juvenile Court, when both political parties were arrayed against him.

Their influence as voters has been largely instrumental in securing measures making mothers joint guardians with the fathers over their children; raising the age of protection of young girls to 18; establishing a juvenile court; making parents responsible for the offenses of delinquent children when they have by neglect or any other cause contributed to such delinquency; forbidding the employment of children in certain industries; making the wife the head of the family in cases where she provides the principal support; providing for supervision of lying-in hospitals and maternity homes conducted by private individuals; compelling men to support their families and making wife-desertion a felony; providing penalties for the punishment of male and female procurers; making it a felony for any person under 18 to work as a servant or employee in any house of ill-fame; making immoral solicitation a felony; imposing heavy penalties upon men for living upon the earnings of immoral women; forbidding the insuring of the lives of children under ten years; establishing State parental schools; establishing a State home for dependent children, two of the five members of the board to be women; requiring that at least three of the six members of the board of county visitors shall be women; establishing a State industrial home for girls, three of the five members of the board to be women; requiring one woman physician on the board of the insane asylum;

providing for the care of the feeble-minded; making father and mother joint heirs of a deceased child; establishing a State traveling library commission to consist of five women from the Colorado Federation of Women's Clubs, to be appointed by the governor; prohibiting the gift or sale of cigarettes to children; prohibiting the sale of opium; making employers liable for industrial accidents; removing the emblems from the Australian ballot (an approach to an educational qualification for voting); establishing the indeterminate sentence for prisoners; making the Colorado Humane Society a State bureau of child and animal protection, and providing for the teaching of humanity to animals in the public schools. Before the franchise was granted, women's property rights had already been fairly well secured, and since that time the last discriminations have been removed, so that, with respect to property, women are on a basis of perfect equality with men.

In 1870, before Utah was admitted as a State, the territorial legislature passed a measure adopting equal suffrage, and for seventeen years women voted at all elections and acted as delegates to political conventions and members of territorial and county committees, but they were not eligible to office. In 1887 Congress passed a bill taking away the rights granted by the territorial legislature [see page 471], and during the remaining nine years of the territorial period Utah women were without the vote. In 1896, however, when statehood was conferred, equal suffrage was included in the constitution. Since then women have been accepted on an equal political footing with men in all respects.

From 85 per cent. to 90 per cent. of women eligible to vote cast their ballots.

Several women have been elected to the State legislature, one to the Senate—so far the first and only woman to sit in the upper chamber of a legislature in any State. Women also serve in considerable numbers as county clerks, treasurers, recorders, auditors, assessors, and county superintendents of schools. Although eligible they do not customarily do jury service.

Women have aided in securing measures providing for equal pay for equal work for teachers; raising the age of protection for young girls to 18; establishing free public libraries in cities and towns; requiring in all schools and educational institutions supported wholly or partly by public funds systematic instruction in physiology and hygiene, including the effects of stimulants and narcotics; providing for a course of free lectures every year at the capital on sanitary science, hygiene, and nursing; providing for a curfew bell at 9 p. m. to keep children off the streets at night; making it a misdemeanor for any minor to buy, accept, or have in his possession cigarettes, tobacco, opium, or any other narcotic; providing for the protection of dependent, neglected, or ill-treated children, and for the punishment of the persons responsible; requiring the establishment of kindergartens in towns of a specified size; prohibiting traffic in women; prohibiting the employment of children in certain industries; prohibiting the employment of women more than nine hours a day or fifty-four hours a week; providing for medical examination of school children; authorizing boards of health to take certain steps to protect the public against venereal disease; providing for sanitary inspection for slaughter-houses and other places where foodstuffs are prepared; forcing wife-deserters to pay a certain sum for the support of their families; giving local option on the liquor question. Women have practically the same rights over their independent property as men.

In 1895 the IDAHO legislature voted, unanimously in the Senate and 33 to 2 in the House, to submit a woman suffrage amendment to the State constitution, and in 1896 the measure carried by a majority of 5,844.

The percentage of eligible women who vote ranges from 75 per cent. to 85 per cent.

A number of women have been elected to the House of Representatives of the legislature, and have filled satisfactorily a number of county and city offices. In 1900 the legislature passed a bill exempting women from jury service, but this was vetoed by the governor in response

to a protest from the women themselves. It is not customary for women to serve, however, except in special cases.

In the first session of the legislature after they got the vote women aided materially in getting through a measure of the utmost importance to the young State, namely, an anti-gambling law. In the six sessions since then they have helped to secure measures raising the age of protection for young girls to 18; prohibiting the employment of children in certain industries; creating a juvenile court; creating a State humane society; increasing the control of married women over their independent property; establishing libraries and reading rooms and a State library commission, consisting of the president of the State University, the State superintendent of public instruction, the secretary of State, and the attorney-general; providing for a department of domestic science in the State university, and for a course of lectures on the subject in the Academy of Idaho; establishing an industrial school; providing for the inspection and regulation of places where foods and drugs are prepared; providing for the commission form of government; providing anti-trust regulations; establishing measures for the control of the sale of liquor; and prohibiting persons of lewd lives, both men and women, from voting.

The Idaho State Federation of Women's Clubs has prepared, for introduction into the next legislature, bills providing for equal guardianship of children; medical inspection of school children; instruction in sex hygiene in the public schools; the closing of houses of prostitution, and making venereal diseases reportable.

In 1883 the territorial legislature passed a bill adopting equal suffrage and for four years the women of WASHINGTON voted in as large, or larger, numbers than the men. In 1886 some question of constitutionality having arisen, the legislature strengthened the act. Nevertheless, in 1887, on the motion of what it was charged were vicious elements that had suffered by legislation enacted with the help of women's votes, the Supreme

Court declared the bill unconstitutional on the ground that it was improperly titled. The following year the legislature reënacted it—this time perfect in every respect. In 1889 the Supreme Court disfranchised women on the grounds that territorial legislatures had no power to extend suffrage.

When statehood was applied for a referendum was held and woman suffrage was defeated by a majority of 19,000. In 1898 a constitutional amendment granting it was submitted to the people, and it was defeated by a majority of 10,000. In 1910 the amendment was submitted for the third time and won by a majority of 20,000 —two to one in every election district.

In the local elections since 1910 from 85 to 95 per cent. of the women eligible to vote have cast their ballots. Women have been elected to local offices, and have served rather extensively on juries, resisting all attempts to relieve them of this duty.

In 1896 a woman suffrage amendment to the State constitution was submitted to the voters by the CALIFORNIA legislature and defeated by a vote of 26,744. In 1911 the amendment was submitted for the second time and carried by a majority of 4,000.

In the local elections since 1911 from 90 to 99 per cent. of the women eligible to vote have cast their ballots. Women have willingly served on juries.

In 1912 the full suffrage was granted to women in ARIZONA, KANSAS, and OREGON.[1]

During the congressional session of 1911-12 six joint resolutions were offered in the House, each proposing to submit to the States an amendment to the Constitution granting to women throughout the nation the right to vote. The Representatives offering these resolutions were John E. Raker [Cal.], A. W. Lafferty [Ore.], Edward T. Taylor [Col.], Victor L. Berger [Wis.], Frank W. Mondell [Wyo.], and Atterson W. Rucker [Col.].

The resolutions were referred to the Committee on Judiciary, Henry D. Clayton [Ala.] chairman.

The committee gave a hearing on March 13, at which

[1] Condensed from "Where Women Vote," by Frances Maule Björkman.

prominent advocates and opponents of the resolution appeared and spoke.

THE RIGHT OF WOMEN TO VOTE

HEARING BEFORE THE HOUSE COMMITTEE ON JUDICIARY, MARCH 13, 1912

The advocates of the resolution spoke first.

Representative Taylor introduced Jane Addams, of Chicago, as the leader of the advocates, calling attention of her prominence as a worker for social reform.

Miss Addams first drew attention to the fact that more than a million women would vote for President in November, 1912, and over a half-million more had the municipal franchise.

> In fact, the remaining women of America are almost the only English-speaking women in the world who are deprived of the municipal franchise. In England women vote upon all civic matters, and all of the women in the English colonies also vote upon municipal affairs. The women in the north, particularly Finland, Sweden, and Norway, have the full franchise; and America, so far from being in the lead in the universal application of the principle that every adult is entitled to the ballot, is fast falling behind the rest of the world. A hundred years ago we occupied an advanced position in regard to the extension of the franchise; at the present moment we are quite behind in this belief that every adult is entitled to representation in his own governmental affairs.

Miss Addams then spoke of the admirable work that had been done by the women of Chicago in reforming social abuses, which was recently checked by the city government taking over the enterprises begun by these women and conducting them inefficiently. The fact that the women were thus excluded she ascribed to the sex's lack of the ballot.

She then touched upon the question of taxation of women to whom representation is denied in laying the tax.

The franchise is only a little bit of mechanism which enables the voter to say how much money shall be appropriated from the taxes, of which women pay so large a part. When a woman votes, she votes in an Australian ballot box, very carefully guarded from roughness, and it seems to us only fair to the State activities which are so largely humanitarian that women should have this opportunity.

Miss Addams then introduced Leonora O'Reilly, a social worker of New York City. Miss O'Reilly declared that working women were asking the ballot for protection of their interests.

Gentlemen, you may tell us that our place is in the home. Do not make fun of us, please. There are 8,000,000 of us in these United States who must earn our daily bread. Now, in all seriousness, because we must earn that bread, we come to tell you that, while we are working in the mills, the mines, the factories, and the mercantile houses, we have not the protection that we should have. Gentlemen, you have been making laws for us; now, we want to make laws for ourselves, because the laws you have made have not been good for us. Year after year working women have gone to the legislature in every State; they have tried to tell their story of need in the same old way. They have gone to you, believing, as they do believe, in the strength of the big brother; believing that the big brother could do for them what they should, as citizens, do for themselves.

They have seen, time after time, the power of the big interests come behind the big brother and say to him: "If you grant the request of these working women you die, politically." It is because the working women have seen this that they now demand the ballot. In New York, and in every other State, we plead for shorter hours. When the legislators learn that women to-day in every industry are being overspeeded and overworked most of them will, if they dare, vote protective legislation for the women. Why do they neglect the women? We answer, because those who have the votes have the power to take the legislators' political ladder away from them, a power that we, who have no votes, do not have. The getting of the vote and the use of the vote for self-protection as a class is another thing we working women are going to do; we are going to do it as well as we have done our work in the factory, mill, office, and shop. The world to-day knows that the women in industry are making good. But we working women maintain that the rest of the

world are not keeping faith with us, in that they are driving us like mad, burning us alive, or working us to death for profits. We, of New York, remember the Triangle fire[1] cases; we saw our women burned alive, and then when our people appealed to the courts and tried to get justice we got instead the same old verdict from the courts, "Nobody to blame." The ballot is a matter of necessity with working women. We want you to put behind you all your prejudice against votes for women; we ask you for fair play. When the workingmen come to you with the power of the ballot they make you listen. We want the power of the ballot for the same reason. If there is a man who will not be just, we mean to put him out of politics. If there is a man in office who is serving humanity fairly, we will keep him in office to help make our land what it ought to be.

Gentlemen, that is my message to you from working women in general, and from all organized working women and workingmen in particular. Working women want the power to protect themselves. Working women want the opportunity to work effectively for decent factory laws, sane labor laws. Working women know that we will never have a universal child-labor law until we have the heart of all the women of the land behind the framing and the enforcing of such a law.

While the doors of the colleges have been opened to the fortunate women of our country, only one woman in a thousand goes into our colleges, while one woman in five must go into industry to earn her living. And it is for the protection of this one woman in every five that I speak.

You may say the vote was never given as a right, but rather as an expedient, to any group of people. Then we demand it as an expedient. It is time that to these women who work in the factories, or wherever they work, contracting the diseases known as occupational diseases, an opportunity be given to clean our political house of its disease germs.

It is in a wretchedly unhealthy condition to-day. Men, let the women come in and help you in this political house cleaning. You have got it into an awful mess; we only ask you to do the thing you have done since Adam, namely, turn the burden of responsibility over to woman when it gets too big for you or you fear the consequences. Let us help you now, or if you will not it will look as if you are afraid of the kind of house cleaning we will give you. Well, we will give it to you, as

[1] A fire in a shirtwaist factory in which the operatives were women, mostly girls, many of whom lost their lives. It was claimed that the owners had not complied with the State laws for fire protection.

sure as fate, because we are on this job to win. [Applause.] We see that there is not a thing in the way of this right which we are asking but prejudice or fear; we are pleading for the right to use our intelligence, as you use yours at the ballot box. You believe you protect us. You say you want to take care of the women. I can tell you as a working woman we know you have made a very bad job of the protection and caretaking. [Laughter and applause.] A working woman has to deal with the facts of life; she knows when she is overtired, when her finger is taken off by a machine just because she was too tired to take it out. That is what one of my girls calls a "fac'." Now, men, we working women deal in "fac's." We want the ballot in order that we may straighten out all of this economic and political mess that your superior intelligence has gotten us into. Is that straight? Well, that is what the working woman wants. [Applause.]

Representative Raker was next introduced. He declared that primarily the question was one of absolute right, and secondarily of expediency.

We are depriving one-half of the intelligence, one-half of the ability of this Republic from participating in public affairs. Women are just as much interested, and have the same rights under the law to exist and to live and to work for what is right as we have, and I believe, from the economic standpoint, from the standpoint of better laws, better existence, better homes, better government in the county, in the city, in the State, and in the nation, that we need our wives', our sisters', and our mothers' votes and assistance in elections.

There can be no doubt but that there is a special work for women in every walk of life. They are entitled to the ballot because of the greater influence it will give them in the affairs of life, dear to the hearts of all femininity.

Miss Addams.—The next speaker, Mr. Chairman, is from New York, Jean Nelson Penfield, who will address you upon her experience in finding much of the city work taken out of their hands when it is taken over by the city. The door of the House of State, so to speak, is shut in their faces, when their precious little enterprise is toddling across the threshold.

Mrs. Penfield said:

Because women have been able to accomplish many things for civic betterment without the ballot, a great many people

think that we do not need the ballot. I ask you to remember at the beginning, however, that the important fact is not that women finally accomplish things, but that when they do succeed in their civic work without the franchise—and, by the way, the failures are not recorded—they accomplish what they do at the greatest and most needless expenditure of time and vital strength, and at the cost to the individual, and, therefore, of course, in the end, to the social world, of self-respect and dignity.

Now, these things are important, because the dominant thought in the world to-day is conservation. Women seem to represent the only great body of energy and talent that is unconserved, unutilized, and recklessly wasted along the byways of life. When men have a public wrong they want rectified they go armed with their votes to the ballot box, just as they also use the influence of the franchise with legislators after they are in office, but when women would seek redress or remedy for public wrong they must accomplish their desire by the long, hard, and indirect process, a questionable process at best, and one wasteful of vital energy and time. What an indictment of our political system it is that in the twentieth century, in a progressive, democratic government, when the very air teems with the words "efficiency" and "conservation," and even the poorest mechanic knows the economic necessity of using the best, most up-to-date tools, nearly one-half the citizens of the country should by statutes be condemned to do what patriotic service they may wish to do with the implements of a day that is dead and gone.

Mrs. Penfield then recounted the reforms which had been wrought by women in New York City and elsewhere.

Everybody in New York now demands pure milk, but I assure you it has taken a long time to secure the present splendid system of inspection, after a few women discovered and made public a number of years ago the facts about the filthy city stables, with their diseased cows. The ordinance for the protection of meats and vegetables in New York represents a labor of years by this same body of women. When women went into our public schools and reported epidemics of disease which were preventable by the observance of ordinary sanitary conditions action finally came. The now well-established institutions of manual training and domestic-science schools, playgrounds, and school gardens were all once "women's notions."

As Miss Addams has said, these things have been done, but they have been done unscientifically, because not economically, from the social standpoint. In almost nine cases out of ten, gentlemen, women have been made to finance these institutions and investigations personally. They have had to finance the institutions and demonstrate the success in each case before the city would acknowledge a public need and adopt them.

Besides this, let me call your attention to another notable feature in connection with women's successful civil work—one overlooked by many, but not to be overlooked much longer by wise statesmen. After women have made a success of these institutions, have managed them and directed them, when they are taken over by the city or State, men alone control them. I ask you to realize that more and more thinking men all over the country are beginning to be more conscious of the way we are excluded from civic interests in which we have as great a stake as have men.

Mrs. Penfield then discussed the work of women on the school boards of the country, pointing to the acknowledged superior efficiency there of women over men. Yet, she said, men held almost all the salaried positions on these boards. This was because of their political influence.

Representative Taylor said that all men who lived in an equal suffrage State agreed that there was only one side to the question—the affirmative.

The men of our mountain homes have added justice to chivalry, and have long since learned, and have the candor and manhood to acknowledge, that our women's influence in the civic housekeeping of our cities, our counties, and the State itself is as beneficial and necessary as it is in every well-regulated home.

On coming East he had found an astounding amount of misinformation about the practical operation of equal suffrage, and had become indignant as well as amazed at the brazen assertions of its opponents.

When I hear men and women who have never spent an hour in an equal suffrage State attempt to discuss the subject from the standpoint of their own preconceived prejudices and idle impressions, I feel like saying, "May the Lord forgive

them, for they know not what they say." Let me say to them and to my colleagues in the House that it will not be ten years before the women of this country, from the Pacific to the Atlantic, will gain the just and equal rights of American citizenship.

Mr. Taylor then recounted the beneficial legislation which had been passed in Colorado largely because of the influence of the women in its favor [see page 350].

The women members of our legislature have all been exceptionally conscientious, industrious, and capable legislators. They devote their energies mostly to moral questions and matters affecting the home and the children, and the betterment of health and social conditions, including humane measures for the unfortunate of all classes.

The delegates of the Inter-Parliamentary Union, who some time ago visited the different parts of the United States for the purpose of studying American institutions, declared, concerning our group of laws relating to child life in its various aspects of education, home and labor, that "they are the sanest, most humane, most progressive, most scientific laws relating to the child to be found on any statute books in the world."

Whenever women have a chance to express their sentiments there is never any doubt as to the result. Every politician knows in advance what it will be, and that is the reason some of them loudly proclaim that woman suffrage is a failure. A married woman's heart is always in her children and her home —the foundation of the Republic—and any measure affecting either is not a political question with her for a minute. There is only one side to it, and that is the right side. A woman's vote is always a patriotic vote.

Mr. Chairman, one of the best traits of human nature is the desire to advise others of the benefits we enjoy in this world and urge them to acquire the same valuable possessions. Scores of patriotic Coloradans, both men and women, have at various times for years traveled over this country from ocean to ocean and from the Lakes to the Gulf, at their own expense, without the slightest hope of reward, telling the people the value of political equality. Colorado, being the most prominent and representative equal-suffrage State, has for nineteen years been called the principal experimental station for woman suffrage, and the storm center of attack on the part of advocates and opponents.

All the shafts of the anti-suffragists on earth have been constantly hurled with fiendish desperation at our State.

While all the old stereotyped stock of objections and obsolete arguments that have been doing valiant service for three generations have long since been exploded and ridiculed out of existence by the women themselves and by the actual experiences of every one of our six equal-suffrage States and by every country in the world where it has been tried, nevertheless, as the subject at this time is being more generally discussed throughout the United States than ever before in our history; and as active campaigns for the adoption of equal-rights constitutional amendments are now in progress in the States of Oregon, Kansas, Wisconsin, Ohio, Michigan, and possibly some other States, I will, even at the risk of merely reiterating some of the conclusive answers that have been more eloquently given many a time before, give some of my personal observations and judgment upon a number of phases of the question. One of the first questions most often asked of me is: Do the women of Colorado vote?

Anyone can answer that question by simply loking at the election records and the census. The increased votes in the suffrage States is exactly in proportion to the total women population in those States.

It is an undisputed fact that in every State in the country where the franchise has been extended to women the vote of the men has steadily risen. The vote of the men is much larger in all the equal-suffrage States of the Union than in most of those in which women are unenfranchised.

I am often asked if the *best* women in Colorado vote. As a matter of fact, it is the good women who vote in the largest numbers, proportionately. That is, in the better residence sections of every city and town and throughout the country the women vote is much larger, in proportion to the female population, than it is in the less prosperous and less desirable localities. There is no class of women in Colorado, no matter what their station in life may be, who do not vote. In the little city of Glenwood Springs, where I live, I do not know of a woman in the city or surrounding country who does not vote. I represent in the House of Representatives nearly five times as many voters as the other members do,[1] and I ought to be, and I am, the proudest man in Congress of my constituency, especially the women in it.

[1] Mr. Taylor was Representative at large.

DO THE BAD WOMEN OF COLORADO VOTE?

It has been repeatedly stated by numerous governors of our State that there was only from one-third to one-half of 1 per cent. of the women of the State who are immoral or disreputable. Therefore, the utterly thoughtless, and in some cases willful, assertion about disreputable women outweighing the number of good women is not only a ridiculous bugaboo, but is a slander upon the women of the country.

Moreover, the women of the half world do not willingly vote at all. They are constantly changing their names and residences. They are a migratory class. They are very largely under the power of the police and sheriff's office, and unless they compel them to vote they generally stay away. And, even where they are forced to vote, not over one-fifth of them are qualified voters. So that their influence is negligible; in fact, it is actually infinitesimal. They are no menace whatever. Their numbers are not sufficient to amount to anything, and no one pays any attention to them. In fact, if it was known that they were voting for any particular ticket or candidate it would do that ticket or candidate ten times more harm than good.

Some people seem to have the queer impression that everybody in a city or town votes in the same place, and that the men and women have a general scramble to vote, and all kinds of unseemly conduct on election day. We of the West cannot comprehend how any sensible people can get such ideas. No large crowds of people vote in one place. Every city and town and the country is divided into small election precincts, usually not over 300 voters in a precinct. Everyone must vote in his or her own precinct. There are no lewd women in the country or in the small towns, and in the large towns and all cities they are strictly confined to certain districts, not in the residence portions.

In the State of Idaho prostitutes are disfranchised entirely, and, if they at any time should become a disturbing element or in the slightest affect the result of elections, that action would undoubtedly be promptly taken in the other States. One reason it has not, I apprehend, is because a great many bad men vote, and many so-called good men do not. Moreover, there is a kind of a humane sentiment that, so long as these women never take any part in elections and so few of them vote, no one should deny this most unfortunate class of human beings whatever protection a vote can give them; at least, so long as men of the same class are voters.

ARE WOMEN PARTISANS?

Among the various far-fetched and utterly groundless grounds of opposition to woman suffrage is the assertion that women would become as partisan or more so than men, and thereby merely double the party vote and accomplish no real good. Nothing could be further from the actual facts. Women, when they are enfranchised, in every State are, practically speaking, nonpartisan. They have not, like the men, inherited their politics from their fathers; and, in States where the people are nearly evenly divided between the parties, practically half of the girls marry men of different politics from that of their fathers. So that in reality they start in comparatively nonpartisan, or, at least, very independent, and the great majority of them remain so. While possibly from 75 to 90 per cent. of the married women vote mainly the general party ticket the same way that their husbands do, because their interests are the same, nevertheless, a small per cent. of them always vote independently; and all of them are perfectly free to scratch their ticket, and a very, very large per cent. of them do so. It is very seldom that either party elects a straight ticket. We nearly always have a mixture of officeholders. In other words, the women are nothing like as partisan as the men. They are very intelligent voters. They know the art of scratching thoroughly; they are exceedingly proficient in throwing out fellows who are no good.

And this freedom of action never causes any friction whatever in the home. I have never in my life heard of a Colorado man having a quarrel or even assuming to complain or criticize his wife for exercising her choice and best judgment. In fact, some strong party men, who feel that for party regularity they should not vote against anyone on their own ticket, at the same time haven't the slightest objection to their wives exercising an intelligent independence which they know is for the general good, and which they feel it is not policy for them to exercise.

Women are not natural-born politicians like men are. They are not as crafty or ambitious politically as the men are. The natural result is that the men practically control politics, *i. e.*, the party machinery of the State. At the same time the women read the papers. They talk among themselves. They learn quite fully about all the candidates and what they stand for. They discuss political issues and the candidates with the male

members of the family, and they are thoroughly advised as to who's who. Women's interests cannot, generally speaking, be roused very much by mere partisan strife. Women never become hysterical, and very seldom show much enthusiasm over a mere party nominee. Men look after the business interests and financial questions, while the moral and humane questions appeal more to the women. In other words, men and women are different in their character and thoughts, and the influence and judgment of both are beneficial in civic and governmental affairs just the same as they are in well-regulated and orderly family relations.

ARE WOMEN OFFICE-SEEKERS?

There has never been any rush of women for offices in Colorado. Giving a woman the right to vote does not change her feminine characteristics or her womanly nature in the slightest. The women as a class are not chronic nor inveterate office seekers. In fact, there is not one out of five hundred who ever thinks of being a candidate for any office. They are not avaricious for power and influence like men are. Men are shrewder politicians and much more unscrupulous than women. In nine cases out of ten when a woman does seek the nomination for an office she is earnestly solicited to do so by many of her friends and acquaintances who recognize her exceptional qualifications for the position. Moreover, women scarcely ever strive for or want the more important positions that the men want. The men want the positions that pay the large salaries and require executive ability and other responsibilities, and that involve control of party machinery, patronage, and large affairs. Women do not care to be political bosses. They are contented with the educational and charitable positions and minor places that require energy and much painstaking diligence and conscientious work, and which are compensated by smaller salaries.

DOES EQUAL SUFFRAGE CAUSE DIVORCES?

There is not a single instance on record anywhere in any court in the State, and there never in twenty years has been a case in Colorado, where a divorce has been granted on account of political differences, or arose from them. Differences in religion between husbands and wives produce a thousand times more quarrels than differences in politics do, and yet no one would nowadays ever think of trying to compel a woman to choose her religion to suit her husband.

DO WOMEN LOSE ANY OF THEIR INFLUENCE OR CEASE TO BE AS MUCH RESPECTED?

The brazen claim that women will become unsexed or lose any of the respect of men is utterly absurd. In the olden times men had the right to chastise their wives. Have the men nowadays got any less respect for their wives because they cannot lick them any more? Respect for woman is based upon her moral character, her intelligence, and her own self-respect. Women are not becoming less respected because they have been admitted to colleges and universities. Women are just as feminine in Colorado as any place on earth, and they are better wives because they are better informed and more companionable to their husbands. The enfranchisement of the wife has given another common interest to the household. It has had no tendency to create discord in the home. On the contrary, it has brought a comradeship in politics, something similar to that of religion, that used to be found in many families in the East.

There is nothing whatever degrading to a woman to quietly go down to the polls on election day once or twice a year and cast her vote along with her husband or brother or with women friends. There is not the slightest tendency whatever in Colorado among the men to omit the ordinary politeness due the women. In fact, I believe our women, by their superior general intelligence and companionable charms, command and receive more courteous attention than in any other State. Under equal suffrage there is a much more chivalrous devotion and respect on the part of men, who look upon their sisters not as playthings nor as property, but as equal and full citizens. We are proud of our Colorado women. I have little regard for a son who swells up and says that he is better than his mother. To-day a boy in his teens in a country or a State where women have the right to vote does not look upon his mother or his sister as belonging to the sex that must be kept within a prescribed sphere, but as a human being, clothed with the dignity of all those rights and powers which he hopes to enjoy within a few years.

The differences between men and women are natural; they are not the result of disfranchisement. The fact that all men have equal rights before the law does not wipe out the natural differences of character and temperament between man and man. Why should it wipe out the natural differences between men and women?

To us people of the West it is utterly stupid for anyone to assume that the vote will lessen the present influence of women. The influence of any class of men, or any individual man, has never in the world been lessened because he had the power to vote.

The objection that "it is unwomanly" has been made to every change in the status of woman from the time she ceased to be a beast of burden and we men decided to give her a soul and a seat at our dinner table to the present time. The days when ridicule and contempt were the reception accorded any attempt of the woman to enlarge her activities or broaden and enrich her life belong to another century. We have to-day urgent need for better fathers and wiser mothers. The feminist leaders of Europe and the United States are changing the attitude of the race toward one-half of its members.

To-day girls form 56 per cent. of the pupils enrolled in our secondary schools and a large majority of those in all our high schools. The old days when women were compelled to keep silent are past. To-day in every field of human endeavor her voice is heard. By the legal establishment and recognizing of woman citizenship, the intellect and character and reciprocal estimation of both sexes have been raised. The possession of the ballot has given women an interest in general as well as political affairs, and this has naturally stimulated the men.

There is no real ground of fear for American marriages and the home. Nothing can break the bond between the sexes. Our own higher development will bring better conditions. We will have higher and happier marriages than ever before.

DO WOMEN NEGLECT THEIR HOMES AND CHILDREN?

We have from childhood constantly heard the solemn assertion that the place for women is the home. I have never heard of anyone denying that platitude, and certainly the women of Colorado do not deny it. If there is anything in this world that a woman naturally wants it is a home. That is her natural place, and her main task in this world is home making. In fact, every married woman in this country is a self-appointed and *ex-officio* member of the Mothers' Home Protective League. But nowadays home is not contained within the four walls of an individual house. Home is merely the center of her sphere from which her influence should radiate. The home is largely the community, and the city or town full of people is the larger family of womankind. All government to-day is in a certain

sense merely housekeeping on a large scale. For some parts of this housekeeping the men may always remain better qualified than women. In other parts of it women will always be better qualified than men. But it takes both men and women to make a home.

But there is another serious and important consideration. There are upward of 7,000,000 women in the United States today who in reality have no home. Economic conditions have driven them into the factory, the mill, the shop, and the store. They have not left their homes of their own volition; they are not earning a livelihood in competition with the men of their own election. No one will ever assert that women voluntarily leave their homes to become wage earners. If some of them think the ballot would help them to better their conditions and enable them to have homes, are they to be blamed and ridiculed for entertaining that hope?

Ninety-nine per cent. of the women of Colorado take no more time in politics than to attend probably two or three political meetings every two years and go to the polls on election day to cast their vote. The women of Colorado, generally speaking, do not spend 1 per cent. of their time in political matters that they spend in social duties. It only takes a Colorado woman ten or fifteen minutes away from her home to cast a vote. But during those few minutes she is wielding the most tremendous power any woman ever had on this earth for the protection of her home and the homes of all others.

DOES IT INCREASE OR DIMINISH CORRUPTION IN POLITICS?

There is no man worthy of the name who will deny the statement that the influence of his mother and his wife and his sister and his daughter is good. When you grant equal suffrage to women, it is our mothers and wives and sisters and daughters who are going to vote.

I have never heard of a woman being prosecuted, or even seriously charged with the commission of a crime in regard to an election. I have heard it repeatedly stated, and I believe it is true, that the men are guilty of 99 per cent. of all political corruption in Colorado.

There may possibly be a few very rare cases where a woman has been implicated in some political crookedness, but if there are any such cases that I have never heard of you will find that she was put up to it by some men who were trying to shield

THE ANTI-SUFFRAGIST AND THE PRO-VICE DELEGATION

Spokesman.—"We have called to express our extreme gratichude fer the bee-utiful fight you are making in our behalf."

Reprinted from the Saturday Evening Post of Philadelphia. Copyright, 1913, by the Curtis Publishing Company

themselves behind her, and there will be 99 men more guilty than she.

One sure way of answering the question as to whether or not equal suffrage increases corruption in politics is to inquire as to who are the opponents of equal suffrage. Everyone who knows anything about woman suffrage, or about human nature, knows that the vicious and criminal vote is always cast solidly against equal rights for women. All those who thrive upon the violation of the law in any way, or upon corruption in politics, are the bitterest enemies of woman suffrage. Every gambler, every ballot-box stuffer, every political thug, every professional debaucher of the public morals, and every conceivable variety of crook will never cease exhausting his vocabulary cursing woman suffrage.

DOES IT DOUBLE THE IGNORANT, OR FOREIGN, OR CRIMINAL VOTE?

As there are one-third more girls than boys attending the high schools of this country, the women are very rapidly becoming the more educated class. According to the last census, the illiterate men of this country very greatly outnumber the illiterate women. Therefore, extending the franchise to women will actually increase the proportion of intelligent voters. Moreover, extending the franchise to women will very largely increase the number of native-born voters, because there are in the United States over twelve times as many native-born women as foreign born. It is also a matter of record that a less proportion of the foreign born than the native born vote, and, as there are much fewer women than men immigrants, the enfranchisement of women will therefore doubly tend to minimize the influence of the foreign vote.

Another important feature is that the foreign women are usually much better in morals and intelligence than the foreign men to whom the ballot is already given. Then, too, very few of them vote until they become quite thoroughly Americanized. While on ordinary questions the foreign-woman vote would be very much like the native-woman vote, and would to quite a large degree duplicate the men's vote, that would not be true of special questions affecting women and children or the home, or matters of morality, or questions of decency. This is one of the main points of the equal-suffrage question. And if women take the moral and humane side on questions affecting the welfare of the home and the good of society, it is of comparatively little importance whether or not on other questions their votes

are duplicates. The taxes paid by women will very much more than meet the cost of printing and counting the extra ballots. Moreover, in a democracy like ours it is of the greatest importance and benefit to the whole people, both men and women, that all of the population interest themselves in all public questions. It has been repeatedly stated that a republic is sound at heart only when all of its adult members take an ardent interest in its affairs. Too many votes cannot possibly be cast in a right cause in a democracy which lives and breathes by the public opinion of the men and women who compose it.

There is in this country no lack in our politics of business ability, executive talent, or shrewdness of any kind. But there is much danger of lack of conscience, character, and humanity.

DO WOMEN READILY UNDERSTAND POLITICS?

Women learn how to vote mighty quickly. They do not have to serve any apprenticeship to know the difference between decency and corruption, or between an honest man and a crook. A woman always knows the difference between good and bad government, and everything pertaining to educational matters or matters affecting the home; and all politicians will very soon learn that she is exceedingly alert and well informed upon all moral questions and questions affecting society and good government and clean candidates. She comprehends intuitively and instinctively. In fact, on questions of that kind she is much more interested than men, and the advice of every married woman is of great assistance to her husband. In reality, on all questions of that kind, instead of a husband voting his wife, there is a great deal more likelihood of the wife voting the husband.

THE DEVELOPING POWER OF RESPONSIBILITY

Responsibility is one of the greatest instruments of education, both moral and intellectual, and woman never will become thoroughly versed in matters of politics until the opportunity of studying them under the stimulus and check of responsibility is given her.

When we consider her handicaps, not merely her natural handicaps, but the unnatural handicaps imposed upon her by civilization and sentiment; when we consider that for ages she has been discouraged from trying to do anything outside of the home, it is no wonder that she cannot do all things as well as men. The wonder is that she does so many things as well as

she does. Every class that has been enfranchised in the history of the world required education in its new civil rights. The American woman requires it, too, but least of all.

The great economic questions of to-day affect the women just as much as they do the men. Their interests are mutual and equal, and her enfranchisement has conclusively proven in the six Western States that the result is a more enlightened and better balanced citizenship and a truer democracy. It has been said that the more civilization advances the more the interests of men and women coincide.

One-fifth of all the women of this country have been compelled to go into the field of business and take positions formerly held by men and are actively earning their own support. The ballot is just as imperatively necessary to them as it is to the men. It is not only contrary to the principles of fair dealing to deny the women the right to vote, but this country needs the influence of her ballot, as will be conclusively shown by the result of her vote wherever it has been given to her. It seems to me infamous that women should be longer classed as political nonentities, the same as lunatics, Chinamen, criminals, and children. While there is a good reason for excluding all of those political nonentities excepting women, there is no good reason under heaven for excluding an intelligent woman from trying to better the conditions which affect her by the use of the ballot.

A woman who is self-centered and satisfied with the gratification of her appetite and vanities is not the highest ideal of our race and is not performing her highest duty to society or to humanity.

There were in our State a number of women who, before they were enfranchised, did not want to vote. Since then nearly all of them have been faithfully performing their duty.

The greatest school of life is the ballot box. The present world movement for the enfranchisement of women shows that under the influence of advanced civilization the nations of the earth are becoming ready for universal suffrage and the conception of society which it implies. Feminism is a world movement. It is a part of the eternal forward march of the human race toward a genuine democracy. The whole history of the development of civilization is merely the story of broadening the channel of human liberty and opportunity. All over the world woman is doing and thinking more effectively than ever before.

Women's clubs are a wonderfully educational movement. It is within the memory of most of us when the American women

first began to form themselves into clubs. At first they were merely little local literary organizations. Afterward the matters affecting the welfare of the community were taken up for consideration; and then the women commenced forming State federations and afterward national federations; and to-day the General Federation of Women's Clubs, working in conjunction with the International Council of Women, are doing a wonderfully beneficial and humane work for the amelioration of the conditions of women all over the world.

The women's organizations thoroughly realize that their cause for the betterment of humanity can be best advanced by giving the women the ballot.

The women of Colorado are quite largely members of various clubs, and they wield an influence that is hardly conceivable by people who do not live in the State. They have not only all the clubs there are in other States, but they also have political clubs; and there is a great deal of family discussion of public questions, which all has an unquestionable tendency to educate and broaden the mind not only of the wife, but of the members of the family. Increased responsibility causes increased development and improvement, and increased development means intelligent action and patriotism.

I have often heard it said that one of the largest book stores in Denver sold more books on political economy, sociology, and kindred subjects within six months after women were enfranchised than during the entire previous twenty years.

WOMAN IN THE SCHOOLS

Colorado spends more money per capita on her schools than any other State in the Union. There is no difference made in the salaries of teachers on account of sex. There is not a child in Colorado but has a seat in a school and is guarded by law compelling its parents to allow it to go to school. Does anyone believe for a moment that if the women had the power to make themselves felt in the administration of public affairs that there would be to-day 100,000 children on half time in the schools of New York City and 25,000 without seats in schools in the city of Philadelphia, and an equal proportion in Chicago and many other large cities in this country? Does any sane person believe that if the women of this country had a vote that it would have taken fifty years to have passed the bill that just passed Congress creating a Federal Bureau for the protection of children?

Women have equal suffrage in school elections, I believe, in thirty States of the Union. Has anyone ever had the effrontery to assert that their influence has contaminated or had any evil effect upon school elections or made less effective the teaching of moral instruction in those States? It is said that in many States where women have a right to vote upon school elections the women pay comparatively little attention to them. That may be true where there is no special interest or moral question involved and where the candidates are equally worthy. But where one candidate represents the moral and another the immoral side of questions affecting the welfare of children the women invariably take an active interest, and it is needless to say that they are always on the side of decency.

Women are sanely and conservatively progressive. They are wisely discriminating and shrewd in their public actions. They chiefly interest themselves in movements that are more social than political—above all, in everything relating to children.

RESULT OF EQUAL SUFFRAGE IN COLORADO

I believe I could prepare a list of at least a thousand beneficial results of equal suffrage in Colorado and an equal number of reasons why women should vote. I will not at all attempt to enumerate them, but, in addition to those I have already mentioned, will merely give in a very general and possibly somewhat disconnected way some of the results as I see them.

Equal suffrage has unquestionably compelled a very great improvement in the standing and moral character of the candidates nominated for office by all political parties.

It has equally improved the political conventions, assemblies, and public meetings and the management of all the different political campaigns previous to elections.

It has made much more orderly and better polling places and election-day customs have wonderfully improved.

It has greatly improved the interest of both men and women in the public affairs of the State and the municipalities.

It educates and broadens a woman's sphere of information, and makes her take a more intelligent interest in public affairs. It makes her more companionable, and consequently increases her intellectual standing, dignity, and influence.

It is a family bond and tie that binds the husband and wife together. In 99 cases out of 100 the best and often the only political adviser a Colorado politician has is his wife. In Colorado there is much greater weight given to women's opinions and judgment than in any State denying them the power that equal suffrage gives.

Some one has said that in our political conventions a few women are as good as a whole squad of police. It is true that more or less political chicanery always has, and probably always will exist among some politicians in the State, not because of, but in spite of woman suffrage. Just the same as crime exists, not because of criminal laws, but in spite of them.

Equal suffrage has almost entirely taken our schools out of politics. One of our prominent educators recently said that there is more politics in school matters in any one block of any large city in this country than there is in the entire 104,000 square miles of Colorado soil.

Mr. Taylor said in conclusion:

The greatest intellects of the human race have from the beginning of civilization to the present time acknowledged that naturally women are intellectually our equal and morally our superior and that they are entitled to all the rights that men enjoy. It has been the partisan, the prejudiced, the biased, and smaller minds that have always desperately opposed any advance of womanhood. I cannot resist having a lingering suspicion that the actions of some men are a tacit confession of fear of the risk to which equal suffrage would subject their imagined superiority. Practically every broad-gaged statesman of the world has denied that any portion of the human species has a right to prescribe to any other portion its sphere, its education, or its rights. The sphere of every man and woman is that sphere which he or she can properly fill. No opportunity should ever in this country be closed to any human being who has the capacity to work therein. It is a disgrace to this country and to this enlightened century longer to disfranchise the patriotic and intelligent womanhood of this Republic. The world has never enfranchised as patriotic a class of people as the American women are to-day. Patriotism is not confined to the male sex. Let us be big enough, broad-minded enough, humane enough, and honest enough to treat the women of our country as fairly as they are being treated in China.[1] Let us show to the world that we believe in the Declaration of Independence. Let us evolve our male oligarchy into a twentieth century democracy.

[1] The new Republic of China had just declared for woman suffrage.

Representative Lafferty then spoke.

I do not think that we could make a mistake, as a republic, in placing the ballot in the hand that rocks the cradle. I believe it would be a good thing if fifty of the best mothers of this country were in the House of Representatives and twenty-five were in the Senate to-day. [Applause.]

You should consider, as statesmen, that in the history of monarchies the women have participated in the Government; it is a shame that in a republic like ours, the best form of government that has ever yet been established, women cannot, under the present law, actively participate in our government.

MISS ADDAMS.—The next speaker is not a member of the House, although she is eligible. Mrs. William Kent, of Kentfield, California, will speak to us of the educational advantages of the campaign for the ballot. She has recently borne a valiant part in such a campaign.

MRS. KENT.—Mr. Chairman, the United States is committed to a democratic form of government, government by the people. Those who do not believe in the ideals of democracy are the only ones who can consistently oppose woman's suffrage.

I heard a man arguing against woman's suffrage by saying he believed in a division of labor, the men to vote and decide political questions as part of their work, and women to have other duties, equally useful. You cannot make such a division of labor if you believe in a democracy, if you believe in self-government, any more than you can give all the eating and sleeping to half the community while the other half does something else equally useful.

In the California campaign we had an effective poster with the incontrovertible, yet suggestive statement, "Lincoln believed in government by the people. Women are people." We want to be recognized as people; we want our share of responsibility in the government under which we live.

In a democracy the only hope of good government lies in an enlightened, responsible citizenship. The hope of democracy is in education. There is food for thought in the fact that the early education of all the citizens is now administered by a class who have no vote.

In the New York suffrage parade last year the mothers marched under a banner which read, "We prepare the child for the State. Let us help prepare the State for the child." What education have women received to fit them for this complement to the first office?

I have heard a man say in the same speech that women should not descend into the dirty mire of politics, and that mothers should teach their sons their sacred duties as citizens. Can we reconcile these statements? Can we really bring up our sons with a clear sense of civic responsibility when we have done?

The evidence goes to show that we have not done it. We believe that our children need what we shall learn in becoming citizens, and that the State needs what we have learned in being mothers and home makers.

Take the example of our prisons, public institutions for which the voter is responsible. These institutions do not redound to the credit of the voter, the man who has not been taught his social responsibility. We see in the prisons the result of the commercial and the military way of conducting affairs, the traditional way of the man. One's ideal of a mother and teacher is not that of a strict disciplinarian, of one bent on punishing, but an integral part of the work of most women is that of dealing with the unruly. Her problems have always been to keep her children in the path of virtue, so far as her love and her wisdom and her wits will help her, and to bring them back if they stray from that path. Prevention and correction are problems which she has lived with and studied. These are the real problems in dealing with those who have gone wrong.

And, as with the prisons, so with the other questions of our social life—which is but the family life enlarged—is not the woman's point of view needed? Can you not see that she has something to offer, and that it is a desire to serve that actuates her in asking for the ballot?

MISS ADDAMS.—I present next, Mr. Chairman, Mrs. Ida Husted Harper, of New York City. She has been before other congressional committees with Miss Susan B. Anthony, who for so many years appeared to present this cause. Mrs. Harper has written a history of the equal-suffrage movement, and also a very fine biography of Miss Anthony. She will make the constitutional argument, and perhaps answer the questions which a member of the committee put to Mr. Lafferty.

MRS. HARPER.—Mr. Chairman, this argument presented to-day shall be based entirely on the Federal Constitution, and the only authorities cited will be the utterances of two Presidents of the United States within the past month.

In the Columbus, Ohio, speech of Theodore Roosevelt, opening his present campaign, he said:

> I hold with Lincoln that "this country, with its institutions, belongs to the people who inhabit it. Whenever they grow weary of existing government they can exercise their constitutional right of amending it."

We appear before you representing a class of citizens who are exceedingly "weary of the existing government," but are wholly deprived by its Constitution of any right or power to change it. We ask you, therefore, what or where is our redress? But one other class could come to you as helpless—the Orientals within our boundaries—but they have not the mockery of citizenship.

> I emphatically protest—

Said Mr. Roosevelt—

> against any theory that would make of the Constitution a means of thwarting instead of securing the absolute right of the people to rule themselves.

Except by physical force there is but one way in which people can rule themselves and that is through choosing their own representatives in the Government by means of a vote. This is practically forbidden to women in the Fourteenth and Fifteenth Amendments to the national Constitution which authorize the State constitutions to prohibit it directly.

To quote Mr. Roosevelt once more:

> The object of every American constitution must be what is set forth in the preamble to the national—to "establish justice" by means of popular self-government. If the Constitution is successfully invoked to nullify the effort to remedy injustice, it is proof positive either that the Constitution needs immediate amendment or else that it is being wrongfully and improperly construed.

When women citizens have invoked the national Constitution in their efforts to establish the justice of a voice in their own government, the Supreme Court of the United States has repeatedly construed it as not conferring this right. As women had no appeal from its being "wrongfully and improperly construed," they accepted the alternative that "it needed immediate amendment."

For this purpose they began making their pilgrimages to Washington in 1869, and they have brought their case before the committees of every Congress since that time. Some of those who address you to-day belong to the third generation who have come to this Capitol seeking "to establish justice."

Turn for a moment to the opinions of another President of the United States, the one who now occupies this exalted position. In the speech of William H. Taft at Toledo, Ohio, inaugurating his present campaign,[1] he said:

> From our body politic we have excised the cancer of slavery, the only thing protected by the Constitution inconsistent with that liberty, the preservation of which was the main purpose of establishing the Union.

In the first establishment of our Union its main purpose was not to preserve physical but political liberty; and when the second struggle came, if it had been only to guarantee personal freedom, the Thirteenth Amendment to the national Constitution would have alone been sufficient, but the fourteenth and then the fifteenth were added in order to secure political freedom. And while this is still denied to half the citizens the roots of the cancer yet strike deep in the body politic.

Then, defending the courts, President Taft said:

> The great body of the law . . . is founded on the eternal principles of right and morality. . . . As between the individual and the State, the majority and the minority, the powerful and the weak, financially, socially, and politically, the courts must hold an even hand and give judgment without fear or favor.

The man filling the highest elective legal position in New York City said to me a short time ago:

> After many years of practice at the bar and many years of service on the bench, I am firmly convinced that women can never receive exact justice in the courts until they become voters. While judges may be absolutely impervious to every other influence, they can not wholly ignore political power.

This fact must be universally recognized that disfranchisement is not only a great handicap to women legally but also economically, and socially in the large sense of the word, while politically it puts them out of the race.

In this Toledo speech President Taft earned the profound regard of women by casting aside the flimsy pretence of universal suffrage and saying:

> The best government, in the sense of the one most certain to provide for and protect the rights and governmental needs of every class, is that one in which every class has a voice. In recognition of this, the tendency from earliest time has been the enlargement of the electorate to include as many as possible of those governed; but even to-day the government is

[1] See the introduction to Volume IX.

by a majority of one-fourth. This is the nearest to a government of the whole people that we have ever had. But woman suffrage will change this, and it is doubtless coming as soon as the electorate can be certain that most women desire it and will assume its burdens and responsibilities.

Gentlemen of the committee, in the nearly a century and a half of our Government this is the only expression in favor of woman suffrage ever publicly made by a President of the United States! We appreciate it and welcome it, but we regret that Mr. Taft should impose upon women a requirement never imposed upon men in our own Government or any other in the world's history—to prove that a majority want the suffrage and would use it. No class of people in any country has ever been enfranchised at a request or with any pledges from the majority, but always because of the efforts of a few strong, patriotic leaders, and ostensibly, at least, as an act of justice by the government. If, in the words of Mr. Taft, "the best government and the one most certain to protect the rights of every class is that one in which every class has a voice," then the United States Government should no longer quibble over the exact number who desire to have their rights thus protected.

Since, however, the excuse for withholding the franchise from women has now practically narrowed down to this one point, they will accept the issue. A few days ago United States Senator Henry Cabot Lodge [Mass.] made a speech at Princeton University in which he used this sentence:

It is quite true that the voters are the means by which we necessarily obtain an expression of the popular will.

There is indeed but one sure way to learn whether women want the ballot and will use it, and that is to make them voters and watch the result. By this test the advocates of women's suffrage are willing to have the question judged.

The women of California were enfranchised in October, 1911. In Los Angeles, one month later, 85,546 registered—nearly all in the city who were eligible—and the following month 95 per cent. of these voted—a record never made by men. Within three months after the women of Washington became electors—in 1910—over 22,000 went to the polls and deposed a corrupt mayor, and last week they defeated him for reëlection. In the six States where women are permitted to vote they have satisfactorily met the supreme test of whether the majority of women want the suffrage and would use it. Basing their claim

on this unimpeachable record, the women of other States demand the franchise.

I will close this argument with one more very recent quotation from President Taft. In speaking of the capacity for self-government, he said:

It is the question of self-imposed restraint that determines whether a people is fit to govern itself.

We can offer no stronger evidence of the self-restraint of women than the fact that, although they have come before these committees of Senate and House with their petitions and arguments forty-three years, only to be treated with contemptuous indifference and neglect, they have never departed from the strictest rules of dignity and self-control. Forty-three years in asking for this amendment they have followed an entirely legal and constitutional method of procedure, which has been so absolutely barren of results that in the past nineteen years these committees have made no report whatever, either favorable or unfavorable. How much longer do you expect women to treat with respect national and State constitutions and legislative bodies that stand thus an impenetrable barrier between them and their rights as citizens of the United States?

THE CHAIRMAN [MR. CLAYTON].—This committee, during my service on it, has always met with this proposition when this amendment was proposed, that the States already have the authority to confer suffrage upon women, and, therefore, why is it necessary for women to wait for an amendment to the Federal Constitution when they can go now to the States and obtain this right to vote?

MRS. HARPER.—Mr. Chairman, the women are not waiting; they are keeping right on with their efforts to get the suffrage from the States. They began in 1867 with their State campaigns and have continued them ever since. But, in sending the women to the States, you require them to make forty-eight campaigns and to go to the individual electors to get the permission to vote.

After the Civil War, the leaders of the Republican party went to State after State, and every one turned down the proposition to give the negroes suffrage. Then they passed the Fifteenth Amendment to the Constitution. You impose upon us an intolerable condition when you send us to the individual voters. What man on this committee would like to submit his electoral rights to the voters of New York City, for instance, representing

as they do every nationality in the world and every class interest? If we could secure this amendment to the Federal Constitution, then we could deal with the legislatures, with the selected men in each State, instead of the great conglomerate of voters.

THE CHAIRMAN.—But if one of these suffrage resolutions should be favorably reported, and both Houses of Congress should pass it, of course it would be referred to the States, and then before it became a law it would have to have their approval.

MRS. HARPER.—Only of the legislatures, not the individual voters.

THE CHAIRMAN.—Of the States acting through their legislatures?

MRS. HARPER.—Yes.

THE CHAIRMAN.—That is the States, you know.

MRS. HARPER.—I think you would fully preserve the idea of States' rights by letting the legislatures of each State decide it. We ask for the easiest way to secure our enfranchisement.

MARTIN W. LITTLETON, of the Committee.—Assuming there is no objection to woman suffrage at all, I ask whether you would make any headway by the adoption of this amendment, and thereby make the only exception on the question of suffrage, except in the case of the negro vote. The States control suffrage absolutely. In this particular case it would be the national Government forbidding the States to deny women the right to vote. You would have to convince every legislator of the fact that this amendment to the national Constitution ought to be adopted. If you could convince the legislatures of three-fourths of the States, you could get three-fourths of them to grant the suffrage itself.

MRS. HARPER.—They could grant it only to the extent of sending us to the individual voters, while if this amendment were submitted by Congress, and the legislatures indorsed it we would never have to deal with the individual voters.

EDWIN W. HIGGINS [Conn.], of the Committee.—In other words, as I understand you, you have more confidence in the legislatures than in the composite citizenship.

MRS. HARPER.—The composite male citizenship, you mean. We suppose, of course, that the legislatures represent the picked men of the community, its intelligence, its judgment, the best that the community has. That is the supposition! [Laughter.]

THE CHAIRMAN.—That supposition applies to Congress also, does it? [Laughter.]

MRS. HARPER.—In a larger degree.

THE CHAIRMAN.—The committee is very much obliged to you, Madam.

Miss Addams then asked that a statement be read from Representative Victor L. Berger [Wis.], the one Socialist in Congress. It was in part as follows:

Economics plays an increasingly important part in all our lives, and political power is absolutely necessary to obtain for women the possibility of decent conditions of living. The low pay and the hard conditions of working women are largely due to their disfranchisement. Skilled women who do the same work as men for lower pay could enforce, with the ballot, an equal wage rate.

The ideal woman of the men of past generations was the housewife, the woman who could wash, cook, scrub, knit stockings, make dresses for herself and her children, and take good care of the house. That ideal has become impossible. Those good old days, if ever they were good, are gone forever.

The housewife used to wash. Now the laundry has taken away her washtub and does the work better and cheaper. She used to knit stockings. Now the knitting factory does her knitting. The frugal housewife can buy two pair of stockings for a quarter. She can buy dresses cheaper and better than she can make them.

Even the scrubbing, ironing, and house-cleaning are now done by electricity. In many of the large apartment houses of New York and Washington no cooking in apartments is permitted. Instead there is one restaurant, where usually they have a man cook. And the workingman, as a rule, eats only one meal a day—or, at best, two meals a day—at home. The kitchen is slipping away from the woman.

In the good old days, moreover, the woman was supported by her father first and later by her husband. The situation is entirely different now. The woman has to go to work, often when she is no more than fourteen years old. She surely has to go to work some time, if she belongs to the working class. She must make her own living in the factory, the store, the office, or in the schoolroom. She must work to support herself, and often must also support her family.

The economic basis of the life of a woman has changed in America as well as in England and Germany. And therefore the argument that a woman should not vote because she ought to stay at home and take care of her family is an argument the basis for which has been destroyed. She cannot stay at home, whether she wants to or not. She must go to work to take care of the family. She has acquired the economic functions of the man, and she ought also to acquire the franchise. Without that franchise she cannot protect her interests as a wage earner.

It is often maintained that women are, as a rule, ignorant of politics and that they would make a mess of it if the franchise were given them. It cannot, however, be asserted that men have made so brilliant a success of politics as to warrant them in doubting the political capacity of women. Women, no doubt, are, as a rule, untrained in politics. Their ignorance, however, is due to a lack of training. When the vote is first given them they blunder with it, of course. So, often, do the young men of twenty-

one. With more experience, with the consciousness of having the ballot and of its power for good and evil, women soon learn to use it as men use it—for the protection of their political and economic interests. That is the history of woman suffrage in the Western States.

The Socialist Party ever since its origin has stood steadfastly for woman suffrage. It has made this demand of prime importance in all of its platforms everywhere. It recognizes that one-half of the race cannot free itself while leaving the other half unfree. It demands woman suffrage for the same reason that it insists upon manhood suffrage—that the race may become politically free, as a preparation for economic freedom.

MISS ADDAMS.—I will introduce, now, one of my fellow-townswomen, Mary E. McDowell, of the University of Chicago Settlement, who has had what I may call a distressing life in the stockyards district for many years, and she will tell you of the conditions there and what she thinks the franchise will do toward cleaning it up.

MISS MCDOWELL.—I am not one of those who believe that if we get the suffrage we are going to have a millennium or that we can clean up the stockyards entirely and vouchsafe that all of the sausages will be exactly right. But I do believe, with Mrs. Podger, in "Adam Bede." She said, "I am not denying that women are foolish; God Almighty made them to match the men." So we are all, together, very human, both men and women; and it is because this is a human proposition, and not a woman proposition, that I am glad to speak for it. Giving the vote to women is not simply a woman's question. It is a human question. It has to do with the man, the child, the home. Women have always worked, but within less than a century millions of women and girls have been thrust out of the home into a man-made world of industry and commerce.

Acording to the census of 1900, over five and a half million women and girls in America are breadwinners; and the latest census states that 59 per cent. of the girls in America are earning some kind of a living not only for themselves, but for others as well.

Whether we like it or not, this great movement of women out from the home is too tremendous to be put aside by that old-fashioned notion, even though it be a chivalrous one, held by one of our great statesmen, who, when asked if he believed women should have the vote, answered, looking at his wife and daughters: "Oh, no; I think women should be protected." Is it not a large undertaking for the men of the old school of chivalry to protect those millions of young working girls and women? Can anyone give to women any real protection except they themselves?

Do we not see that to the working women must be given every safeguard that workingmen have, for now as they stand side by side with men in the factory and shop they must stand with them politically. The ballot may be, to be sure, but a small bit of the machinery that is to lift the mass of wage-earning women up to a higher plane of self-respect and self-protection, but will it not add the balance of power so much needed by the workingmen in their struggle for protective legislation, which will in the end be shared by the women? To-day women are cheap, unskilled labor and will be until organization and technical training and the responsibility of the ballot in their hands will develop a consciousness of their social value.

As man gave strength to developing the institution of the home, to woman must be given the opportunity to help man humanize the State. She can do this only when she has the ballot and shares the responsibility.

Miss Ella C. Bréhaut, Washington, D. C., of the executive committee of the National Association Opposed to Woman Suffrage, then presented a paper from Grace Duffield Goodwin, chairman of the District of Columbia auxiliary of the anti-suffrage association. The points made by Mrs. Goodwin were as follows:

1. The advocates of the resolution, before submitting it to Congress, should have first ascertained whether it would be adopted by the State legislatures. As such an amendment could not be ratified for many years to come, if ever, its adoption at this time would be an absolute waste of time and energy.

2. The majority of the women of this country do not favor woman suffrage, and are either indifferent or actively opposed. Miss Jessie Ashley, treasurer of the National Woman Suffrage Association, says that, according to a rough estimate, the women favoring suffrage number 3,000,000. This is a high estimate, in view of the fact that only 75,000 are organized. The last information from the Bureau of the Census gives the estimated female population of the continental United States as approximately 46,000,000. The suffrage party thus represents but a small proportion of the whole number of women.

3. American conditions in no way resemble those of the countries in which suffrage is granted to women. If it were given to all the women of this country, the large and ignorant element among negroes and naturalized foreigners, corruptible

because ignorant, would be doubled, and the difficulty of handling an already cumbersome and unwieldy electorate would be greatly increased, and the attendant expense enhanced, while the intelligent element which ought to be a source of strength would be overwhelmed by numbers and lose its direct non-partisan power of influencing legislation, which it now possesses because unsuspected of interested or selfish motives.

4. There has been formed this year a National Association Opposed to Woman Suffrage, and State associations allied therewith are being organized with rapidity, to express the active opposition of women who have recently been aroused to aggressive effort against woman suffrage. Among the members will be found very many of the sanest, most useful, and best-known women of America, who desire their wishes in this matter to be presented to the governing bodies of our country, feeling sure that every consideration of fairness will be given them, and that their wishes and convictions will be duly weighed.

5. It is manifestly unfair that a question involving so many women should be settled at the behest of a few, and that the majority should have thrust upon them duties and burdens which they are unwilling to assume.

Miss Bréhaut, speaking for herself as a working woman, said she did not believe the majority of her class wanted the suffrage.

Miss Addams replied to Mrs. Goodwin's arguments:

The fact that the amendment must be submitted to the States, and three-fourths of the States pass upon it, will be of great educational value to each State having before its legislature an amendment to the State constitution to give the full franchise for women. Such an amendment is pending in Illinois. We cannot get the suffrage there without it.

Mr. Higgins asked Miss Addams if she was in accord with Mrs. Harper's view that the matter had better be submitted to the legislatures rather than to the citizenship of the States.

MISS ADDAMS.—No; I should like to do it in both ways. In Illinois we would have to have a constitutional convention before we could have the State and Federal franchise. It is a long and difficult process to call a constitutional convention; it

is tied up with many checks and counterchecks. We shall be glad ultimately to submit the question to the people, but in the meantime to submit the Federal amendment to the legislatures gives us an educational opportunity. We do not in the least distrust the people.

MR. HIGGINS.—Mrs. Harper's statement seems to me the worst indictment of the referendum that I have ever heard.

MISS ADDAMS.—I do not agree with Mrs. Harper altogether. If you gave the franchise to every adult woman in the United States you would approximately double the native vote, but you would not double the immigrant vote. In my neighborhood we have 20,000 Greek men and less than 1,000 Greek women. There are many more foreign men than women in this country, particularly among the Slavs. If you gave the franchise to every adult woman in the United States, you would cut your immigrant vote while you would double your American vote. I am, however, not one of the people who believe that the immigrant vote is a vote to be feared.

MR. HIGGINS.—I hold the same view expressed by Dr. Lyman Abbott on this subject. I am in favor of the suffrage if the matter is submitted to women and the majority vote for it.

MISS ADDAMS.—That has never before been required from any other class desiring the franchise. You did not wait for every negro to vote for it; they might not have had it yet. That was not done in the Chartist movement in England. The franchise was extended to the workingmen in England in that long agitation starting in 1832, not because every workingman wanted it, but because the leading statesmen saw the advantage of the ballot to the workingman himself and to the political life of the nation.

John W. Davis [W. Va.], of the committee, suggested that the disproportion of the sexes among immigrants was only temporary. To this Miss Addams agreed, saying that young unmarried men came first; later, families.

MR. HIGGINS.—If you did not think the majority of women wanted full suffrage, you would not favor it, would you?

MISS ADDAMS.—Yes, sir. It is not a question of forcing it upon the women who do not want it. It is a question of giving it to the minority who do want it.

MR. HIGGINS.—You do not take the view, then, which has been advanced by a good many, that the failure to exercise suffrage should work as a deprivation of the franchise?

MISS ADDAMS.—No; I do not. I think if a man is not interested he ought not to vote. He does no good voting blindly.

MR. HIGGINS.—So you assume an interest, always.

MISS ADDAMS.—He should be interested, but if he is not, the man who does not want to vote ought to stay at home.

MR. LITTLETON.—Do you think failure to exercise suffrage ought, as sometimes, to cause a forfeiture of it or a suspension of it?

MISS ADDAMS.—No.

MR. LITTLETON.—Do you not think the person who has suffrage and does not pretend to use it ought to have it suspended for a while?

MISS ADDAMS.—No; I should not penalize him. The point is, that those of us who do want to vote, cannot; those who do not want to are not being forced to.

MR. LITTLETON.—In election frauds that have come up in some States they punished them for the misuse of the suffrage.

MISS ADDAMS.—I think for grafting

MR. LITTLETON.—You think there ought to be some law depriving persons of the right to vote because they have misused it?

MISS ADDAMS.—There is a difference between misusing it and merely not using it.

MR. LITTLETON.—It has occurred to me there ought to be some sort of penalty or a suspension of the franchise to non-users, until they come to a realization of the use of it.

MISS ADDAMS.—Women would be pleased to take up such questions later, after we have the vote.

MR. LITTLETON.—Yes; I was anxious to have your view. Can not the constitution of Illinois be amended in any fashion without a constitutional convention?

MISS ADDAMS.—Yes; but our constitution is very difficult to amend. The legislature can propose only one amendment at the same session, and that article cannot be again amended for four years. There are proposed amendments pending covering many years to come.

I should like to say one more thing in regard to working women. I know a great many working women, and certainly I know of no class of women who so clearly see the necessity for the vote or so sorely need the power of protecting themselves as working women do. They are becoming increasingly conscious of it. We have a ten-hour law in Illinois, and hope to soon have a law to protect the women in dangerous trades. At every session of the legislature there is more and more legislation for the

protection of working women. It is the trade-union girls themselves who always appear before the legislature and make arguments. It is not a philanthropic undertaking at all. It is being pushed by the working women of Illinois.

I should like to call upon Caroline A. Lowe, of Kansas City, Mo., as the next speaker.

Miss Lowe spoke as a wage-earner and on behalf of the 7,000,000 wage-earning women in the United States. She emphasized the arguments already made on the necessity of her class being protected by the ballot. Women workers needed to be relieved of long hours of labor, to be protected from injuries by machinery, to secure better wages, etc. She related instances of great abuses arising from present non-protection in these regards. One was of a working girl during the great garment workers' strike in Chicago.

Katie Malloy had worked at Hart-Schaffner & Marx for five years and had saved $30. It was soon gone. She hunted for work, applied at the Young Woman's Christian Association and was told that so many hundreds of girls were out of work that they could not possibly do anything for her. She walked the streets day after day without success. For three days she had almost nothing to eat. "Oh," she said, with the tears streaming down her cheeks, "there is always some place where a man can crowd in and keep decent, but for us girls there is no place, no place but one, and it is thrown open to us day and night. Hundreds of girls—girls that worked by me in the shop—have gone into houses of—houses of—impurity."

Has Katie Malloy and the 5,000 working girls who are forced into lives of shame each month no need of a voice in a government that should protect them from this worse than death?

Women, said Miss Lowe, as an almost universal rule, received only about half the wages of men doing the same work.

We have equal need of food, clothing, and shelter. But at 21 years of age a powerful weapon is given our brothers for self-defense, a larger means for growth and self-expression.

We working women, because we are women and find our sex not a source of strength, but a source of weakness and offering

a greater opportunity for exploitation, have even greater need of this weapon than our brothers.

For the same reason the working girl needed the ballot more than her employer.

Why is it given to him while it is denied to us? Is it for the protection of his property that he may have a voice in the governing of his wealth, of his stocks and bonds and merchandise?

The wealth of the working woman is far more precious to the welfare of the State. From nature's raw products the working class can readily replace all of the material wealth owned by the employing class, but the wealth of the working woman is the wealth of flesh and blood, of all her physical, mental, and spiritual powers. It is the wealth not only of to-day, but that of future generations that is being bartered away so cheaply. Have we no right to a voice in the disposal of our wealth, the greatest wealth that the world possesses, the priceless wealth of its womanhood?

Is it not the cruelest injustice that to the man whose material wealth is a source of strength and protection to him, and of power over us, should be given the additional advantage of an even greater weapon which he can use to perpetuate our condition of helpless subjection?

Miss Lowe declared that in public employment men were favored over women.

The Chicago teachers, firemen, and policemen had had their salaries cut because of the poverty of the city. The teachers' salaries were cut the third time. They organized to investigate the reason for the reduction. Margaret Haley was selected to carry on the investigation. As a result she unearthed the fact that large corporations were not paying the legal amount of taxes. The teachers forced the issue, and through their efforts in July, 1902, $597,033 in back taxes on the franchises of five public utility corporations was turned into the public treasury, and a few months later an additional $600,000 taxes on these franchises was paid. What was done with it? The policemen and firemen had the cut in their salaries restored, while the teachers did not. Instead, the finance committee recommended and the board of education appropriated the teachers' share to pay coal bills, repairs, etc.

Why was this? It was a clear case of the usual treatment accorded to a disfranchised class.

Miss Lowe declared that the ballot had never yet been granted by a ruling class to a serving class because of the latter's need.

Almost without exception, the extension of the franchise has taken place only when the needs of the industrial development have demanded a larger degree of freedom upon the part of the serving class; so that the serving class, driven by the very pressure of economic need, has organized as a class, and after a struggle has wrested from the grasp of the ruling class a larger share in the powers of government.

At the breaking up of the feudal system, the peasants in large numbers left the estates of their masters and entered upon the new form of industry made possible through manufacturing. To escape the robbery of the nobility, they organized in guilds. As a result of the struggle the members of the guilds forced the nobility to relinquish their exorbitant demands, and free towns came into existence.

When the industrial basis of any society, or any large portion of society, changes, the superstructure must change in accordance with it. This was again proved when the transition from the hand tool to machine production took place. Again it resulted in an extension of the franchise to a still larger portion of the working class.

Miss Lowe then declared that we were in the midst of another change of the industrial system, that from home manufacture of food, clothing, etc., to factory manufacture.

Even the education of our children is placed in the hands of the kindergarten and the public schools. There has been nothing for us to do but to follow our jobs into the great industrial centers. The political superstructure must be adjusted to conform to this change. This industrial change has given to woman a larger horizon, a greater freedom of action in the industrial world. Greater freedom and larger expression are at hand for her in the political life.

Mr. Chairman, and gentlemen of the committee, the time is ripe for the extension of the franchise to women. We do not come before you to beg of you the granting of any favor. We

present to you a glorious opportunity to place yourselves abreast of the current of this great evolutionary movement. You can refuse to accept this opportunity, and you may for a moment delay its advance. But in effect it will be only as that of the old woman who, with her tiny broom, endeavored to sweep back the incoming tide from the sea. If you desire to take the broad, progressive attitude, you will support the suffrage amendment now before your committee.

MISS ADDAMS.—There are being organized all over the country leagues of men who devote themselves to the advancement of equal suffrage. It is a very great pleasure for us to have them associated with us. We have a representative here to-day of one of the leagues, James L. Laidlaw, of New York City.

Mr. Laidlaw spoke of the Men's League for Woman's Suffrage; its spread from New York to other large cities of the Union.

We believe this is the leading political question of the day, and that the time is now ripe for taking it in hand.

It has been said that women do not want the suffrage. We men of the league believe that, if only one woman in the country wants it, she should have it, and not have to wait for a majority of her sex to express a desire for it.

If then, said Mr. Laidlaw, the suffrage is a matter of right, Congress should not delay granting it in the speediest fashion. This is by constitutional amendment.

Why should we give women the right to hold property, why should we give them the right to an education, and refuse them the right to protect their interests or the right to express themselves politically? That question is being asked to-day all over the world. This is a women's era; the women in Europe and in Asia are working for the ballot just as they are in this country, and, believe me, the women of China—think of China showing us the way—appear to be nearer gaining the franchise than the women of this country. It seems a disgrace that we, the people of the United States, who vauntingly use the terms liberty, equality, democracy, should permit one country after another, oriental and European, to show us the way to a true civilization.

Mrs. Elsie Cole Phillips, a Socialist of Milwaukee, Wis., was then introduced. She replied to the anti-suffrage argument of "increasing the ignorant vote" by saying that many members of the so-called educated classes were lamentably ignorant of fundamental things in our political, social, and industrial organization, in which members of our so-called non-educated classes took great concern. To illustrate this she told an experience of Mrs. Frederick Nathan, president of the Consumers' League, of New York City. Mrs. Nathan, said Mrs. Phillips, being naturally a woman suffragist, asked a young woman clerking in a department store if she took an interest in women voting.

The girl replied indifferently, "Oh, not very much." And Mrs. Nathan said, "That is very strange to me. You ought to realize what it would mean to you to have a political expression for your needs, needs that no one but yourself can understand." The girl said, "Oh, yes; of course, that is true. All of us girls know what we need. The working girls would vote all right, but it just appalls me to think of letting in that ignorant Fifth Avenue vote." [Laughter.]

Mr. Littleton asked Mrs. Phillips what proportion of woman suffragists were Socialists. Mrs. Phillips was sorry to say that, in her opinion, it was only a very small percentage. She implied in her answer that almost all Socialists were in favor of woman suffrage.

On this point Miss Bréhaut remarked that the New York *Call*, a Socialist organ, had declared that in a recent election in Los Angeles, Cal., three Socialist votes out of five were cast by women.

Changing the subject she denied the claim that the equal suffrage States had been more friendly to humane legislation than the other States.

The model child labor law proposed by the National Child Labor Committee contains 49 sections, and the following figures show the number of these provisions already enacted in the woman suffrage States and those of similar conditions and location: Of the 49 provisions we find the law of Wyoming contains none; Idaho contains none; Colorado contains 7; Utah, 8; California, 12; Oregon, 14; Oklahoma, 15; North Dakota, 15; Minnesota, 20; Nebraska, 25; Wisconsin, 27. It is obvious that the

man-suffrage States have the best child-labor laws and that the education of public opinion has more to do with the passage of good laws than women's votes.

Because of the value of woman's particular function to society and because of her physical limitations public opinion demands a limit to the hours of labor for women in industry. In 31 States laws have been passed limiting the number of hours of labor in which wage-earning women may be employed. Does any suffragist claim that these laws materialized through women's votes?

It has been claimed here to-day that low wages, speeding, etc., would be cured by votes, though it has been proved over and over again that the vote does not control economic conditions. The law of supply and demand, modified by the demands of organized labor, controls wages. Men everywhere improve their condition by unions and collective bargaining, and if they demand and obtain an uneconomic wage the industry is soon impaired and wages again adjust themselves.

Many women receive equal pay for equal work, and when they receive lower wages than men it is not because they are without votes, but because they are women, with physical and mental limitations which cannot be legislated out of existence.

Women's limitations are natural and not to her discredit. According to the Pittsburgh *Survey* she is often prevented by inferior strength from competing for the best positions. This publication gives the following facts: Of the 22,185 women employed in Pittsburgh, only 3 per cent. possess a handicraft or are engaged in skilled work. Most of the occupations of women in that city require neither training nor stability nor intelligence. Skill and judgment and the relation of one machine to another cannot be learned in three or six months, and there is no apparent utility in training a woman to a knowledge of several processes when she hopes to end her factory or shop employment in six or eight years and has a consequent lack of ambition. Together these facts produce an unbusinesslike attitude, a conscious instability. For this reason women are undesirable apprentices. They can be employed profitably only at such occupations as are quickly learned. Their opportunities for employment are, with one exception, still further circumscribed by the opposition of men's unions, and the unions that bar women are those of skilled workers; and this is true in spite of the fact that the American Federation of Labor stands for woman suffrage. Her lack of physical strength, the opposition of men's unions, and her industrial instability combine to leave

women the subsidiary processes and the mechanical operations which demand little intelligence. Expectation of marriage lessens her ambition, and this lack of ambition can have no other effect than to limit efficiency.

Naturally, the subsidiary processes are stultifying, slipping a hinge into place, filling pickle bottles, packing crackers, fruit and candy, stitching seams in ready-made garments, etc. Women's trade-unions and trade training are now considered the remedy for these undesirable conditions; but, even when they become general, they will not alter the natural limitations of women, both mental and physical. With trade training her neuromuscular exhaustibility will be less apparent, and the result may be a lengthening of her trade life, but she will still desire and expect to marry. It is hoped by a number of intelligent men and women that trade training will materialize long before votes for women, and that this trade training will be a part of the public-school system or given in coöperation with boards of education. Public education, gentlemen, is not a function of the National Government, and we do not look to you to solve these economic problems.

A better distribution of immigrants in small groups to those localities where they are needed and can be Americanized would also seem to be a function of the National Government, and would certainly do more to prevent an oversupply of labor in the great centers of population than women's votes.

The implication by Mrs. Phillips that connection with the Consumers' League connotes a belief in woman suffrage has no foundation in fact. I am myself a member of the Consumers' League and point to its effective work as a proof of the power of women's organizations unhampered by partisan politics.

The most emphasized reason given to-day is that woman suffrage is right. No measure of government is right unless it be for the greatest good of the greatest number. As a political unit, would the average woman do better than the average man? If not, there can be no possible reason for compelling her to assume the responsibilities that the ballot imposes. If she failed to do much better the added vote would be only an extra expense without corresponding gain.

Would a taxpayer's wife be sufficiently interested in the welfare of women teachers to vote for men pledged to raise their pay at a greatly increased cost to the community? Would a working woman consider anything but her own convenience and comfort in voting on a subway bond issue? Would a Congressman's wife be overcritical of her husband's legislative acts or

of his party? Would women generally be interested in the good of the greatest number, and, if so, would this interest lead to a large attendance at primary elections and an intelligent consideration of the relative merits of candidates for nomination? We claim that this would not result. Average women, on attaining the ballot, might for several years be on their mettle, but their interest in politics would very naturally be spasmodic and not to be counted on. Prof. Jensen says of Utah women that "their interest in politics is passive rather than active." There are thousands of women who are interested in politics, but millions who are not.

This mental attitude toward politics is perfectly natural. Should the majority of women appreciate the privilege of voting, and gain the familiarity with affairs that would make it intelligent, they would certainly be deprived of time that is necessary for recreation and physical upbuilding. Even without the burden of politics the woman of the majority (the married woman without a servant) does not generally devote enough time to this purpose. Overtired nervous women do not make for the betterment of the race, and manifold functions, except where circumstances are very favorable, do not result in well-balanced natures.

And the women who demand this full life for all women are not sincere. The full life, supposed to be consequent on entrance into politics, is only desired by a small minority of middle-class women, mostly college and professional women, who see in political position a release from the strain of competitive life. One leader, the Rev. Anna Shaw, has expressed a desire to be United States Senator. This desire for office has been expressed to-day before your honorable committee. We submit, gentlemen, that one can hardly pick up a newspaper without reading of the appointment or election of some specially qualified woman to office in States where only men vote. We do not desire that women should be appointed or elected because they are women, but only when they can demonstrate peculiar fitness. These college and professional women are making good from year to year, and new avenues of usefulness are being opened up to them. Practically all industries and professions and many elective and appointive places in municipal and State government are open to women. The greatest good to the greatest number makes it inexpedient that the whole realm of politics should be theirs.

Miss Addams states that the foreign vote of Chicago would not be doubled by woman suffrage, and refers to the large number of Greeks and Slavs in that city who have no women folk. But I would say that the birth rate among the foreign born in this country is three times as large as that among native-born Americans. The foreign born people and their children constituted, in 1900, 48 per cent. of the total population of the country, and much more than half the white population of the Northern States, reaching 79 per cent. in New York and Chicago.

According to Dr. Sidney D. Wilgus, chairman of the committee on immigration of the New York State Lunacy Commission, one out of every four immigrants is found to be an undesirable.

I don't agree with Miss Addams that education is not a necessary qualification in voters. The men and women of high ideals who have accomplished much for children would be hampered rather than helped by the votes of ignorant mothers. The tenement-house mother is so ignorant of the rights of childhood that she will hide her young daughter from the inspector that the child may continue to ruin her eyes and health by knotting willow plumes.

With reference to the alliance of the suffragists with the socialists "for convenience," and not on principle, I submit that socialistic principles are now taught by the woman-suffrage leaders, particularly the economic independence of all married women, and the State nurseries that would in such case be necessary, involving the general loosening of marriage and family ties that naturally follows with the shifting of responsibility from the individual to the State.

Miss Ashley, the treasurer of the National Woman Suffrage Association, has frequently written the weekly headquarters letters in the *Woman's Journal* (their national organ). She states that "our cities swarm with outraged, degraded, unfree women," and advises her readers to study the facts of social conditions "with an open mind," and to this end she especially recommends August Bebel's book on "Woman." This book is a translation from the German; and, besides describing and arraigning conditions that have never obtained in this country, it preaches the most radical socialist doctrines, such as free love.

Conservative women, gentlemen, see nothing but danger in woman suffrage. If the ballot is given them, patriotism would compel all right-minded women to vote. Men are nowhere excused from taking up the responsibility laid upon them by the State.

Mrs. Harper explained the apparent preponderance of Socialists among the woman suffragists by saying the Socialist party openly advocated equal suffrage.

The Democratic and Republican parties do not stand for woman suffrage, and that is why there seems to be more Socialist women than Republican or Democratic women. If the two old parties will come out for woman suffrage then the women will show their colors.

Miss Addams suggested to the committee that a commission be appointed by the House "to look into the question of woman suffrage, the possible demand for it in the various States, and the success it has gained in other States."

She closed the hearing by relating a story to illustrate the help women could give to men in public affairs. It was of a patriotic play written by a small boy in a city social "settlement."

The first act showed two Revolutionary soldiers on watch; one soldier said to the other, "Say, ain't it fierce, we ain't got no flag for this Revolution!" and the other soldier said, "Ain't it fierce!" and that was the sum of the act. The dramatic personnel of the second act were George Washington and a Revolutionary officer, and the officer said, "Ain't it fierce we ain't got no flag for this Revolution!" and Gen. Washington said, "Ain't it fierce!" and that was the sum of the second act.

The third act showed George Washington calling upon Betsy Ross, the latter in a domestic setting, rocking a baby. George said, "Betsy, ain't it fierce we ain't got no flag for this Revolution!" and Betsy Ross said, "Yes; ain't it fierce. Hold the baby and I will make one." [Laughter.]

The anti-suffragists submitted a number of papers opposed to the amendment, of which two had a special bearing on the question of the success of woman suffrage in Colorado.

WOMAN SUFFRAGE IN COLORADO

I have voted since 1893. I have been a delegate to the city and State conventions, and a member of the Republican State committee from my county. I have been a deputy sheriff and a

watcher at the polls. For 23 years I have been in the midst of the woman suffrage movement in Colorado. For years I believed in woman suffrage and have worked day in and day out for it. I now see my mistake and would abolish it to-morrow if I could.

No law has been put on the statute books of Colorado for the benefit of women and children that has been put there by the women. The child-labor law went through independently of the women's vote. The hours of the working women have not been shortened; the wages of school-teachers have not been raised; the type of men that get into office has not improved a bit.

Frankly, the experiment is a failure. It has done Colorado no good. It has done woman no good. The best thing for both would be if to-morrow the ballot for women could be abolished.

MRS. FRANCIS W. GODDARD,
President of the Colonial Dames of Colorado.

December, 1910.

Our State has tried the female suffrage plan a sufficiently long time to form a fair idea of its workings. I am not prejudiced in any way, but honestly do not see where the experiment has proved of benefit. . . . It has produced no special reforms, and it has had no particular purifying effect upon politics. There is a growing tendency on the part of most of the better and more intelligent of the female voters of Colorado to cease exercising the ballot. . . . If it were to be done over again the people of Colorado would defeat woman suffrage by an overwhelming majority.

MOSES HALLETT,
United States District Judge for Colorado.

The anti-suffragists also submitted a pamphlet containing the arguments and opinions of eminent opponents of woman suffrage.[1]

In the presidential campaign of 1912 woman suffrage was for the first time advocated by a major party, the Progressive platform declaring that this party, "believ-

[1] The reader who desires to study the subject further is advised to write for this pamphlet, as well as other anti-suffrage literature, to the New York State Association Opposed to Woman Suffrage, 29 West 39th St., New York City. A pamphlet and various leaflets containing opinions and arguments of eminent advocates of woman suffrage, as well as other literature on the subject, may be procured from the National American Woman Suffrage Association, 505 Fifth Avenue, New York City.

ing that no people can justly claim to be a true democracy which denies political rights on account of sex, pledges itself to the task of securing equal suffrage to men and women alike." The Prohibition and the Socialist parties, as they had done in the past, declared for equal suffrage. The Republican and Democratic parties were silent on the question, their candidates declaring it was a State and not a national issue.

For the first time in American politics a woman took official part in a presidential convention, Miss Jane Addams of Chicago seconding the nomination of Theodore Roosevelt, the Progressive candidate for President.

CHAPTER XI

Federal Recognition of Polygamy

[polygamy and slavery]

Sketch of the Rise of Mormonism, Its Settlement of Utah, and Its Doctrine of Polygamy—Bill Is Introduced in the House of Representatives to Grant Lands in Utah to White Settlers, Excluding Polygamists—Debate on the Exclusion as Implying Recognition of Polygamy: John M. Bernhisel [Utah], Solomon G. Haven [N. Y.], John Letcher [Va.], Thomas Davis [R. I.], William Smith [Va.], Williamson R. W. Cobb [Ala.], Joshua R. Giddings [O.], Philip Phillips [Ala.], Lewis D. Campbell [O.], Alexander H. Stephens [Ga.], Gerrit Smith [N. Y.], David T. Disney [O.], John S. Millson [Va.], George A. Simmons [N. Y.], Samuel Parker [Ind.], Samuel P. Benson [Me.], Joseph Lane [Ore.], Mike Walsh [N. Y.], John Kerr [N. C.], John Z. Goodrich [Mass.], Nathaniel G. Taylor [Tenn.], Charles Ready [Tenn.], Lawrence M. Keitt [S. C.], James L. Seward [Ga.], Hiram Walbridge [N. Y.], Caleb Lyon [N. Y.], Charles Hughes [N. Y.], Bishop Perkins [N. Y.], William W. Boyce [S. C.], John L. Taylor [O.]—Declaration of Republican Platform [1856] against Polygamy—Speech of Representative Justin S. Morrill: "Polygamy a National Reproach"—The Mormon War of 1857-8—The Morrill Anti-Polygamy Act of 1860.

JOSEPH SMITH (born Sharon, Vt., December 23, 1805; assassinated in jail at Carthage, Ill., by a mob, June 27, 1844) was a gold-seeker near Palmyra, N. Y., who claimed to have discovered in 1823 gold plates engraved with strange characters. Deciphering the writing by means of a divining crystal, which he called the "Urim and Thummin," he found it to be the "Book of Mormon," the "Sacred History of Ancient America from the Earliest Ages after the Flood to the Beginning of the Christian Era," telling of the settlement of the country by early colonies of Israelites, and the mission to them of Jesus Christ after his resurrection, and containing references to the religious and

critical movements of Smith's time, with religious rules, exhortations, etc. This book he published at Palmyra in 1830; in the same year and place the "Church of Jesus Christ of Latter-Day Saints" was founded on the revelation. It is generally known by outsiders (called "Gentiles" by the believers) as the Mormon Church, and its followers are called Mormons.

Sidney Rigdon, a minister of the Disciples' Church, organized at Kirtland, O., a congregation of Mormons, and thither in February, 1831, Smith betook himself. Rigdon had imbibed communistic ideas, and these Smith incorporated in his religion, founding a city of "Zion" near Kirtland, and starting various coöperative industries in Kirtland and neighboring towns, all of which projects languished and expired, the final crash coming with the complete failure in 1838 of the Kirtland Society Anti-Banking Company, which had uttered $200,000 in notes.

In 1835, while at Kirtland, Smith chose twelve Apostles, one of whom was Brigham Young. It is charged that Smith sanctioned polygamy, and that it was practiced to some extent by his followers. In 1836 he expelled one of his first converts, David Whitmer, for opposition to the doctrine, it is said. A later sect, the "Reorganized Church of Latter-Day Saints," which was organized under the leadership of the prophet's son, Joseph Smith, claims that the doctrine of "spiritual wifery" as it is called, was introduced, not by the prophet, but by the older men, such as Rigdon.

Upon the failure of the "Anti-Banking Company" Treasurer Smith and Secretary Rigdon went to Far West, Mo., where a Mormon colony had been established, to set up there a new "Zion." Smith deposed the officers of the colony for misappropriation of funds, etc., and, a defection of Mormon officials, including two Apostles, ensuing, established, it is said, a band of "Avenging Angels" or "Danites," to terrorize his followers into remaining in the church. He also established a tithing system, the revenues of which were applied to church purposes.

On July 4, 1838, Rigdon preached a sermon in which he predicted a war of extermination between "Saints" and "Gentiles." There ensued a partisan warfare between the Mormons and their rough, pioneer neighbors, in which Governor Dunklin of Missouri, on October 27, took a hand by ordering the Mormons to be driven from the State. The leaders of the sect, including Smith, were arrested. Smith was liberated after a trial in which testimony was presented as to the fell purpose of the Danites, and the orders of the Mormon leaders to spoil the Gentiles.

Smith purchased the city of Commerce in Illinois, upon the Mississippi, changing its name to Nauvoo, said to be a Hebrew word meaning "Beautiful," and thither led his people. The place flourished because of great accessions to the church from all over the country, and from England, whither missionaries had been sent. A military company, the "Nauvoo Legion," and a "university" were organized, with the countenance of State officials, for Smith was welcomed into politics because of the solid vote which was at his complete disposal. Indeed, he became so bold that he presented to President Van Buren a claim for Mormon losses amounting to $1,381,044.55½. On obtaining no action upon his claim, he ran for President himself.

On July 12, 1843, Smith gave out his famous "Revelation on the Eternity of the Marriage Covenant, including Plurality of Wives." In this the authority for polygamy was derived from the Old Testament. Smith had twenty wives, some of whom were taken over after his death by Brigham Young.

This practice, as well as the destruction of an anti-Mormon newspaper press by the Nauvoo Legion, caused the Gentile population of the neighborhood to rise in arms against the Mormons in June, 1844. Smith and his brother Hyrum were arrested and incarcerated at Carthage. On June 27 a mob broke into the jail and brutally murdered both prisoners.

Brigham Young succeeded Smith in leadership. He sent investigators into the Far West to find a proper

place for colonization, removed from a chance of disturbance for years to come. Upon their report, he selected the Great Salt Lake Valley, and thither led the Mormons, completing the emigration in 1848. With marvelous energy Young set about building a city, even contemplating the establishment of factories of all sorts, in order to render the colony independent.

But despite Young's indomitable courage and the implicit faith he inspired in his followers, undoubtedly the colony would have proved a failure had it not been for the discovery of gold in California at this juncture, bringing an almost continuous train of gold-seekers through Salt Lake City, all in need of supplies in the midst of their journey through the "Great American Desert." This event, and the subsequent building of the Union Pacific Railroad, established the prosperity of the colony and the credit and power of its leader.

Utah was a part of the cession of the United States at the close of the Mexican War, and was organized as a Territory September 9, 1850. Brigham Young was appointed governor. He took the high hand toward Federal officials sent out from the East; thus when one of them, Judge Brocehus, criticized polygamy, Young publicly called him a coward, and demanded that he "apologize to the satisfaction of the ladies." When President Pierce offered the governorship to an army officer, Lieutenant-Colonel Steptoe, stationed in Utah, Young threatened vengeance against the Federal Government for the "infringement upon his rights."

The subject of polygamy came first before Congress in connection with a bill in the House introduced from the Committee on Territories "to establish the office of surveyor-general of Utah to grant donations (of land) to actual white settlers therein, and for other purposes."

A condition of the land grant was that its benefits should "not extend to any person who shall now, or at any time hereafter, be the husband of more than one wife." This proviso created an animated discussion in which almost every Representative desired to take part.

The debate was therefore conducted under the five-minute rule. Among the speakers were: John M. Bernhisel [delegate from Utah, and a Mormon], Solomon G. Haven [N. Y.], John Letcher [Va.], Thomas Davis [R. I.], William Smith [Va.], Williamson R. W. Cobb [Ala.], Joshua R. Giddings [O.], Philip Phillips [Ala.], Lewis D. Campbell [O.], Alexander H. Stephens [Ga.], Gerrit Smith ([N. Y.], David T. Disney [O.], John S. Millson [Va.], George A. Simmons [N. Y.], Samuel Parker [Ind.], Samuel P. Benson [Me.], Joseph Lane [delegate from Oregon], Mike Walsh [N. Y.], John Kerr [N. C.], John Z. Goodrich [Mass.], Nathaniel G. Taylor [Tenn.], Charles Ready [Tenn.], Lawrence M. Keitt [S. C.], James L. Seward [Ga.], Hiram Walbridge [N. Y.], Caleb Lyon [N. Y.], Charles Hughes [N. Y.], Bishop Perkins [N. Y.], William W. Boyce [S. C.], and John L. Taylor [O.].

Government Recognition of Polygamy

House of Representatives, May 4, 1854

Mr. Bernhisel, the delegate from Utah, a Mormon, moved to strike out the proviso. Mr. Haven seconded the motion, for the reason, as he said, that he did not desire by any legislation to recognize any such institution as polygamy.

Mr. Letcher rose to ask the reason for the discrimination in the bill whereby "the settler was to be punished for having more wives than one, while office-holders" (the surveyor-general and his assistants) "who are in receipt of large salaries, not only have the benefit of money, but of the women to boot."

Mr. Davis did not see that the discrimination was worse than inserting the word "white" in all the territorial bills. Worse than polygamy existed among the Southern slaves, and that by the compulsion of law which did not recognize slave marriages. Slavery was now to be introduced in the Territories, bringing there a system of promiscuous concubinage, worse than polygamy, for the Mormons had made some regulation at least of that practice. He was opposed, however, to

the introduction of either system, because of their common opposition to moral laws, as understood by every reasonable man.

Mr. Smith [Va.] denied that promiscuous concubinage existed among the Southern negroes, and affirmed that, on the contrary, the marriage tie was as sacredly observed by them as among white people in the North. Incontinence was as rare in the South as in "the great State of Rhode Island."

Mr. Cobb asked the delegate from Utah whether the proviso would work hardship to any considerable number of the inhabitants of the Territory.

Mr. Bernhisel replied yes: "The more wives a man has the more farms he needs to support them." [Laughter.]

Mr. Giddings charged the Southern Representatives with inconsistency. They had repudiated all attempts *to interfere with the domestic institutions of our Territories,* and now were in favor of interfering with the domestic institution of marriage among the Utah Mormons.

Although he was opposed to polygamy, nevertheless, while we legislated for slavery, he would deal out to the Mormons the same measure of justice that he would to the citizens of Nebraska with their hundreds of [negro] concubines.

When the Mormon marries, he does it openly before the public. The act is lawfully registered; and, when it has taken place, the woman assumes and takes the same standing in society and in the community as her husband. He recognizes her as his lawful partner. His children are legitimate. They are educated; they are taught to understand the laws of the country, and its Constitution. They become enlightened and intelligent, and may become useful members of the community.

Sir, the Mormon does not sell his wife, nor does he sell his children. No, sir. God forbid. The Mormon recognizes his child as entitled to his care, to his attention, to his protection, to the privileges of education. He does not sell his own offspring to a slave dealer. No, sir; no, sir. The gentleman over the way, from Virginia [Mr. Smith] says that negroes in the South are entitled to marriage. Why, sir, am I to stand here

at this day and proclaim that there is no such institution as legal marriage among three millions of slaves in the United States? A fact of which we all are conscious. Is it not true that the gentleman who has made the declarations would sell the wife of his slave to-morrow if he could get his price for her? Or, that he would do worse, perhaps?

Mr. Phillips would not trust himself to reply to such language as had fallen from the gentleman from Ohio, but left him to his own conscience and the reprobation of his constituents. He wished to strike out the proviso, as tending to the centralization of the Government.

We are not only now undertaking to regulate the industry of the country, to regulate the education of the country, to become the general almoner for all its charities; but we are now undertaking to regulate its morality. Sir, where, in the legislation of Congress, will any gentleman point me to a precedent where such a provision as this has ever been annexed to any legislation of Congress? Why, sir, in the homestead bill which this House has passed, was there any provision that no man shall become a settler who had been an adulterer; that no man should be entitled to the benefit of a homestead who had taken the life of his brother, or who had committed a larceny, or any crime whatever? Why is it that in this bill, in reference to the only Territory where this is regarded as a legal institution, this provision is inserted. Why, sir, if, in Utah, which is an organized Territory governing itself, the marriage of more than one wife is illegal, it is punishable there as a crime; and, if legal, it is a most extraordinary thing that, having permitted the organization of a Territory where this is a known legal institution, when we pass bills for that Territory we exclude from its benefits all the person who are living in said Territory.

Why, sir, I say that there is no principle whatever on which this is founded; and the remark of the gentleman from Virginia [Mr. Letcher] to the inquiry was perfectly legitimate. For if we exclude these men from the benefit of settlements on the land, on the ground that they are in the commission of a crime, why, I ask, do you not annex the same condition to the salaries of the important officers in the same country? You have given salaries to the governor and judicial officers of that Territory. Why, then, has not this condition been annexed to those salaries?

I say that Congress has nothing to do whatever with this

transaction. We are disposing of the public land. It is not necessary or proper for this Government to make this condition. How is it to be worked out? Who is to investigate the fact? If you are making a provision it ought to be a provision with some sanction; there should be some mode of enforcing it. What provision is there here for ascertaining the fact whether the party is entitled to make the entry?

To what tribunal have you delegated the inquiry to know whether the person applying for this benefit is subject to the condition? Sir, there is nothing of all this; and it looks to me to be most out of place, and most inopportune. It is certainly without the slightest precedent in the past history of the country; and I trust, therefore, that this motion to strike out will prevail.

Mr. Campbell believed Congress had complete power over the Territories, including the morals of its people. He was as much opposed to centralization as the member from Alabama.

I am in favor of State rights and of popular rights, and am for resisting all attempts that may be made to overwhelm in the halls of legislation that which is known to be the sentiment of the people of this land. Sir, it sounds strangely to me to hear a gentleman condemning that which may seem to be, in this instance, centralization and consolidation, who is in favor of hurrying through in hot haste a measure that is to affect a vast empire in the future, when no voice has been raised from any State or from any portion of the people of this land in favor of it.

Mr. Stephens said that the member from Ohio was mistaken; that the legislatures of Georgia, Louisiana, and other States had spoken in favor of the proviso.

The chairman declared that the speaker was traveling outside of the record, the actions of the legislatures not having been presented to the House.

Mr. Stephens admitted this fact, and addressed himself to the remarks of Mr. Campbell. He denied that it was the province of Congress to interfere in the case of morals.

Sir, the Constitution of the United States has guarded this point. Congress has no power to establish any religion—none

at all. Congress has no power to touch the question of morals, which lie at the foundation of all systems of religion. Congress can rightfully exercise no power which looks to the establishment of any particular tenets of any religion or any religious sect, or to the putting down of any such religion or sect, either in the States, Territories, or anywhere else. Congress can interfere only with such actions in a criminal point of view as come within the class of *"mala prohibita."* Congress has no right to look to those actions designated by ethical writers as *"mala in se."* None whatever.

The gentleman says that this practice of polygamy is regarded as a great moral crime in every one of the States of the Union. I am not going to discuss before this House the question whether that practice is moral or not. Congress has no right to set up a standard of morals for the people of any portion of this country. I meet this question at the threshold—I stand upon principle. I stand upon the Constitution of the United States. I will do the same justice to the people of Utah that I will to people of other Territories, without inquiring into their ecclesiastical polity.

I am in favor of granting lands to the people of the Territory of Utah in the same manner, and upon the same terms, as we do to the people of other Territories of the Union. I would make no discrimination. If we discriminate to-day against *Mormons,* to-morrow, perhaps, we shall be asked to discriminate against Baptists, Methodists, Presbyterians, or Catholics. The evils of such discriminations, or even the attempt to make them, have been wisely provided against in the Constitution. Let us stand by the Constitution. Let us strike out this proviso, and let the people of Utah, amenable to their own laws, civil as well as ecclesiastical, have the rights and privileges of this bill, just as the people of all the other Territories within our jurisdiction. The power which will be exercised in this proviso will, if ever brought in full operation, break down the only safeguard we have for religious freedom.

Mr. Smith [N. Y.] thought that no subject had come before the House involving more important principles than this question, and therefore that it should be discussed temperately and acted upon deliberately and wisely. He was in favor of retaining the proviso.

In reply to Mr. Smith [Va.] he would say that Congress should discuss questions in their legal aspect. We

are not to accept concessions in place of rights. Kind masters might concede marriage to their slaves, but this was not granted the slaves by law. Wives could be sold away from husbands, and a new mate forced upon either of the separated parties.

He agreed that government went outside of its province either in promoting or protecting morals. Its function was limited to protection of persons and property.

The office of government is to hold a shield over the great essential natural rights of its subjects. Now, sir, I hold that polygamy invades a great natural right, and that it is, therefore, the duty of civil government to suppress it.

I suppose it will not be denied that polygamy prevails in Utah. But it is said that polygamy is a part of the religion of the Mormons; and that, as we would keep ourselves clear of the offense of invading the religion of our subjects, we must not strike at polygamy. I admit, sir, that the reformation of religion cannot be a legitimate object of legislation. But, sir, that legislation may be sound and justifiable which incidentally affects religious systems. If a religious system tramples on any of those great rights which it is the office of government to protect, then, at just those points where such system offends, government is to meet it and overcome it.

I argue the duty of government to suppress polygamy on just the principles that I argue the duty of government to suppress land monopoly. I believe that all persons have an equal right to the soil. The Maker of the earth has provided one home, not two homes, for each person; not two farms, but one farm, for each farmer. The right to the soil is natural and equal.

So, sir, the right of each man to one wife, and each woman to one husband, is a natural right; and for one man to get more than one wife, or for one woman to get more than one husband, is to violate this natural right, which it is the duty of government to protect.

The word of God shows that nature provides but one wife for one man, and one husband for one woman. That word teaches us that He "made them male and female"—not male and females, nor female and males. And if there are any present who do not bow to the authority of that word I would point such to the census. The census, in every country, and in every

age, shows that the sexes are numerically equal, and that the arrangements of Providence forbid polygamy.

I have proceeded in my argument for sustaining this proviso on the ground that this Government has as full power and authority over the people and institutions of its Territories as a State government has over the people and institutions within its jurisdiction. Now, I ask the gentleman from Georgia [Mr. Stephens] whether the government of his State should or would permit the dark-haired men of his State to press and practice upon their claim to a hundred wives each, and thus to shut out the light-haired men from marriage?

Mr. Disney claimed that the bill did not interfere with the religious belief or existing institutions of the people of Utah. The proviso simply provided that in making these grants of lands a particular class of persons should not be entitled to them. It was a *donation,* and so differed *in toto* from the payment of an officer's salary for services rendered, to which Mr. Letcher would apply the proviso.

The Government might pay one who practices polygamy for discharging the duties of surveyor-general for services rendered, and yet might esteem it impolitic to make donations of land—gifts to parties on condition of settlement, and thus settle that country with person practicing polygamy.

Now, with regard to the Mormons themselves, I have to state the fact that polygamy is a legal institution in the Territory of Utah. I have a volume of the statutes of Utah before me, and I have examined it carefully.

MR. MILLSON.—Really, I am somewhat astonished at that declaration of the gentleman from Ohio. Do I understand the gentleman to say that polygamy is a legal institution in the Territory of Utah?

MR. DISNEY.—Yes.

MR. MILLSON.—Has the law legalizing it ever been revised by the Committee on Territories? And, if so, are the Committee on Territories prepared to—what I take it for granted they will promptly do—report a bill annulling such a law?

MR. DISNEY.—There is no statute in the Territory of Utah expressly allowing polygamy as such, although it recognizes its existence. The statutes recognize the issue of marriages under such a system there as heirs-at-law, and make provisions in re-

gard to estates, and in every way and form recognize the existence of polygamy as a legal institution. I desire merely to make one more remark in addition to what I have already said. It is proper for me, in justice to the Mormons, to state that their statute-books are filled with provisions against incontinence of a most severe character.

Mr. Simmons was opposed to striking out the proviso for the reason that it would repudiate the whole antecedent policy of the Government, which was to control absolutely the Territories, including the subject of morals. The Ordinance of 1787, organizing the Northwest Territory, specifically stated that:

"*Religion, morality,* and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Here, sir, *religion* and *morality* are recognized as being necessary to good republican institutions. Certainly, sir, they do not mean by religion and morality *Mormonism* and *polygamy*.

Mr. Millson.—Sir, I am unwilling that the statute books of this Confederacy shall contain the admission that anywhere, within the reach of our laws, an institution exists under which a man is allowed to be at one time the husband of more than one wife. Sir, this proviso would be a confession of the weakness and powerlessness of Congress. Have we no further control over those who would establish this profligate institution in a Territory belonging to the United States than by withholding from them largesses and benefits? Have we not the right to apply to them our criminal legislation?

But how can a man be truly said to be the husband of more than one wife? Our laws acknowledge the right to have but one; and every second and further matrimonial contract, the wife being still alive, is simply null, and does not raise the female to the dignity of a wife. No man, then, in any Territory subject to our laws, can have more than one wife; and if, in the Territory of Utah, a man may, as this proviso seems to suppose, have more than one wife, it is only because Congress establishes or consents to such a law. We have reserved to ourselves the right to revise the statutes of the territorial assembly of Utah, and have declared that all acts disproved by us shall be null and void. There can be no statute in Utah allowing a plurality of wives, except by the consent of Congress; and until Congress

gives that assent—and it has not done it yet—there can be only one wife who can legally hold that relation.

Now, Mr. Chairman, I was surprised to hear just now, what I learned then for the first time, from the gentleman from Ohio [Mr. Disney], that the legislative assembly of Utah has already provided, or attempted to provide, for the legalization of polygamy. I beg leave to call the attention of the Committee on Territories to this act of the legislature of Utah. It devolves upon the Committee on Territories to lose no time in bringing this subject to the notice of the House. I trust they will act promptly and decidedly.

I, for one, have never surrendered, and I will not agree to surrender, the control of Congress over the legislation of the Territories. And the gentleman from Ohio [Mr. Giddings] made an incorrect statement this morning, when he said that no Southern gentleman in this House had yet spoken who had not ridiculed the right of Congress to interfere with the domestic institutions of a Territory.

Mr. Giddings.—I stand corrected.

Mr. Millson.—I know many Southern gentlemen who, in the recent debate, have, as I myself have done, protested against this doctrine—a doctrine which was, only a very little while ago, known as "squatter sovereignty," but which, in the more euphonious and refined vocabulary of the present day, is designated as "popular sovereignty." I believe that this Government has full control over the legislation of the territorial assembly, and full authority to annul any law which the people of the Territory, in their legislative capacity, may undertake to enact. I do not pretend to say that we can deprive them of any of their natural or personal rights; but such powers as they derive from us are always subject to our supervision and control. All their political power—all their legislative authority—is derived from Congress, and it can be derived from no other source. And I, for one, will never abandon these principles.

Sir, if it be true, as I was grieved to hear the gentleman from Ohio [Mr. Disney] say it is, that it has been attempted to legalize this licentiousness in the Territory of Utah, then we shall be partakers of the shame and of the disgrace, if we fail to discountenance and repress it. If we, either directly or indirectly, give it our sanction, we shall be held responsible for it. May not the very language of the proviso be construed as an indirect sanction of it? I ask gentlemen who have spoken upon this subject, and who, as I infer from their remarks, agree with me in sentiment, I ask them if there is not some reason for ap-

prehending that if this proviso be adopted, declaring that land shall not be given to those having more than one wife, some judicial authority, I know not where, may torture it into a sanction by Congress of the crime of polygamy in the Territory of Utah, by recognizing the possession, in one man, of more wives than one? For these reasons I shall vote to strike out this proviso.

Mr. Parker.—Does the gentleman mean to say that Virginia could not make polygamy legal within the limits of that State?

Mr. Millson.—I do not.

Mr. Parker.—Then the gentleman would confine his action exclusively to the Territories. Now, sir, how can we go to the Territory of Utah to prevent polygamy? How can we prevent it by any direct legislation? Who will enforce the law if you make one? Here, then, is a great, if not an insurmountable, difficulty. I am, therefore, in favor of retaining this proviso in the bill, for the purpose of discouraging the evil there. I am in favor of refusing to grant to men who practice polygamy any portion of the public domain. It is perfectly legitimate and proper, in my view of the case, that the proviso should be retained.

My friend from Georgia [Mr. Stephens] thinks that, by retaining this provision, we infringe upon the Constitution; for we have no right to adopt any legislation which may look to a religious test. Sir, what religious test is there here? If there be a religious test here, there are other religious tests in the bill. Go back to the preceding section of the bill, and you will find that we make a discrimination between married and unmarried men. Why that discrimination? It is simply because we wish to invite to those Territories men with their families. If that be the case, and it be a legitimate object, cannot we discourage the population of these Territories by those who have two, or a dozen, or twenty wives, and rebuke the practice of the crime of polygamy? It seems to me to be perfectly legitimate. No provision of the Constitution is infringed.

Polygamy can exist in fact, and the question is, shall we countenance it in this law, or not? I am against it tooth and nail; and I will go with the gentleman, when the laws of Utah are submitted to us, to put a quietus on this feature of them to the full extent of our power. It is our duty as a moral and Christian people to do so.

Mr. Benson.—We have been told by the gentleman from Ohio [Mr. Disney] that the laws of Utah recognize the right to have more than one wife. Now, I want the committee to look,

for a single moment, at the act organizing the Territory of Utah, and see how the law stands on this subject.

"All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, *and, if disapproved, shall be null and of no effect.*"

Now, I ask the lawyers of this House whether, when a law has gone through the regular course of enactment in the Territory of Utah, it is not the law of the land in Utah until it is disapproved by Congress?

Several Members.—Certainly.

Mr. Benson.—Then if such is the fact, I ask if it is not legal in the Territory of Utah for a man to have more than one wife? I agree entirely with what the gentleman from Virginia [Mr. Millson] has said. But I ask if you are going to shut your eyes to the fact that there are such laws existing in the Territory of Utah, and strike out this proviso because you are not willing to acknowledge, by implication, that there are any such laws in existence? Sir, we know the fact; the world knows it; the Congress of the United States knows it, for it has been proclaimed upon this floor again and again that there are such laws in Utah. And, with your eyes wide open to this fact, are you going to strike out this proviso, and say to the people of Utah, of every other Territory, and to the world, especially with this new doctrine of squatter sovereignty which seems to be prevailing in some quarters, though, I desire to be thankful, not in others, that you regard such laws and such a practice, in this Republic, of no sort of consequence?

Mr. Millson (interrupting).—The gentleman from Maine and myself evidently aim at the same end. We have the same views. We merely differ as to the proper mode of accomplishing a common object.

Mr. Benson.—Yes, sir.

Mr. Millson.—I merely wish to make a suggestion to him. I am aware, and it was for that reason that I said what I did, that the act organizing the territorial government of Utah provides that the acts passed by the territorial legislature shall be transmitted to Congress, and, if disapproved, shall be null and void. If disapproved, then they are null and void, not only from the moment when they are disapproved, but the disapproval dates back and declares those laws to haye been null and void.

Mr. Benson.—Oh, no, that would be a kind of *ex post facto* legislation. They are laws until disapproved by Congress.

MR. MILLSON.—I think not.

MR. BENSON.—The statute says so. That is all I can say about it.

MR. LANE [Ore.].—It has been so decided with reference to our Territory.

MR. BENSON.—Let me ask the gentleman from Virginia one question. Suppose Congress should declare that polygamy, or a plurality of wives, should not be allowed, by disapproving of the laws of Utah which now allow it, could you go back and punish for bigamy, or polygamy, those persons who have had more than one wife under the laws existing in Utah?

I wish simply to say to the committee that I hold it to be the duty of Congress to put their hands upon crime of this kind wherever they can find it. But we have been told by certain gentlemen upon the floor that we are not to punish crime, and that we are to close our eyes to its commission. I do not believe in any such thing. We punish, most assuredly, piracy; and there has been, if I am informed aright, in the other branch of Congress, a proposition to confer upon the President power to suspend certain laws for the punishment of crime.

MR. STEPHENS, of Georgia.—I certainly advocated no such doctrine. Power is conferred upon Congress by the Constitution of the United States to punish certain specified crimes. Congress may define any line of duty upon subjects within its constitutional limits, and point out what shall be the penalty for a violation of it; and such a violation would be an offence coming within the class of which I spoke. I deny that Congress can go beyond that.

MR. BENSON.—One line of duty in which Congress may punish crime—and I call that crime which is held so in the thirty-one States of this Union—is by withholding its donations. This bill says "donate."

MR. STEPHENS.—Can there be any crime where there is no law? If there be no law in Maine against bigamy, would it be just to punish for a violation of the principle? And if there be no law in Utah against polygamy, is it not manifestly unjust to make such an unjust discrimination as is proposed? There is no law there against polygamy, and hence there is no legal crime of which your courts can take jurisdiction.

MR. BENSON.—Congress should administer this Government according to those principles which shall promote the morals of the country. Now, I ask, where there are thirty-one States of this Union that punish this multiplicity of wives as a crime, will you treat those who practice this in Utah so tenderly, and *donate* to

them your public lands? I will agree with the gentleman from Georgia [Mr. Stephens], if there is no law in Utah against a multiplicity of wives, that it is not a crime by law there—that is a self-evident proposition. At the same time the practice is to be discountenanced in all proper ways—and I hold this to be one—do not give them your public lands according to the provisions of this bill. Let them first conform to the laws upon this subject, so important to the common welfare, which prevail in every State in the Union, and then it will be time to confer upon them the gift of your public domain.

We have not been officially informed of it, but it is universally conceded that polygamy exists among the citizens of Utah. Now, then, I ask, again, are we to shut our eyes to this fact, and make a donation to those who live in violation, not of the law of Utah, but of the law of every State in the Union, and I may add, of the law of God? I would make no such donation as that—nor am I willing to close my eyes to the fact which exists, while I know that it does exist—and I therefore am opposed to the striking out of this proposition.

MR. WALSH.—The best, and, in my estimate, the most effectual method of preventing polygamy, is for every young man, at the earliest opportunity after he finds that he can support a wife, to procure one. [Laughter.] Now, sir, if my friend on the opposite side of the House [Mr. Simmons]—for I believe he still remains a bachelor, and, therefore, he ought to be the last man in the world to grumble about other men taking two or more wives, as he has not yet taken one himself—if, I say, my colleague and others had pursued that course, there would have been no such thing as an opportunity afforded to any man to monopolize wives. [Laughter.]

Mr. Chairman, in reference to the provision under consideration, I am in favor, most emphatically, of striking it out of the bill. I think the gentleman from Georgia [Mr. Stephens] has given incontrovertible reasons why it should be stricken out. And I see no propriety at this time, when this flourishing Territory is progressing toward the condition of a populous State, in creating a state of feeling there which may tend to produce irritation and injury. The history of this people, from the earliest period of their settlement, has been one of outrage, wrong, bloodshed, and oppression; and now that they have removed far beyond reach of the narrow prejudices and bigotry of those surrounding them, the system of oppression and wrong under which they suffered should not be revived. I believe that, with the single exception of this conventional idea of theirs, of

their right to have more wives than one—and that is only a simple difference of opinion between them and us—the Mormons are as good citizens, and as faithful to the Constitution and the Republic, as the citizens of any other State or Territory in this Republic.

Sir, time, example, good precepts, and persuasion will do more to remove polygamy from that Territory than all the laws you can pass here. Do nothing. I would impress upon the members of this House the propriety of doing nothing to insult the prejudices of a people already goaded into madness by the wrongs and oppressions which they suffered before they reached their present location. They are rapidly gaining in strength and numbers. They will soon become one of the most powerful sects—you must not shut your eyes to the fact—in this country; and I trust that the liberality of this House will not disgrace itself by indorsing so narrow and so contemptible a species of legislation.

MR. KERR.—Polygamy has been acknowledged in the Territory of Utah ever since the organization of the Territory. It was known at the time of its organization that it did exist, and then was the time for Congress to meet the question directly, and take the necessary measures for its prevention. But, sir, Congress did not meet the question in that form at that time. And I say it is our manifest duty to meet it directly—now. Congress possesses the power of supervising all laws made by a territorial legislature; and I say it is clearly the duty of Congress to exercise that power by annulling any law which may exist in that Territory that countenances or sanctions such a crime.

But I am in favor of striking out this provision for another reason. Congress knew of the existence of polygamy among these people when they organized the Territory, and used no means for its suppression. These people, when they took possession of a portion of the territory of this Republic, practiced polygamy openly as no crime; and I say that, under these circumstances, it is unjust to exclude them from the benefits of this provision when they are extended so freely to outcasts from Europe and fugitives from justice.

When we are taking hold of this crime I propose to take hold of it directly, as we should of any other crime. By the laws, I believe, of some of the States of this Union polygamy is a crime punishable with death. I believe that punishment suited to the crime, and I believe it the duty of this Government to prescribe that penalty for its committal, wherever it exists in

the Territories over which the Federal Government has jurisdiction.

MR. CAMPBELL.—This land proposed to be donated is the public domain, and belongs to the people of the States in common. If, then, we give it to actual settlers who will cultivate, we have a right to impose the terms; and we have the power, I hold, to say that "you shall not have this public domain as a gift if you intend to use it to perpetuate that system which is recognized throughout all the States as a high offence against public morals."

The gentleman from Georgia [Mr. Stephens] assumes the ground that Congress is undertaking to define such acts as shall be regarded as crimes, and to punish them as such in the Territory of Utah. Such is not the fact. I do not know that I should disagree with him very much as to the power of Congress to enact a criminal code for Territories, but I do contend that the people of that Territory, or those who would settle on our lands, have no right to ask of us a bonus in favor of extending a system of wrongdoing or revolting crimes, in the shape of donation of public lands. If we donate the lands we have the right, and it is our duty, to impose such terms and restraints as will lay deep and strong in that far distant land the foundation of sound morals.

I will never agree, as one of the Representatives of the people who own the soil, to give it as a bonus for settlement to those who disregard all the moral restraints which they themselves enforce in their own State governments, through the instrumentality of strong penal enactments.

MR. GOODRICH.—Strike at this crime as directly as you may, you will not reach it so effectually as you will by retaining this proviso in the bill. Annul by law the act authorizing polygamy, and how will you secure the practical enforcement of your law? Annulled as that act may be by the law of Congress, the people of Utah will still practice polygamy. I therefore want this proviso retained for the purpose of reaching that people, if they are not already beyond the reach of moral considerations, by carrying the moral power of this Government there, so far as we have the power of legislating on the subject. We derive that power just as we derive the power in the States to reach any evil. Polygamy, as all agree, is a great moral, social, and political evil. I am ready to strike it down in any way, directly or indirectly. I would reach it by carying the moral power of this nation out to Utah Territory, and saying to the people of that Territory that any man who practices this crime of polyg-

amy shall not receive the Government bounty—shall not have the land which we give to other people. I would touch them through their interests in that way. I would reach this evil just as we reach the great evil of intemperance in the States. We legislate in the States upon the subject of intemperance, some by the application of the Maine law, and others by other means. I am for the Maine law; others are in favor of other measures. But we strike down intemperance as an evil, and so would I strike down this evil, if these people are not beyond the power and influence of moral considerations. I wish to put into this bill a moral power against polygamy. I want to say to the people of Utah that they shall not receive grants of the public lands as other people receive them if they continue in the practice of this crime.

Mr. Taylor [Tenn.].—I regard the proposition to strike out the whole proviso as offering a premium to the polygamists of the whole world to settle in that Territory. In a very few years, under the operation of the proposition to strike out this proviso, you will have that Territory peopled by polygamists, who will inevitably outnumber those who may settle there opposed to polygamy. What then? The first step will be to apply for admission into the Union. If you admit them, what then? By your action, your initiatory action, in encouraging settlements in that country, you, the American Congress, have virtually established there polygamy—this crime and vice of the dark ages. Is the American Congress prepared, for the sake of technicalities, to establish this principle? I cannot vote for the proposition to strike out this proviso.

Mr. Millson.—The question is one which demands the solemn consideration of Congress; and the best way to effect this would be the introduction of a joint resolution or bill, having one single object only in view; and that, the annulling of any such laws or regulations in the Territory of Utah. A bill to this end, and not connected with any other measure of legislation, will therefore command the almost unanimous assent of every member, perhaps, in both Houses of Congress.

Mr. Ready.—I move to amend by adding at the end of the proviso the following:

> And that any person who shall at any time have more than one living wife shall forfeit all right to any lands acquired under this act.

My object in presenting that amendment, sir, is to eradicate the evil of polygamy by the roots. [Great laughter.] I regard it as an excrescence on the body-politic. [Renewed laughter.]

The proviso to this bill does not reach the evil. You may pass the bill with the proviso, and still the polygamist may indulge in this practice with impunity, afterward as well as before. What is he to do? You say that if he has more than one wife he shall not be entitled to the benefit of this act. You permit him to avail himself of the benefits of this act, having but one wife, and when he has obtained his three hundred and twenty acres of land from the Government—when he has perfected his title, then you allow him to go and marry fifty wives, if he can find so many to have him. Therefore, I propose this amendment with a view of making a forfeiture of his right to the land which he may have acquired by his grant from the Government, if he shall afterward indulge in this unlawful practice.

Mr. Chairman, I differ with the gentlemen who seem to be of the opinion that Congress has no right or power to interfere with this subject. Certainly, so far as the constitutional right of this body is concerned, there can be no question. The Constitution declares that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." What are we doing here? Are we not proposing, by legislation, to make certain needful rules and regulations respecting the territory of the United States?

The question was then taken on Mr. Ready's amendment, and it was adopted.

Mr. Keitt.—I merely desire to throw out some suggestions for the consideration of the committee. You propose now to interfere in the domestic relations of these Territories. You say that no man shall have two wives. Where do you get the power to do that? In fact, where do you get the power to legislate at all for the Territories? The right to acquire carries with it the right to govern, you say. But to what limitations is the right to govern subjected? To all the restrictions and limitations contained in the Federal Constitution. The power to legislate is, at best, an implied power; and all such powers should be used with great caution. Now, if Congress has a right to say that no man in the Territories shall have more than one wife, may it not say that no man shall have a wife at all? If it can prescribe the number of wives, may it not altogether abrogate the marital relation?

I ask the question for information. If Congress can determine that there shall be no polygamy, may not Congress also

determine that there shall be no marriage union whatever? Cannot Congress go a step further, and say that there shall be no parental relation? What power is involved in the decision of this question? Is not sovereignty involved? Is not sovereignty necessarily implicated in the right to arrange and manipulate the vital relations of a community? If so, where is sovereignty lodged? In the inhabitants of the Territory? Sir, I have scarcely even contempt for the piebald doctrine of "squatter sovereignty." Is it in the Federal Government? This assumption of power would aggrandize this Government with a ruthless, overshadowing, and awing central despotism. Where is it, then? In the *people of the several sovereign States.*

If, then, this exercise of power appertains to sovereignty, how will you reach the evil alluded to? The declamation of gentlemen may bubble up, but it will never moisten the roots of any constitutional right. In truth, sir, an exigency has arisen which was never contemplated by the framers of the Constitution. To meet this you propose to swell the powers of Congress by construction. Do this, and you will soon burst the bands of our federative union, and weld the fragments of the Constitution into a consolidated despotism. The first step in this always is an amplification of power by construction. Sir, I think polygamy a burning shame upon any community. I abhor all trifling with the marital tie; all conjugal licentiousness; and I will extirpate this disgraceful evil as quickly and as sharply as any man, if I can but see the power in Congress to do it. All I ask is for gentlemen to show me this power.

Again, how do gentlemen propose to accomplish this purpose? By the enactment of laws? How will they be executed? By a jury of the vicinage? Why, every inhabitant is a Mormon. He will screen the accused, instead of aiding in the execution of your laws. Government can only scourge out this evil by military tyranny. Sir, "to this complexion" your acts must come at last. Now, sir, will this justify an assumption of power? I again ask for the power of Congress in this matter; and if it is shown to me I will cheerfully act. I cannot legislate in blindness, both as to power and the mode of reaching an end. I advise gentlemen to look to these, and not to moral and social enormities, in the character of which we all agree.

Mr. Davis [R. I.].—I would ask the gentleman where Congress gets the power to insert the word "white" in this bill? I should like to have the gentleman answer that question.

Mr. Keitt.—I have an immitigable scorn, sir, for abolitionism and all its offshoots; but I will answer the question——

[Here the hammer fell.]

Mr. Seward.—It is too late now, after the Government of the United States has sanctioned the existence of this law of polygamy, and given to these people a territorial organization, to fix upon them as a crime that which has been sanctioned by your Government. I hold that the only way to treat this matter is to bring up the question directly, and assert the power, if we possess it, of repealing the organic law under which polygamy is sanctioned in this Territory. What right have we to fix upon these people as a crime that which has been sanctioned by law? The very highest authority we have declares that there can be no offence where there is no law. Such is the language of the Bible; and it is useless to talk about the existence of crime when it receives the sanction of your laws. The marriages which have taken place under territorial law are valid; and the rights of these parties cannot be disturbed by the action of Congress. All that we can do is to look to the future, and prevent these marriages, if we consider them immoral.

Mr. Kerr.—I do not see that anything in the world is to be accomplished by the fling that is now being made at the Mormons. Supposing polygamy to be a crime, as all of us pronounce it to be, what will be the effect of an attempt, at the present time, to strike at it? It will drive off the Mormons from Utah to some other portions of the Union, where the homestead bill that we have passed during the present session of Congress will enable them to settle down again comfortably and securely. Congress will thus aid and abet in establishing them elsewhere by the authority given them to go there, and thus indirectly sanction this very institution of polygamy, and do injustice to other communities.

If Congress has not got the fearless independence and determination to make a bold and direct onslaught on the institution of polygamy, by providing penalties for the punishment of those guilty of that crime—so long as Congress does not aim at its total suppression—then I say let it stay where it is. Let it be confined to Utah; and do not interpose any enactment of legislation here, the direct tendency of which will be to unsettle again that migratory horde of people—for they are a migratory people, start at a very short notice, and go a very great distance, in order to secure a place where they can enjoy the exercise of their religious rights. I am in favor of giving these Mormons a title in the land, instead of having them cut off as they are by the restriction of this territorial bill.

Mr. Bernhisel.—I desire simply to remark that there is no

statute in the Territory of Utah on the subject of polygamy. It is a matter of ecclesiastical law.

MR. WALBRIDGE.—If this practice rests upon ecclesiastical law, and this House has not the power to strike it down, I shall then sustain this proviso, that being the only manner of reaching the evil. I am therefore decidedly in favor of standing by the proviso.

MR. LYON.—Against the striking out of this proviso I most earnestly protest. This subject is too lightly considered, I fear, by this enlightened committee. Its great consequence as a precedent makes it needful that our investigation should be thorough, worthy of Christian statesmen and Christian lawgivers. I would appeal to the hearty patriotism of every member present, educated, as they have been, in the principles of the Pilgrim fathers, Cavaliers, and the Huguenots—the descendants of men who fled from profligate, libidinous, and licentious courts to enjoy a virtuous quiet in the unbroken wilderness of the West—if they are willing to see this Government disgrace itself by express or implied legislation in any way sanctioning the practice of polygamy in this country. Its enormity as a crime has been made the subject of stringent statutes in every State in the Confederacy. Is a premium to be paid, in fertile lands, for the debauching of our daughters and the deluding of our wives? Is this Congress so weak as basely to stoop to such a purpose, reversing all the cherished associations and instructions of our childhood? Is this black cancer sore, this creeping leprosy, to be encouraged?

When the people of Utah are placed on the same basis as the people of other Territories, is not that sufficient, is not that enough? Strike out the clause, and what will be its actual consequences? Individuals will go there whose senses are stronger than their sentiments, whose passions override their principles, and avail themselves of Government bounty, and, like Persians, Hindoos, and Mussulmen, fill their houses with the blooming beauties of the North, and the witching women of the South, provided they have wealth or personal attractions to induce such a painful and horrid sacrifice. It has been demonstrated clearly by all political economists, Dr. Franklin, Malthus, and Miss Martineau, that one man is just enough for one woman, the very state the Lord originally intended when he created Adam and Eve—that there should be no monopoly of the fair sex. Yet, when polygamy is tacitly *respectablized* by an American Congress, it may not be so difficult to fill with sisters and daughters—those whom God destined for a nobler domestic sphere—an

American harem, a Mormon seraglio. Sir, there is but one way to kill the cockatrice. *It is to break the egg.*

Here the speaker described the degradation of women in polygamous Islam:

And, sir, do you think things are different among the "Latter-Day Saints" in the Mormondom of Utah? No, sir; just as bad. Amid the jealousies of a plurality of wives the respect of parental authority is lost, the gentleness of fireside instruction and hearthstone memories is destroyed. Crime of the most revolting character ensues; infanticide follows as a matter of course as soon as the husband finds he is getting more children than he can support. Sir, human nature is just the same in every land. Do you think Abdul Medjid, with three hundred and seventy wives, has been the father of only five children? It is impossible. [Applause and laughter.] The bodies of dead infants float on the sapphire tide of the Bosphorus, and the light of many a harem, from the destruction of her offspring, has been lost among the dark shadows of the cypress of Scutari. There is not a drug shop in an Oriental city but sells the means of destroying the new-born. And, being warned of these things, let us not fix this plague-spot upon the route to the golden gate of the Pacific, the western pathway of empire. Posterity, sir, will anathematize this kind of legislation to the latest years of the Republic. We all shall die, crumble to dust, our names be lost in oblivion, but the principle we establish by implication, as the ghost of Hamlet's father, will evidence against us when we have passed away. Let us meet this subject, discourage it, condemn it, reject it. And, sir, it will be an honorable precedent, *not for a day, but for all time.*

The Mormons have been spoken of as a persecuted people—a martyred people, driven from State to State. With their sorrows I sympathize, for their griefs I grieve; but it seems a curious way to console them for the past by asking Congress to sanction polygamy in the future. It is said that this practice existed in the days of Solomon. True. The running after the strange women of Egypt, the falling from grace in the service of God, was the great reason of Solomon's reign, after a glorious day, ending with a lurid sunset. And from his loins issued that undutiful heir, whose unjust acts were the scourge of Israel; for plurality of wives destroys young men, as well as debases the old. The light of the Prophets went out the night Jesus was crucified. Let us, as Christians, follow and legislate

in the doctrines of Christ, not of Joe Smith; let us take the holy Gospel, not the book of Mormon.

It has been doubted by gentlemen whether this clause is constitutional; yet, with the following words in relation to the powers of Congress, tender must be their scruples if they doubt it. Section third of the Constitution of the United States reads as follows:

"Congress shall have power to dispose of, and make all needful *rules* and *regulations* respecting, the Territories."

This is one of the necessary *regulations*—one of the wholesome *rules*. We are told by the Delegate from Utah [Mr. Bernhisel] that it is an "ecclesiastical establishment," a religious law, and over such many strict constitutional constructionists believe we have no control. Then the thugs or stranglers of men, the Phansegars, the Buddhists, who worship Juggernaut, the Seftis, who perform every year human sacrifices, would all have a right to practice their abominations under the territorial government of the United States, if once settled here. They would all have an equal claim to their "religious establishment," no matter how demoralizing or inhuman, over which it is said Congress has no right to interfere or to control; but that we have power to prevent giving a bounty for its encouragement I think I have fairly shown. If the many-wifed demoralizers get outnumbered by the virtuous single-wifed, a wise State government may yet be formed that will do honor and credit to the Union. Let us nip this evil in the bud, for the sake of morality, religion, and Christianity.

Polygamy, sir, is a

> "Monster of so frightful mien
> As, to be hated, needs but to be seen;
> Yet, seen too oft, familiar with her face,
> We first endure, then *pity*, THEN EMBRACE."

By the blessed memory of those virtuous spirits who battled for liberty, not licentiousness, it should be blotted out, as a stigma, a dishonor, a disgrace, from existence on the soil of North America. [Sensation, and cries of "Good!" "Good!" "Well done!"]

MR. HUGHES.—I move to strike out of the proviso all after the word "hereafter," and to insert in lieu thereof the words "live with or have more than one woman as his wife, under color of law."

The provision, as I propose to amend it, would do away altogether with the idea of legality. It merely involves the idea that there is a custom prevailing in the Territory—a claim that, under the color of law, a man may have more than one woman as a wife.

The question was then taken on Mr. Hughes's amendment, as modified; and it was agreed to.

MR. PERKINS.—I have seen recently in the newspapers a statement declaring that no law shall be cited, except the statutes of the United States, in any court whatever in the Territory of Utah. Then the common law is not recognized there, and the spiritual law is recognized, if this statement in the newspapers is true, which gives the privilege and right to a person there to have as many wives as he can get. It seems to me utterly preposterous, and will be disgraceful to this Congress, to allow the governors, judges, and other officers appointed by the Government of the United States, to hold their offices, at large salaries, and have just as many wives as they please, as their salaries will enable them to support, and yet prohibit the poor men from enjoying the benefit of land there, if they happen to have only two wives. [Laughter.]

MR. BOYCE.—What right has this Government to interfere with the religious relations of the people of this Territory? The whole power which this Government exercises over the Territory is simply that of a constructive character. Where is it derived from? There is no express clause in the Constitution in relation to this matter. The authority which is derived from that clause which prescribes the right of making all needful rules and regulations for the Territories clearly does not authorize a governmental power. It is said by the best writers on constitutional law to be derived as an incident to the treaty-making power; they lay down the principle thus: because you have the right to acquire territory, you have also the right to govern it.

Well, Mr. Chairman, the right to govern the Territory is not an unlimited power of Government. It is subject to all the express limitations of the Constitution that may be applicable to the subject; and the subject is liable to all the implied limitations derivable from the nature of this Government. Sir, what is the object of the government of the Territory? The governments of Territories are organized merely for the purpose of protecting the Territories in their infant state, until they

are able to become States. The whole power of the Government over the Territories should be confined to that narrow sphere of protecting the rights of persons and things until they are able to become States. It by no means implies that Congress has a right to interfere with the domestic, the social, or the religious relations of the people. Their religious relations, I say, are not to be interfered with. This is a religious subject; and because it is a religious subject it is one of great magnitude.

But, Mr. Chairman, if there is one thing clear in reference to the power of Congress, it is that it has no right to interfere with the subject of religion. That is the very first of the amendments to the Constitution; it stands at the head of all the amendments. Congress shall pass no law upon this subject. But it may be said that this religion of the Mormons is not a true religion—that it is a false religion. But I do not think that Congress has any right to say that this or that religion is true or false. Who made us judges over this matter? Who appointed us apostles, or bishops, or priests? Why, Mr. Chairman, if there is any one subject which this Congress does not understand practically I expect it is this very subject of religion.

I ask you, sir, who set us up to be judges of other people's religion? Who gave us authority to legislate for them on the subject of religion? But it may be supposed that it is no great violation of the principles of the Constitution to interfere with the religion of the Mormons; but once you break in upon that principle, once you violate it in any regard, where will you stop? I am opposed to any infraction at all of the Constitution on this point. Let all religions be free. Let every man worship God according to his own heart and conscience.

Mr. Campbell.—I wish to put a case to the honorable member from South Carolina.

Suppose that, in the wildness of religious fanaticism in Utah, the Mormons should imagine that they had received a revelation from the prophet Joe Smith which required them to enact an ecclesiastical law to the effect that the eldest born of every woman in that Territory should, when it was one month old, be sacrificed and slaughtered; and suppose, further, that, under such circumstances, that people should come here and ask Congress to make a grant of lands to encourage settlement under a system of that kind, would not the honorable gentleman, acting in the capacity of a guardian, and representing a people having a joint interest with all the rest of the people of this land in that domain, deem it proper and advisable to provide that no person who subscribed to, and practiced upon, the principles of

such a religion, or rather *fanaticism*, should have a grant of land? Now, I will yield to the gentleman from South Carolina [Mr. Boyce] to answer my question.

Mr. Boyce.—I propose to ask the gentleman from Ohio——

Mr. Campbell.—I propose that you answer the question, which I have already propounded, first.

Mr. Boyce.—You put an extreme case, and I believe it is customary to answer one question by asking another.

Mr. Campbell.—Answer the question first, and then propound yours.

Mr. Boyce.—Then I will say that I would do nothing to recognize such a state of things.

Now, I will ask the gentleman whether Congress has the right to declare, in this bill, that no Presbyterian should have the privilege of taking a portion of this land?

Mr. Campbell.—If a Presbyterian church in Utah, actuated by a wild fanaticism, should declare, by an ecclesiastical provision, the allowance of polygamy, or any other crime, as a tenet of its faith, I should say that no person subscribing to such a provision, or practicing under it, should have any portion of the public domain, and that it would clearly be the duty of Congress so to declare.

Mr. Phillips.—If, through the exercise of the power "to dispose of" the public lands, Congress is to take this incidental control over this particular crime, why not over every other? And, if in this mode, why not in every other mode of disposing of the territory? Why not extend the proviso so as to exclude from the benefit of the act all persons who are guilty of murder, arson, piracy, forgery, and, I might add, theft of slaves, if I were not afraid of shocking the sensibilities of some gentlemen, and thus bring the influence of the Government to bear upon the whole dark catalogue of crime?

Sir, these considerations are not answered by sophomoric declamation as to the heinousness of the offence. That, sir, is not the question, but whether we shall, for the first time in the history of our legislation, link into our acts the discouragement or punishment of crimes which are appropriately referred to the local legislatures.

If Congress possesses any power, acting as the legislature of this Territory, then let them exert it in a direct manner, by virtue of that power, and we could then meet the question fairly when it is presented; but let us not smuggle into this bill a jurisdiction not warranted by the clause of the Constitution under which it is framed.

Mr. Taylor, of Ohio.—My friend from Alabama [Mr. Phillips] said that we might as well insert a provision here to exclude any man guilty of murder, perjury, or any other crime. I understand that the territorial legislature of Utah denounce those crimes, and hold them to be crimes as they do in the States of this Union, whereas they tolerate the other crime, that of polygamy.

And here we have a beautiful specimen of this squatter sovereignty, so ably advocated by gentlemen in Congress; the leaving of the Territories to do as they please; the Territorial legislatures to do what they please; establish any crime they choose. Whether we approve or not, we are to pass the laws unnoticed.

If I had the time I would read from the law organizing the Territory of Utah, a law for which I take this occasion to say I did not vote. I felt indisposed to give the people of Utah (whom I conceived at that time to be a set of strolling squatters, who had seized the public land, and defied the authority of the United States, a territory twelve times as large, I am informed, as that of the State of New York) the power to set up and to justify a crime in defiance of the Congress of the United States.

Mr. Boyce.—I am opposed to this wholesale legislation against a whole community. It reminds me of our revolutionary struggle. Sir, I well recollect what Burke said, when Lord North and his servile majority attempted to proscribe a whole province. He said, "I do not know how to draw up an indictment against a whole nation." And so with me. I do not know how to draw up an indictment against this whole people. I am for letting them alone.

It seems to me that this proviso is at war with that provision of the Constitution which says that no man shall be bound to answer for any criminal offence unless upon the presentment of a grand jury. Here you require this whole people to answer for a criminal offence, and on what presentment? The presentment of the Congress of the United States. Is that in consonance with the Constitution? Again: Every man has a right to a trial by jury when he is charged with crime. Do you give the people of Utah this right? No, you do not. To whom do you give the power to decide this question? You give it to this surveyor-general.

Sir, these people are entitled to our pity. Look at their history. It is a history of misfortune and persecution, of disaster and suffering. They have never been permitted to live in

peace and security in any community. They were driven from Missouri and from Illinois. Their beautiful city of Nauvoo was devastated, and they were compelled, with bleeding hearts, to bid adieu to the graves of their people and to their beautiful temple. Their prophet was taken and placed in jail in Carthage, and while there was brutally murdered by assassins. They were then driven into the wilderness. They went up on the western side of Iowa, and there at mid-winter, while they were in the midst of suffering, the United States called upon them to go and fight the battles of the country. And how did they respond to that call? They responded to it better than the people of many parts of the United States. They sent almost their whole military force; and that people rallied around the star-spangled banner, and went out to fight the battles of our country. And yet you will not now permit those men to enjoy a home in that wilderness which they have rescued from barbarism and from the Indians.

Mr. Perkins moved that the committee [of the whole] rise and report the bill to the House with the recommendation that it be rejected. Carried.

The Republican party, in the presidential campaign of 1856, coupled polygamy with slavery as a "relic of barbarism." On February 24, 1857, Justin S. Morrill [Vt.], speaking in the House of Representatives, denounced the practice and upheld the constitutional power of the Federal Government to abolish it.

Polygamy a National Reproach

By Justin S. Morrill, M. C.

We are told, because our Constitution declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," that we must tamely submit to any burlesque, outrage, or indecency which artful men may seek to hide under the name of religion! But it is impossible to twist the Constitution into the service of polygamy by any fair construction. The fullest latitude of toleration in the exercise of religion could not be understood to license crimes punishable at common law; and, if Congress is prohibited from making an established religion, a Territory must

be equally prohibited, for a Territory is the creature of Congress, and Congress cannot authorize a Territory to authorize an incorporated company of priests to do what it may not do itself. The practice under our Constitution has been, and is specially provided for in the organic act of Utah, that territorial laws are annulled and void the moment they are *disapproved* of by Congress. We cannot shirk the responsibility by creating a territorial government to do that which the Constitution inhibits to ourselves. If the laws of Utah are in our judgment such as are "not fit to be made," it is our duty to annul them; and if they create an establishment of religion, then it is clearly an open and palpable violation of the Constitution, and not too sacred to go untouched.

The general assembly of the Territory of Utah has incorporated a church, over which one man presides with an insolent and all-grasping power, with authority to establish the practice of polygamy, and *not be legally questioned* therefor. Now, I submit that we not only have the power, but it is eminently proper that we exercise it by disapproving of and annulling this act.

From all these statutes, from all the teachings set forth in the Mormon tabernacle, from all the evidences within our reach, it is clear that an ecclesiastical hierarchy exists in Utah, with a plenitude of power greater than that which can to-day be exercised by the Pope of Rome.

Commencing with tithings, not to be evaded by the poorest day-laborer; continued by monopoly of land and water privileges; swelled in its current by the waifs, estrays, and escheats incident and contrived as to the rights of property; the whole wealth of the Territory of Utah, present and future, threatening to be finally and wholly absorbed by the church and its dignitaries; the system ends in the foul abomination of spiritual wifery.

This hierarchy is clearly repugnant to the Constitution of the United States, which guarantees to every State a republican form of government. The republican form of government in Utah is a dead letter, existing only *pro forma*, and only so much of the tattered remains are exhibited as will secure the largesses of the national Government; while the real *bona fide* government is that of the Mormon priesthood. The obligations of the Constitution cannot be held in abeyance or postponed, nor have the people of Utah the right to evade them. A republican form of government in substance, and not the shadow, is required at the hands of the United States at all hazards. How can this be

complied with if we suffer our Territories, while in a state of pupilage, so to educate the people, mold their habits, fix their affections and their antipathies—so to control the rights of persons and property, as to make a republican form of government unprofitable, sinful, hated, and impossible?

All human experience proves that it is in vain to undertake to regulate men's views of God and eternity by human legislation. All such attempts are resolved into persecution, and there are no sects which are not blessed with members ambitious of martyrdom. The blood of foolish saints is not less the seed of some churches than the blood of wiser saints. In this regard, it makes no difference whether Joseph Smith was an imposter, a vulgar, fiddling tavern-keeper or not—his followers believe, or affect to believe, that he was a prophet of God (the brother of Moses and Christ) with equal power to work miracles, to raise the dead, and heal the sick, grant forgiveness of sins, to interpret and pronounce new divine revelations, and that Brigham Young, as the successor of Smith, is also a prophet and a "lion of the Lord." This may be lamentable, but it cannot be cured by law. Faith is intangible. But when the works of such a religion, in its overt acts, exhibit the grossest immorality and debauchery, and covertly asserts civil and criminal jurisdiction over all its members, it is questionable whether legislators should remain neutral, or whether the "livery of heaven" should screen men from criminal courts, because they have the impudence to give their crimes the privileges of a sacred name.

Could a man, charged with burglary or rape, find privilege and excuse before any of our courts on a plea that it was an act done in accordance with the religion of the prophet Mercury, or the prophet Priapus, and that our Constitution permits the *free exercise* of religion? And, if individuals could not thus shelter their villainy, where is there a chance for Territories to creep in for similar grace?

The test which Brigham Young requires as the sole dispenser of the "blessings of Abraham" is subserviency to the priesthood, as will be seen in one of his published discourses of February 27, 1853:

"The elders of Israel frequently call upon me—'Brother Brigham, a word in private, if you please.' 'Bless me, this is no secret to me. I know what you want; it is to get a wife!' 'Yes, brother Brigham, if you are willing.'

"I tell you here, now, in the presence of the *Almighty God*, it is not the privilege of *any elder* to have even *one wife* before he has *honored* his

priesthood, before he has *magnified* his *calling*. If you *obtain one* it is by *mere permission*, to see *what* you will *do*, *how* you will *act*, whether you will *conduct yourself* in *righteousness* in that *holy estate*."

This power, held in the hands of one man, and that man Brigham Young, is one which may be wielded with tremendous effect. When Judge Brandenbury was upon the point of leaving the Territory, in order, if possible, to change his purpose, Brigham Young went and urged him to remain, telling him that "he would even black his boots, and that he might have as many wives as he chose, if he would only stay." If such a license is granted in one case as a bribe, doubtless it is in others. If the license is a powerful temptation to some men when granted, the refusal of it is a not less fearful vengeance to others.

That the women in Utah would escape from their miserable fate if it were in their power is shown by the escape of the fourteen traitors to polygamy who fled with Colonel Steptoe, and also by reported cases where women have preferred—"a dinner of herbs rather than the stalled ox"—to seek the protection and undivided affection of the Indian rather than to remain in Mormon seraglios.

One plan of ridding the Territory of polygamy—and the idea derives some pungency from having been suggested by one himself a Mormon—is to make some regulation by which those who have more wives than one shall be *compelled to live under the same roof with them!*

From the discourse of President Young, to put down the embryo rebellion among the women, on the afternoon of the 21st of September, 1856, I make a single extract:

"My wives have got to do one of two things—either round up their shoulders and endure the afflictions of this world and live their religion, or they may leave; for I will not have them about me. I will go into heaven alone, rather than have scratching and fighting around me. I will set all at liberty. What! first wife too? Yes, I will liberate you all."

The remarks by President J. M. Grant, Sunday, September 21, 1856, as reported in the *Deseret News*, shows that even sterner threats are made against the rebellious women.

"We have women here who like anything but the celestial law of God; and if they could break asunder the cable of the Church of Christ, there is scarcely a mother in Israel but would do it this day. And they talk it to their husbands, to their daughters, and to their neighbors, and say they have not seen a week's happiness since they became acquainted

with that law, or since their husbands took a second wife. They want to break up the Church of God, and to break it from their husbands and family connections.

"We have been trying long enough with this people; and I go for letting the sword of the Almighty be unsheathed, not only in word, but in deed."

Whether these bloody threats ever have been or ever will be put in execution is not for me to say; but they certainly do *not* tend to allay the suspicions widely entertained, as I am informed, by gentlemen who, having been United States officers of the territorial government, have resided there (Major Holman and Judge Brandenbury). They suppose that there is a secret society existing there called *Danites, Shanpips*, or *Destroying Angels*, whose mission is to fulfill the dark and unwritten prophecies of the heads of the Mormon church. There is a mystery hanging over this subject that it would be well for all "good Mormons" to have cleared up.

There have been many strange murders and disappearances in Utah, which have been charged to the Danites. All these charges may be slanderous stories; but the cases are surrounded with many circumstances tending to arouse suspicion. It is almost incredible to suppose the doings of the Thugs can find a parallel in the history of any portion of America; but these Mormon prophets and apostles, if they do not mean anything (and they claim for themselves and all revelation a literal interpretation) should be more wary about talking of unsheathing the *sword*, fixing the *place*, and the shedding of *blood in word and deed*.

I have no desire to make party capital by making any issues touching Utah. It is a subject requiring the deliberate attention of statesmen. It is quite within the power of gentlemen to throw the question into the pool of partisan politics by giving "aid and comfort" to the wildest theories to which any religious imposture ever gave birth. The president and rulers of the Mormon Church have already sought shelter in the bosom of the Democratic party by their proclamation of the 14th August, A. D. 1856. They find fault with the Republican party for including their "sacred institution" in the phrase of "the twin relics of barbarism." They also declare:

"The Democratic convention in Cincinnati, which nominated James Buchanan for President, passed the following resolution:

"*Resolved*, That Congress has no power under the Constitution to interfere with or control the domestic institutions of the several States,

and that all such States are the sole and proper judges of everything appertaining to their own affairs not prohibited by the Constitution.

"This is the principle of the Democratic party, which they have extended to Territories as well as States, and the doctrines of sovereignty apply to us in the desert as well as to the settlers in Kansas or Nebraska.

"The Democratic party is the instrument, in God's hand, by which is to be effected our recognition as a sovereign State, with the domestic institution of slavery and polygamy, as established by the patriarchs and renewed to the saints of latter days, through God's chosen rulers and prophets."

There is, I hope, room to doubt whether the Democratic party will allow itself to be used for any such purpose. Their political necessities must be great when they accept of such coadjutors upon the conditions indicated.

It may be very properly asked, supposing it should be shown that a state of things exists in Utah which all would admit to be wrong, what are you going to do about it? The subject is not without its difficulties, but they are not altogether insurmountable. For one, I should greatly prefer that the people of Utah would, upon a calm reconsideration of their own affairs, remove by their own action all just matters of complaint. But, if they choose to refuse, or neglect so to do, we have only to say by our silence and non-action that we will acquiesce, or to constitutionally express our disaproval.

1. We may "disapprove" of all the laws of the Territory that we please, and thereby annul them, and for such reasons as may appear proper.

2. We may circumscribe the boundaries of the Territory, and give the inhabitants much narrower limits.

3. If the second proposition be adopted, we may then abandon them, and leave them to fight out their own independence and salvation, spiritually and temporarily, in their own good time.

4. We may cut up the Territory and annex it to the various adjoining Territories.

5. We may organize a territorial government on the old plan of a Council, consisting of a governor and judges—not Mormons; and with a military force sufficient to maintain it.

I cannot but hope enough of earnest men will ere long be found in Congress ready to devise some action—not of persecution—whereby our common country may be rescued from the great reproach of a barbaric age.

Others than Republican statesmen made political capital out of the question of polygamy.

Senator Stephen A. Douglas [Ill.] made it a point against James Buchanan, in his war with that President, that he had not removed Brigham Young from office. To this the President replied, in his annual message of 1857, that there was no longer any Government in Utah but Brigham Young. Nevertheless, on the report that the Mormons had destroyed records of the Federal court in Utah the Government dispatched 1,500

MORMON BREASTWORKS AND U. S. TROOPS
From the collection of the New York Historical Society

troops to Utah. Young, declaring that he asked "no odds of Uncle Sam or the devil," organized a "Nauvoo Legion" and halted the approach of the troops by setting fire to the grass (forage), stampeding their draft cattle, and burning their supply trains, and so compelling the force to winter near Fort Bridger.

On May 2, 1858, A. Cumming, Governor of Utah, reported to the Federal Government that the judicial records were intact; thereupon the troops were recalled.

An anti-polygamy bill, introduced by Representative Justin S. Morrill [Vt.], was passed in February, 1860,

but as the severest punishment was the statutory penalty for bigamy, the act was ineffective.

During the Civil War, because treasonable tendencies were suspected of the Mormons, Utah was put under military supervision. In view of the more crucial problems of the war no anti-polygamy legislation was passed.

CHAPTER XII

Polygamy: Crime, or Religious Practice?

[DEBATE ON THE CULLOM BILL]

Shelby M. Cullom [Ill.] Introduces Bill in the House to Punish Polygamists in Utah—Debate: in Favor, Mr. Cullom; Opposed, William H. Hooper [Utah]; Bill Passed by House, but Not Acted upon by Senate—President Grant on Polygamy—Enactment of the Poland Anti-Polygamy Bill; It Is Upheld by the Supreme Court Decision That Religious Belief Is not a Valid Plea against an Act Made Criminal by Law; the Act Is Ineffectual.

IT was not until five years after the war that the Republican party attempted to execute its pledge of 1856.

On February 17, 1870, Shelby M. Cullom [Ill.] brought forward in the House of Representatives from the Committee on Territories a bill "in aid of the execution of laws in Utah," which, among other provisions, excluded from grand and petit juries all believers in polygamy; made the lawful wife in prosecutions for this offense a competent witness to prove her husband's first and second marriages; made cohabitation and kindred acts a proof of the original and subsequent marriages, there being no public official Mormon marriage ceremony or record; and declared plural marriage to be concubinage, punishable by fine and imprisonment, the concubines to be competent witnesses; authorized the use of United States troops to enforce the act; excluded alien polygamists from citizenship, and native polygamists from voting or holding office or preëmpting homesteads; prescribed that an office-holder qualify by swearing he is not a polygamist or will become one; prescribed that marriages be solemnized as in other parts of the country;

debarred marriage within specified degrees of consanguinity; required divorce from former spouse in case of a marriage of a person whose former spouse was living, etc.

In support of this bill Mr. Cullom made a long speech explaining its provisions. In it he said in part:

As to the qualification to hold any office of trust or profit in the Territory it seems to me that there can be no question that these leading Mormons, openly and defiantly violating law and practicing crime in the face of Federal authority, should be rendered ineligible to hold office; they are criminals, running at large because the Government has not had the courage to arrest them, and are unfit to hold office of honor or trust.

This being shown by the testimony of all who are acquainted with the condition of things existing in that Territory, and, as we have already adopted this principle in regard to certain classes of men lately in rebellion against the Government, I see no good reason why these wicked and vile men should be shielded from the operation of such a law as applied to them. I maintain that men practicing bigamy and polygamy in defiance of law are no better qualified to hold office than those lately in rebellion whom we have deprived of this right by statute and constitutional amendment.

As to the clause in regard to voting, my opinion is that the time has come when stringent, positive, and even severe legislation should be resorted to for the purpose of uprooting and destroying the iniquity that exists everywhere in that Territory; and this enactment, by depriving them of the right to vote and hold office, will take the power out of the hands of these leaders and tend to prevent the election of men sworn to defend the interests of the church at all hazards. This is a matter concerning which there should be no hesitation or timidity; and I contend that these people should neither be entitled to vote, to hold office, nor to have their aliens naturalized so long as they persist in the violation of the laws against bigamy and polygamy. The same as regards the right to preëmpt lands. Some may say that is too severe a hardship on these people. Sir, it is not a new thing in the history of our Government that persons should be prevented from the right to take possession of the public domain who are living in violation of its laws. It is but a short time since we passed a general law upon this subject as regards the

public lands of the South, wherein, while inviting law-abiding men to come forward and partake of the benefits derived under it, we made a proviso that any person so desiring to preëmpt any portion of the public domain should first swear that he had not taken up nor voluntarily borne arms against the Government of the United States, and that he would support the Constitution. I regard, then, this provision as in entire harmony with the previous legislation of Congress and think it ought to become a part of the law.

Mr. Cullom answered the objection that the bill would "too suddenly break down the system of polygamy and leave the women and children of the Territory helpless and dependent, and, perhaps, in a starving condition."

Sir, I do not believe that any such result will be likely to follow the passage of this bill and the destruction of the institution of polygamy. The testimony before the committee, and which has been presented to the House, shows that the women of that Territory, in many instances, support not only themselves, but their children and their husbands. I could cite many cases where prominent Mormons have been supported by their numerous wives, made rich by their labors, and, instead of being dependent upon their husbands for their own and their children's support, the husbands are dependent upon the women.

In conclusion he asked:

Are we to have any legislation that will effectually crush out this bold and defiant iniquity, or are we to go on as we have been for over thirty years, allowing the practice of bigamy and polygamy to flourish in violation of human and divine laws, cloaked by the title of "Latter-day Saints" and a pretended system of religion? Shall we continue to temporize any longer with it and allow its defenders and abettors to go unpunished?

The great mass of the Mormons are either actively or passively in hostility to the Government of the United States. A great majority of them are of foreign birth, brought from their homes by persons assuming the garb of bishops or apostles of the church, and have never known, and never would know under the present system, anything of the institutions of this country. The power of these priests and presidents and apostles and bishops over them must be destroyed, so that the light of Christianity and civilization may reach their benighted understand-

ings. They know nothing of the glorious principles of our Declaration of Independence. They have no impressions in regard to our people except as they are taught by Mormon teachers. They are led to believe the American people are the most infamous and bloodthirsty people on the face of the earth, and they hear from their pulpits, in their workshops, in their fields, nothing but the denunciations by their leaders against the American people. Under such a system of things it is not to be wondered at that these ignorant and deluded people come finally to regard us as their worst enemies, and become passive or active agents in the hands of their leaders to carry out their infamous designs.

Under almost any other system of religion or ethics we might hope that, in time, they would be divested of their prejudices and partake of the influences of enlightenment and civilization which are spread throughout this great country. And upon this theory the argument is raised that we had better do nothing now, that the system will die out, especially since the completion of the Pacific railroad, which will bring them more and more under the influence of our civilization and our modes of life. I confess that I had some hope that such would be the case upon the completion of the Pacific railroad. But, sir, the testimony shows that, since the completion of that great work, there has been a greater degree of proscription on the part of the leaders of that people than ever before. Within the last few months many men, Gentiles, who had been in business there, and who in years past have been favored with some degree of prosperity, latterly these men have been hunted and persecuted and in every way thwarted in their enterprises until they have been compelled, in order to protect their persons and their property, to leave the Territory and return among people where liberty and freedom prevail.

Sir, Brigham Young stands at the head of all affairs, spiritual and temporal. He has the power of "sealing." He is a "revealer"; he is prophet, priest, seer-revelator, first president, and trustee of the church of Latter-day Saints. He holds the keys of the kingdom; unfolds to the people the will of God as revelator. As seer he warns the people of danger, and as priest seals men and women for time and eternity. The testimony shows that, while there is no law upon the statute-books of the Territory in relation to marriages in any way whatever, yet there is a law in relation to divorces. Brigham Young seals the people in wedlock and divorces them at pleasure. But of late, since it has become apparent to him that perhaps a little

observance of law would be necessary in order to save his head, while he divorces his people one from another in secret, yet, after it is done by him, and not until then, do they ever approach a court of justice to have the bonds of matrimony broken? To show the power as well as the supreme authority claimed and exercised by him I will call your attention to a sentence or two from a sermon recently delivered by him in that Territory.

"I have never yet preached a sermon and sent it out to the children of men that they may not call Scripture. Let me have the privilege of correcting a sermon and it is as good Scripture as they deserve."

Such, Mr. Speaker, is the manner in which he speaks to those benighted and ignorant people, and I suppose it is true that the great mass of them believe he speaks as from God.

Polygamy has been declared a criminal offence by every State and Territory in the Union, and is regarded by the civilized world as opposed to law and order, decency and Christianity, and the prosperity of the State. Polygamy has gone hand in hand with murder, idolatry, and every secret abomination. Misery, wretchedness, and woe have always marked its path. Instead of being a holy principle, receiving the sanction of Heaven, it is an institution founded in the lustful and unbridled passions of men, devised by Satan himself to destroy purity and authorize whoredom. It is not enough to say that it was practiced by many of the ancients and has been mentioned in the Bible. While it is true that such practices did prevail to some extent in ancient times, yet in no single instance does Holy Writ approbate it.

On March 22 and 23 William H. Hooper, Delegate from Utah, opposed the bill.

Mr. Speaker, I wish to make a few remarks concerning the extraordinary bill now under consideration. While so doing I crave the attention of the House; for I am here not alone as one of the people sought to be cruelly oppressed, not only as the delegate representing Utah, but as an American citizen, to utter my solemn protest against the passage of a bill that aims to violate our dearest rights and is fraught with evil to the Republic itself.

I do not propose to occupy the time of the House by dwelling at length upon the vast contributions of the people of Utah to the wealth of the nation. There is no member of this House

who does not recollect in his schoolboy days the vast regions west of the Rocky Mountains characterized in the geographies as the "great American desert." There, said those veracious text-books, was a vast arid region wherein no man could live, around the borders of which roamed the painted savages, only less cruel and remorseless than the desert itself.

In the midst of this inhospitable waste to-day dwell an agricultural, pastoral, and self-sustaining people, numbering one hundred and twenty thousand souls. Everywhere can be seen the fruits of energetic and persistent industry. The surrounding mining Territories of Colorado, Idaho, Montana, Arizona, and Nevada in their infancy were fed and fostered from the surplus stores of the Mormon people. The development of the resources of these mining Territories was alone rendered possible by the existence at their very doors of an agricultural people who supplied them with the chief necessities of life at a price scarcely above that demanded in the old and populous States. The early emigrants to California paused on their weary journey in the redeemed wastes of Utah to recruit their strength and that of their animals, and California is to-day richer by thousands of lives and millions of treasure for the existence of this halfway house to El Dorado.

This, however, is but a tithe of our contributions to the nation's wealth. By actual experiment we have demonstrated the practicability of redeeming these desert wastes. When the Pacific slope and its boundless resources shall have been developed; when beyond the Rocky Mountains forty million people shall do homage to our flag, the millions of dwellers in Arizona, Nevada, Idaho, Colorado, and Montana, enriched by the products of their redeemed and fertilized deserts, shall point to the valley of Great Salt Lake as their exemplar, and accord to the sturdy toilers of that land due honor, in that they inaugurated the system and demonstrated its possible results. These results are the offering of Utah to the nation.

For the first time in the history of the United States, by the introduction of the bill under consideration, a well-defined and positive effort is made to turn the great law-making power of the nation into a moral channel, and to legislate for the consciences of the people.

Here, for the first time, is a proposition to punish a citizen for his religious belief or unbelief. To restrain criminal acts, and to punish the offender, has heretofore been the province of the law, and in it we have the support of the accused himself. No man comes to the bar for trial with the plea that the charge

upon which he is arraigned constitutes no offence. His plea is "Not guilty." He cannot pass beyond and behind the established conclusions of humanity. But this bill reaches beyond that code into the questionable world of morals, the debatable land of religious beliefs; and, first creating the offence, seeks, with the malignant fury of partisan prejudice and sectarian hate, to measure out the punishment.

The bill before us declares that that system which Moses taught, which God allowed, and from which Christ, our Savior, sprung, is a crime, and that any man believing in it and practicing it shall not be tried, but shall be convicted, and his children shall be declared bastards, his wives turned out to starve, and his property confiscated—in fact, for the benefit of the moral reformers who, as I believe, are the real instigators in this matter.

The honorable member from Illinois, the father of this bill, informs us that this is a crime abhorred by men, denounced by God, and prohibited and punished by every State in the Union. I have a profound respect for the motives of the honorable member. I believe he is inspired by a sincere hostility to that which he so earnestly denounces. No earthly inducement could make him practice polygamy. Seduction, in the eyes of thousands, is an indiscretion, where all the punishment falls upon the innocent and unoffending. The criminal taint attaches when the seducer attempts to marry his victim. This is horrid. This is not to be endured by man or God, and laws must be promulgated to prevent and punish.

While I have this profound regard for the morals and motives of the honorable member, I must say that I do not respect to the same extent his legal abilities. Polygamy is not denounced by every State and Territory, and the gentleman will search in vain for the statute or criminal code of either defining its existence and punishment. The gentleman confounds a religious belief with a criminal act. He is thinking of bigamy when he denounces polygamy, and, in the confusion that follows, blindly strikes out against an unknown enemy. Will he permit me to call his attention to the distinction? Bigamy means the wrong done a woman by imposing upon her the forms of matrimony while another wife lives, rendering such second marriage null and void. The reputation and happiness of a too confiding woman are thus forever blasted by the fraudulent acts of her supposed husband, and he is deservedly punished for his crime. Polygamy, on the contrary, is the act of marrying more than one woman, under a belief that a man has the right, lawfully

and religiously, so to do, and with the knowledge and consent of both the wives.

Suppose, Mr. Speaker, that in proclaiming the old Jeffersonian doctrine that that government is best which governs least, I would not have even a minority upon this floor. But, when I say that in a system of self-government such as ours, that looks to the purest democracy, and seeks to be a government of the people, for the people, and by the people, we have no room for the guardian, nor, above all, for the master, I can claim the united support of both parties. To have such a government, to retain such in its purest strength, we must leave all questions of morals and religion that lie outside the recognized code of crime to the conscience of the citizen. In an attempt to do otherwise than this the world's abiding places have been washed with human blood, and its fields made rich with human bones. No government has been found strong enough to stand unshaken above the throes of religious fanaticism when driven to the wall by religious persecution. Ours, sir, would disappear like the "baseless fabric of a vision" before the first blast of such a convulsion. Does the gentleman believe, for example, that, in aiming this cruel blow at a handful of earnest followers of the Lord in Utah he is doing a more justifiable act than would be, in the eyes of a majority of our citizens, a bill to abolish Catholicism because of its alleged immorality? Let that evil door once be opened; set sect against sect; let the Bible and the school-books give place to the sword and the bayonet, and we will find the humanity of to-day the humanity of the darker ages, and our beautiful Government a mournful dream of the past.

This is not only philosophically true, but, sir, it is historically a fact. In making the appeal I stand upon the very foundation-stone of our constitutional Government. That they might worship God in accordance with the dictates of conscience the fathers fled from their homes in Europe to the wilds of America. For this they bore the fatigues or perished in the wilds of a savage-haunted continent; for this they poured out their blood in wars, until every stone in the huge edifice that shelters us as a nation is cemented by the blood of the martyr.

In our Constitution, still perfect and fresh as ever, we have a clause that cannot be changed and leave a vestige of a free government. In the original instrument we find this language: "No religious test shall ever be required as a qualification to any office or public trust under the United States." But this was not considered sufficiently comprehensive for a free people, and

subsequently we find it declared: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

Upon the very threshold of my argument, however, I am met by the advocates of this extraordinary bill with the assumption that polygamy is not entitled to be considered as a portion of our religious faith; that, under the Constitution, we are to be protected and respected in the enjoyment of our religious faith, but that we are not entitled to consider as a portion thereof the views held by us as a people in reference to the marriage relation. One eminent disputant, as an argument, supposes a case where a religious sect might claim to believe in the rightfulness of murder, and to be protected in the enjoyment of that right. This is not in any sense a parallel case. Murder, by all law, human and divine, is a crime; polygamy is not. Not only by the authority of the Old Testament writers, but by numerous leading writers of the Christian and Jewish churches, the doctrine of polygamy is justified and approved. The only ground upon which any argument can be maintained that our views of the marriage relation are not to be considered as a portion of our religious faith is that marriage is a purely civil contract, and therefore outside the province of religious doctrine. No sect of Christians can, however, be found who will carry their beliefs to this extent. The Catholic church, the most ancient of the Christian churches, and among the most powerful in numbers of the religious denominations of our country, upon this point is in accord with the Mormon church.

Marriage, according to the faith of the Catholic church, is one of its sacraments; is not in any sense a civil contract but a religious ordinance, and the validity of a divorce granted by a civil court is denied. And not in any Christian church is the marriage contract placed on a par with other civil contracts, with a swap of horses, or a partnership in trade. It is a civil contract, in that a court of equity for certain specified causes may dissolve it; but not otherwise. To most intents and purposes with every Christian denomination the marriage ceremony is regarded as a religious ordinance. Upon this point, therefore, and a vital point in the discussion of the question before us, the Catholic church in fact, and the other religious denominations in theory and usual practice, are with the Mormons in their position, that the supervision and control of the marital relation are integral and essential portions of their religious faith and practice, in the enjoyment of which they are protected by the Constitution.

The Mormon people are a Christian denomination. They believe fully in the Old and New Testaments, in the divinity of Christ's mission, and the upbuilding and triumph of His church. They do not believe, however, that light and guidance from above ceased with the crucifixion on Calvary. On the other hand, they find that in all ages, whenever a necessity therefor existed, God has raised up prophets to speak to the people and to manifest to them His will and requirements. And they believe that Joseph Smith was such a prophet; that the time had arrived when there was a necessity for further revelation, and, through Joseph Smith, it was given to the world.

Upon this point of continuous revelation, which is really one of the turning points of the controversy, we are in accord with many of the most eminent divines of the Christian church, and with the most earnest and vigorous thinkers of our own day.

Says Ralph Waldo Emerson, in one of his most golden utterances:

"I look for the hour when that supreme beauty which ravished the souls of those Hebrews, and through their lips spoke oracles to all time, shall speak in the West also. The Hebrew and Greek Scriptures contain immortal sentences that have been the bread of life to millions. But they have no epical integrity; are fragmentary; are not shown in their order to the intellect. I look for the new teacher that shall follow so far those shining laws that he shall see them come full circle; shall see their rounding, complete grace; shall see the world to be the mirror of the soul."

Ours is a religious sect; it has to-day vindicated its right to live by works and sacrifices which are the admiration even of its enemies. It brings forward certain new doctrines; of church government; of baptism, even for their dead; of the marriage relation. Upon what point is it more probable that light from above would be given to our race than upon the marriage relation? The social problem is the question of the age. The minds of many of the foremost men and women of our day are given to the study of the proper position and relations of the sexes. The wisest differ—differ honestly and unavoidably. Endless are the dispute and clamor of those honestly striving to do away with the social evil, to ameliorate the anomalous condition of the wronged and suffering women of to-day. And, while this is so, while thousands of the good and pure of all creeds and parties are invoking the divine guidance in their efforts for the good of our fallen humanity, is it strange that the divine guidance thus earnestly besought should come; that the prayers of the righteous be answered? The Mormon people believe that God has thus spoken; that, through Joseph Smith,

He has indicated the true solution of the social questions of our day; and, while they persecute or question no man for differing honestly with them as to the Divine authority of such revelation, they firmly insist that in their following of what they believe to be the will of God they are entitled to the same immunity from persecution at the hands of the Government, and to the same liberty of thought and speech, wisely secured to other religious beliefs by the Constitution.

Upon the point whether polygamy can properly be considered as a part of our religious faith and practice I beg leave humbly further to submit, sir, that the decision rests solely on the conscience and belief of the man or woman who proclaims it to be a religious belief. My people proclaim polygamy as a part of their religious belief. If they are honest in this, however much they may be in error, they stand on their rights under the Constitution, and to arrest that error you must appeal to reason and not to force. I am here not to argue or demonstrate the truthfulness of their faith; but if I can convince you that this belief is honorably and sincerely entertained my object is accomplished.

It is common to teach, and thousands believe, that the leaders of the sect of Latter-day Saints, popularly known as Mormons, are hypocrites, while their followers are either ignorant, deluded men and women or people held to their organization by the vilest impulses of lust. To refute these slanders I can only do as the earlier Christians did: point to their sufferings and sacrifices, and I may add the unanimous testimony of all, that, aside from what they consider the objectionable practice of polygamy, my constituents are sober, moral, just, and industrious in the eyes of all impartial witnesses. In this community, removed by long reaches of wastes from the moral influences of civilization, we have a quiet, orderly, and Christian community. Our towns are without gambling-hells, drinking-saloons, or brothels, while from end to end of our Territory the innocent can walk unharmed at all hours. Nor is this due to an organized police, but to the kind natures and Christian impulses of a good people. In support of my argument of their entire sincerity I with confidence appeal to their history.

Here the speaker recounted the early history of the Mormons, ending with their expulsion from Missouri.

The annals of religious persecution, so fruitful of cruel abuse, can give nothing more pitiable and heartrending than

the scenes which followed this last expulsion. Aged men and women, the sick and feeble, children of tender years, and the wounded, driven into the flats of the river, yet in sight of their once happy houses, to perish from exposure and starvation. While over our broad land the churchbells of Christian communities were ringing out peace and good-will to men; while to the churches thronged thousands to hear preached the Gospel of charity and forgiveness, these poor, heart-sick followers of the same Redeemer were driven in violence from their houses to perish like wild beasts in the swamps and wilderness.

Word went out to the world that Mormonism had finally been annihilated. But again the scattered hosts were gathered together, and set out on a pilgrimage that since that of the children of Israel has been without parallel in the history of the human race. They had no stores; they were beggared in the world's goods, yet with earnest religious enthusiasm they toiled on through unknown deserts, over unexplored mountain ranges, and across plains haunted by savages only less cruel than the white Christians who had driven them forth in search of that promised land where at last they could worship God in accordance with the dictates of their own consciences and find unbroken that covenant of the Constitution which guards this sacred right. Ragged, foot-sore, starving, and wretched they wandered on. Delicately nurtured women and their little children dug roots, or subsisted on the bark of trees or the hides of animals. From Nauvoo to Salt Lake, the valley of their promised land—fifteen hundred miles—there is to-day scarce a mile along that dreary and terrible road where does not repose the body of some weary one whom famine or sickness or the merciless savage caused to perish by the way.

It was while on this pilgrimage that an order came from the Government for five hundred men to serve as soldiers in the Mexican war. The order was promptly obeyed. These devoted men who had received only cruel persecution from the people they were called upon to protect on the field of battle dedicated their poor, helpless wives to God and themselves to their country. Leaving their families to struggle on as best they could these brave, patriotic men followed our flag into New Mexico and California, and were at last disbanded at San Diego with high praise from their officers, but with scanty means to return to those they loved, and whom they had left to suffer, and perhaps to perish on the way.

Mr. Speaker, is this shining record that of a community of lustful hypocrites? What other Christian denomination of our

country can show higher evidences of earnestness, of devoted self-sacrifice for the preservation of their religious faith?

Mr. Hooper here reverted to his claim that the Christian and Jewish churches had endorsed polygamy.

At the period of the Reformation in Germany, those great reformers, Luther, Melancthon, Zuringli, and Bucer, held a solemn consultation at Wittenberg on the question "whether it is contrary to divine law for a man to have two wives at once?" and decided unanimously that it was not, and upon the authority of this decision Philip Landgrave, of Hesse, married a second wife, his first being still alive.

Dr. Hugo Grotius states that "the Jewish laws allow a plurality of wives to one man."

The Evangelical Christian missionaries in India, in a conference at Calcutta, decided that having more wives than one should not debar a man from membership in the church.

These facts prove that one of its main charges, that polygamy is abhorrent to every Christian nation, is false; for the British empire is a Christian nation, and Hindustan is an integral part of that empire. Hindustan is a civilized country, with schools and colleges and factories and railroads and telegraphs and newspapers. Yet the great mass of the people, comprising more than eighty millions, are polygamists, and, as such, they are recognized and protected by the laws of the British Parliament and the courts of the queen's bench; and the English and American missionaries of the Gospel who reside there, and have resided there many years, and who know the practical working of polygamy, have assembled together in solemn conference, and unanimously pronounced it to be right, and in accordance with the practice of the primitive Christian churches; and the French, the Spanish, the Dutch, the Portuguese, and other Christian nations are known to pursue a similar policy, and to allow the different peoples under their governments the free and unmolested enjoyment of their own religions and their own marriage system, whether they are monogamous or polygamous.

Polygamy is a doctrine the practice of which, from the precedents cited, is clearly not inconsistent with the highest purity of character and the most exemplary Christian life. My opponents may argue that it is unsuited to the civilization of the age, or is the offspring of a religious delusion; but, if so, its remedy is to be sought through persuasion and not by the exercise of force; it is the field for the missionary and not for

the jurist or soldier. So soon, however, as the Luthers, the Melancthons, the Whitfields of to-day have wiped out the immorality, licentiousness, and crime of the older communities, and have made their average morality equal to that of the city of Salt Lake, let them transfer their field of labor to the wilds of Utah, and may God forever prosper the right.

Mr. Hooper then addressed himself to the subject of prostitution, stating that polygamy had been presented as a remedy for it long before the days of Joseph Smith.

Rev. Martin Madan, relative of the poet Cowper, and an accomplished scholar, was chaplain of the Lock Hospital in London during the latter part of the eighteenth century. By his exertions the first chapel for the use of the unfortunate inmates of that hospital was built, and then, perhaps for the first time in the history of England, the gospel was preached for the special benefit of fallen women. The sympathies of their benevolent chaplain were so deeply enlisted in their behalf that he published a book upon the subject in 1780 entitled "Thelyphthora; or, a Treatise on Female Ruin, in Its Cause, Effects, Consequences, Prevention, and Remedy" which remedy he discovers to be polygamy, and which he discusses in a very thorough manner in three octavo volumes. I submit copious extracts from this learned work.

Here the speaker read the extracts.

Mr. Hooper then arraigned the bill as a reversion, in these days of religious toleration, to the days of the Holy Inquisition and the persecution of New England Quakers and witches.

It is but a short time since the country hailed with satisfaction a treaty negotiated on the part of a pagan nation through the efforts of a former member of this body [Anson Burlingame], and whose recent death has filled our hearts with sadness, whereby the polygamous Chinese emigrants to our shores are protected in the enjoyment of their idolatrous faith, and may erect their temples, stocked with idols, and perform their (to us) heathenish worship in every part of our land unquestioned. And, while the civilized nations of Europe have combined to sustain and perpetuate a heathen nation practicing

polygamy in its lowest form, and are hailing with acclamation the approach of its head, the American Congress is actually deliberating over a bill which contemplates the destruction of an industrious people and the expulsion of the great organizer of border civilization.

Mr. Hooper spoke of the "countless lies which had been circulated for years" about his people.

These falsehoods have a common origin—a desire to plunder the treasury of the nation. They are the children of a horde of bankrupt speculators anxious to grow rich through the sacrifice even of human life.

Here the speaker charged that the "Mormon War" in Buchanan's Administration, costing twenty or thirty million dollars, had been promoted by army contractors, who spread the report that the Mormons had destroyed the official records of the Federal court in Utah; this report was subsequently proved false, and the troops were withdrawn.

These contractors, and numerous would-be imitators, long for the return of that golden age. They fill the ears of the public with slanders and with falsehoods; that murders are rife; that life and property are unsafe in Utah without the presence of large armies. They have even sometimes induced Federal territorial officers, through ignorance or design, to become their tools to help forward their infamous work. But since the railroad was completed many of the American people have looked for themselves. They see in Utah the most peaceful and persistently industrious people on the continent. They judge the tree by its fruits. They read that a community given up to lust does not build factories and fill the land with thrifty farms. That a nation of thieves and murderers do not live without intoxicating liquors and become famous for the products of their dairies, orchards, and gardens. A corrupt tree bringeth not forth the fruits of temperance, Christianity, industry, and order.

Mr. Speaker, those who have been so kind and indulgent as to follow me thus far will have observed that I have aimed, as best I might, to show—

1. That, under our Constitution, we are entitled to be protected in the full and free enjoyment of our religious faith.

2. That our views of the marriage relation are an essential portion of our religious faith.

3. That, in considering the cognizance of the marriage relation as within the province of church regulations we are practically in accord with all other Christian denominations.

4. That, in our views of the marriage relation as a part of our religious belief, we are entitled to immunity from persecution under the Constitution if such views are sincerely held; that, if such views are erroneous, their eradication must be by argument and not by force.

5. That of our sincerity we have, both by words and works and suffering, given for nearly forty years abundant proof.

6. That the bill in practically abolishing trial by jury, as well as in many other respects, is unconstitutional, uncalled for, and in direct opposition to that toleration in religious belief which is characteristic of the nation and age.

It is not permitted, Mr. Speaker, that any one man should sit as the judge of any other as regards his religious belief. This is a matter which rests solely between each individual and his God. The responsibility cannot be shifted or divided. It is a matter outside the domain of legislative action. The world is full of religious error and delusion, but its eradication is the work of the moralist and not of the legislator. Our Constitution throws over all sincere worshipers, at whatever shrine, its guaranty of absolute protection. The moment we assume to judge of the truthfulness or error of any creed the constitutional guaranty is a mockery and a sham.

Three times have my people been dispersed by mob violence, and each time they have arisen stronger from the conflict; and now the doctrine of violence is proposed in Congress. It may be the will of the Lord that to unite and purify us it is necessary for further violence, suffering, and blood. If so, we humbly and reverently submit to the will of Him in whose hands are all the issues of human life. Heretofore we have suffered from the violence of the mob; now the mob are to be clothed in the authority of an unconstitutional and oppressive law. If this course be decided upon I can only say that the hand that smites us smites the most sacred guaranties of the Constitution, and the blind Samson, breaking the pillars, pulls down upon friend and foe alike the ruins of the State.

On March 23 the House passed the bill by a vote of 94 to 32. It was discussed in the Senate, but not acted upon.

In his fourth annual message [of December, 1872] President Grant called the attention of Congress to the Cullom Bill against polygamy at the previous session, and inferentially recognized the impossibility of crushing out the abuse at once by asking for the passage of this or a similar law looking to "the ultimate extinguishment of polygamy."

His recommendation was not acted upon.

In 1874 an anti-polygamy bill, introduced by Representative Luke P. Poland [Vt.], was enacted. It was along the lines of the Cullom bill. Convictions under it being appealed, the Supreme Court decided that religious belief cannot be accepted as justification for an overt act made criminal by the law of the land.

Nevertheless the act was an ineffectual one, polygamy continuing to flourish in the Mormon settlements, not only in Utah, but in other Territories.

CHAPTER XIII

Debarring Polygamists from Civil Rights

[debates on the edmunds bill]

George F. Edmunds [Vt.] Moves an Anti-Polygamy Bill in the Senate, with a Provision for a Commission to Declare Persons Polygamists and so Ineligible to Vote, Hold Office, or Serve on Juries—Debate on the Commission Feature: in Favor, Augustus H. Garland [Ark.], Mr. Edmunds; Opposed, George G. Vest [Mo.], John T. Morgan [Ala.], Wilkinson Call [Fla.]; Bill Is Passed by Congress and Approved by the President—President Cleveland on the Execution of the Law—Federal Dissolution of the Mormon Church Corporation—Manifesto of the Mormon President, Wilford Woodruff, against Practicing Polygamy—President Harrison's Comment on the Manifesto: "The Doctrine Is Not Abjured"—Admission of Utah into the Union with Polygamy Forbidden.

IN his third annual message [December, 1879] President Hayes struck at the root of the matter by declaring that polygamy could be suppressed only by taking away the political power of the sect which practiced it. Like remarks of Presidents Garfield and Arthur in 1881 led to the passage of an act in which this principle was embodied. This, with supplementary legislation, finally proved effective.

On December 12, 1881, George F. Edmunds [Vt.] introduced in the Senate a bill to amend the statute relating to bigamy, so as better to prohibit polygamy in the territories. It was referred to the Committee on Judiciary. It was reported from the committee on January 24, 1882, by Senator Edmunds. The bill provided that practice of or *belief in* polygamy disqualified a juror in a case under the statute, and gave the President power to grant amnesty to persons guilty of

"bigamy, polygamy, or unlawful cohabitation" before the passage of the act.

It further provided that no polygamist should be eligible to vote or hold office, and that the question of this eligibility be determined by a bi-partisan board of five persons appointed by the President.

The bill came forward for discussion on February 15.

The Edmunds Anti-Polygamy Bill

Senate, February 15-16, 1882

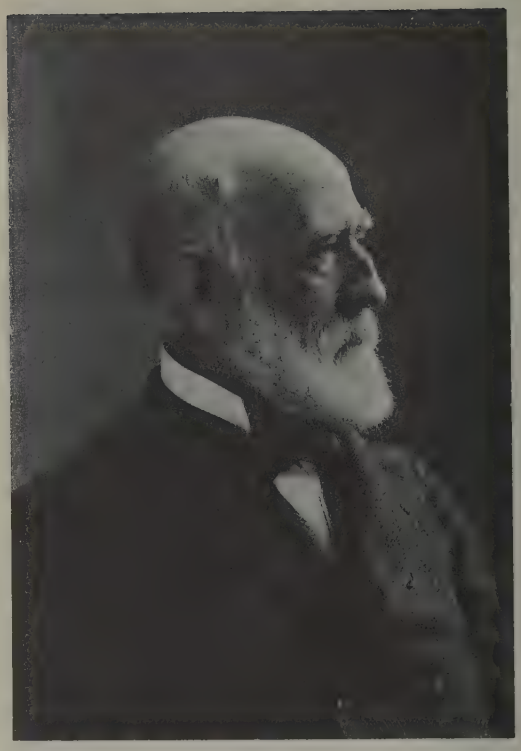
George G. Vest [Mo.] objected to the last provision of the bill as "establishing an anomaly in the jurisprudence of the United States, and striking down the fundamental principle of American liberty."

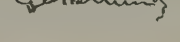
If there is one single clause in our Constitution or bill of rights dear to the American heart, it is that no citizen shall be deprived of life, liberty, or property without the judgment of his peers or of a competent tribunal. The idea that any citizen can have taken from him a right conferred by law, without the judgment of a competent tribunal and without a trial, is abhorrent to every principle of personal liberty and constitutional right. It is the very essence of good government and of freedom and of constitutional right that every man should be tried and convicted before punishment. The seventh section of this bill takes away from a citizen of the United States the right to vote or hold office before conviction by his peers of any crime.

The Senator from Delaware [Thomas F. Bayard] is pleased to say that this case is analogous to that of a Territory applying for admission into the Union, when Congress has the right under the Constitution to impose its own terms and form of government under the Constitution. But, sir, there is no analogy. The people of Utah to-day are voters; the people of Utah to-day are officeholders; they have had this right from the organization of the Territory.

Senator Bayard.—By act of Congress.

Senator Vest.—By act of Congress under the Constitution; and under the Constitution I say that no man can be deprived of the right to vote or to hold office except after conviction. I announce that proposition to-day. If Utah were here applying for admission into the Union then we could say to her: "Accept certain conditions"; and, if they were within the limitations of the Constitution, those conditions of course must be accepted or rejected. But here these rights have been conferred; they are already given; and we propose by a commission which is outside of the law, outside of the Constitution, to give to its members the power to say absolutely who shall be elected and what shall be the returns, to canvass the returns, and to declare who shall be the voters and who shall be elected. Such power inside of American legislation was never known before.





But, Mr. President, I say as a lawyer that the principle of taking away the right of suffrage or the right to hold office before conviction for crime is unknown in the legislation of this country or in its jurisprudence. In the case of Barker, in 3 Cowen, this doctrine was announced by the Supreme Court of New York by John Savage, a man who graced the bench and the tribunal over which he presided. The legislature of New York undertook to stamp out dueling, and provided that any man who should fight a duel should be deprived of the right to vote or to hold office. The case was taken to the highest tribunal in the State and adjudicated. I wish I had time to read it all, for every word of it is applicable to the case now before the Senate. I will simply read as much of it as constitutes the syllabus:

But, while many rights are consecrated as universal and inviolable, the right of eligibility to office is not so secured. It is not one of the express rules of the Constitution, and is not declared as a right or mentioned in terms as a principle in any part of the instrument. Important as this right is, it stands, as the right to life itself stands, subject to the general power of the legislature over crimes and punishments.

I call the attention of the Senate to the fact that this bill inflicts a punishment for crime on any man guilty of polygamy, or any person cohabiting with more than one woman, etc., by providing that he shall be deprived of the right to vote and the right to hold office. A subsequent section provides that five gentlemen, constituting a commission, shall determine the question of guilt. I say that this bill comes within the meaning of this decision, for it is the infliction of a punishment for crime.

As a right flowing from the Constitution, it cannot be taken away by any law declaring that classes of men, or even a single person not convicted of a public offence, shall be ineligible to public stations.

The Territories of the United States are peopled by citizens of the United States, and I say to-day that the highest judicial declaration, in my judgment, ever made by the Supreme Court of the United States was made by the late Chief-Justice Taney when he declared that the Constitution of the national Government and the citizen walked into the Territories side by side under the Constitution of our common country. This idea that the Territories are absolute creatures to be governed by Congress as they please, without reference to the Constitution or law or right is, in my judgment, abhorrent to every principle of American freedom.

Much as I detest polygamy, much as I believe it to be utterly subversive of all pure society and good morals, I shall never vote for a provision which, in my judgment, subverts the highest and dearest rights of every American citizen.

AUGUSTUS H. GARLAND [Ark.].—Mr. President, the argument of the Senator from Missouri [Mr. Vest] goes somewhat to the foundation of this bill. He has said that the provisions of section 7 and section 8 are severe provisions. They were intended to be severe. They have been said to be rough provisions. They were intended to be rough. Desperate cases need desperate remedies, and I am of the opinion that every provision in this bill is as well sanctioned by the organic law and precedents under the organic law of this country as any bill that has ever received the sanction of Congress.

Mr. President, what are we undertaking to do? We are undertaking to provide for a government in the Territory of Utah. What Territory? One of the Territories of the United States. We are not undertaking to legislate for a State; we are not undertaking to reconstruct a State that has already been rehabilitated; but we are undertaking to legislate for the government of a distant Territory of the United States. Where do we get that power? We get it under the following provision of the Constitution:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The Senator from Missouri is correct when he says that the Constitution goes into the Territories. It goes in and enters into the Territories by virtue of this very provision in the Constitution which gives Congress power to make all needful rules and regulations respecting the Territories. What now has the highest tribunal of the land said is the relative position of these

Territories to the United States under that grant of power? A case that has been followed repeatedly by no divided court, by no individual opinion merely, but followed repeatedly—it is the fountain of the authority as construed by the Supreme Court—the case of Gratiot *vs.* The United States, in 14 Peters:

> The term territory as here used—

That is, as used in the clause of the Constitution I have just read—

> is merely descriptive of one kind of property, and is equivalent to the word "lands." And Congress has the same power over it as over any other property belonging to the United States, and this power is vested in Congress without limitation, and has been considered the foundation upon which the territorial governments rest.

And no other. You cannot place your hand upon this Territory without this grant of power; you cannot legislate for it in one form or another without this grant of power or some similar grant; and, upon this grant of power, says the Supreme Court, rests your territorial government. That is the law of this land. That being so, what are your territorial governments? Under a law that has been in force for many years, section 1850 of the Revised Statutes, it is provided:

> All laws passed by the legislative assembly and governor of any territory except in the territories of Colorado, Dakota, Idaho, Montana, and Wyoming shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

And on several occasions since I have been in the Senate Congress has disapproved of acts of the Territories and set them aside under this section 1850.

So the legislative acts of the Territories have no force and effect save and only as Congress acquiesces in them. They are operative laws only because Congress does not see proper to repeal them or to disapprove of them. Ten thousand people in Utah Territory vote. They vote by the sanction of Congress; they vote by reason of the non-repeal, the non-disapproval by it of the Territorial acts giving them the franchise. Certainly, if that be the case, it is within the power of Congress to repeal them whenever it sees proper, and that is what we are undertaking to do in this bill.

The difficulty in Utah is not because a man has one, two, or ten wives; it arises not merely upon the morality or the virtue

of that peculiar proceeding; but it is because he has a government there at war with the spirit and theory of the Government under which we live; he has a government there that bids defiance and stands not in awe of the laws passed by the Congress of the United States. Probably no law will ever be effective to prevent polygamy or polyandry there if you please, probably no law can ever be passed that can effectually prevent cohabitation; but yet I have in my hand the laws of every State and Territory of this Union except that one, and there is a severe penalty against that crime of cohabitation, bigamy, or whatever name you may choose to call it by. If they had a law there that the other Territories and the States have against these crimes, probably nothing need be said on this subject; but, as stated by the honorable Senator from Delaware, there is no republican government there, there is a hierarchy, a theocracy; it is a government bred and brought into life by an inspiration, according to the report of Mr. Cullom submitted in 1870, "by an independent revelation of God to Brigham Young." The marriages are held within the bosom of the church there, all the property goes through the church, the lands and the wills and everything else go through the same sanction of the church. Will you tell me, then, that there is a republican government there?

The theory of our Government is that church and State shall not be commingled, shall not be made to run together; and, in the case of the United States *vs.* Reynolds, in 98 U. S. Supreme Court Reports, where Reynolds pleaded that he was only practicing his religion there and was not committing an indictable offence, the Supreme Court told him in plain language that the plea would not do in this country to shield a man under his religion to perpetuate these crimes which the civilized world denounces. It was from an inspiration, I believe, that Guiteau said he was impelled to take the life of the Chief Magistrate of this country and plunge this people in woe. Yes, you may have your religion, but you cannot have it as a cloak to commit crimes that the laws of the country say must be punished and put down and suppressed. Let it go to the world that that Territory is organized on the theory that a man can govern himself because he is inspired by God to a certain course, and you may as well abolish all your statute-books and dispense with your law-making power. When the Constitution spoke and when the theory of this Government spoke, and when Jefferson and the men of his day spoke on this subject, declaring that Church and State should not be mixed, it was not meant to give an authority to

commit crime under the cloak and guise of religion by whatever name it might be called.

Our Constitution says that the United States shall guarantee to each State a government republican in form. What is the object and purpose of your Territories? They are now in their chrysalis state, marching on to full sisterhood and to admission into the Union. Suppose, now, Utah was to be presented for admission into the Union, is there a Senator here present who could say that there is a republican form of government there? That is the test of this question. Suppose Utah now were to knock at the doors of Congress for admission, let us see what your constitution says and what your practice under the Constitution is; let us see what you would say in reference to it. Its people might say: "We only have four or five or six or ten wives apiece; we live in this kind of business at large, and everybody knows it is according to law; nobody can be punished for it; our property comes through the Church, and our rules and regulations are all from the church." That is not a government carried on by the people through their representatives, which means a republican government—people who are guilty of crimes, as suggested to me by the Senator from Texas [Samuel B. Maxey], which were punishable at common law at the time of the adoption of the Constitution and by all the States at the time they adopted it.

Now, it is in the power of Congress to say to these people "You shall not vote at all." We have seen that our power in that regard is ample, that it is plenary. When we speak of a man forfeiting a right, it is not a right of voting secured by the laws of the country, because that right is conferred by the law-making power and it is changed repeatedly by a change of law or constitution. That is not one of those guaranteed rights (as decided repeatedly by the Supreme Court) of which a man cannot be deprived without the intervention of a jury; but every State and every Territory in this Government disqualifies persons for certain things from sitting upon a jury. Aliens and felons shall not sit upon juries; persons under twenty-one years of age shall not, and yet they are taxed. True a felon is convicted; but look at all the laws of your different States and you will find that provisions as severe and as far-reaching as these apply to making up your jury boxes.

We cannot afford to stand here speaking of the rights of a Territory in these matters. Nor is it novel for the Congress of the United States to provide for a commission government in the Territories. Have we not provided a commission govern-

ment for this District which is no more under the control of Congress than are the Territories by the Constitution of the United States and the decisions of the Supreme Court under the Constitution? Have you not taken away the right of suffrage from the people here in this District?

SENATOR EDMUNDS.—If the Senator will allow me to add to his suggestion about this District, he will remember that in three or four instances of the Territories in the Northwest we governed them entirely by commission composed of the governor and judges.

SENATOR GARLAND.—Here we have a Territory, anomalous as it may appear, directly at war and directly antagonistic to all the theories of our Government and at war with the principles of our Government. It is a Territory subject to our own control, under the needful rules and regulations we may think proper to make. Shall we hesitate to adopt this proposed law? If it is extreme, it is an extreme case upon which it is to operate.

On February 16 John T. Morgan (Ala.) opposed the mooted sections as unconstitutional.

Whatever you may choose to declare a crime in this country, I do not care what it may be, that moment the Constitution comes in and guarantees to that citizen that no punishment for that crime can be inflicted upon him of any character whatsoever unless it is done according to the due process of law and through the judicial tribunals of the country.

The elective franchise is a right which was guaranteed at the time we enacted the law organizing this Territory; for the moment we put the citizens in Utah in possession of the rights of American citizens within that Territory by the act of 1850, we gave them then the guaranties of the Constitution of the United States, which would follow them in all cases and in all places for the protection of their personal rights, secured to them under the law by the community at large, and to all men who are described in the fifth section of the act of 1850 as being citizens and settled in that Territory.

A case came up in the Supreme Court of the United States which I think clearly establishes the doctrine for which I am contending now as against this section of the bill. The first was the Cummings *vs.* The State of Missouri. An attempt was made in the constitution of that State to deprive a number of persons of certain rights and privileges of a similar character because they refused to take what was called there the iron-

clad oath, who refused to exculpate themselves for having participated in the then recent rebellion. It is not necessary to read all the statement of the case in order to get before the Senate the part of it which I think is applicable to this particular matter. The court say:

> The disabilities created by the constitution of Missouri must be regarded as penalties—they constitute punishment. We do not agree with the counsel of Missouri that "to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all." The learned counsel does not use these terms—life, liberty, and property—as comprehending every right known to the law. The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment.

After having considered the *ex post facto* nature of this enactment, its operation on existing rights, emoluments, honors, privileges, and trusts, the court proceeded to discuss the other feature to which I now desire to call the special attention of the Senate:

> No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

It will be observed, of course, that that language is made applicable by this section of the Constitution to States, but not to States alone. The Supreme Court of the United States has repeatedly held that these restrictions are just as obligatory upon the Congress of the United States as they are upon the States themselves.

> A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

A more perfect definition could not be given. You can neither contract it, nor can you enlarge it, without depriving it of its proper force. But is this bill before us to-day a bill which by legislation inflicts punishment without judicial process? What is the object of disfranchising a man because he is a polygamist or a bigamist? It is not to preserve the purity of the ballot-box, but it is to inflict a punishment upon him for that crime which the Congress feels may be at work destroying the foundations of society.

Mr. President, I venture to say that there is no gentleman on this floor who has a more profound abhorrence of that Mor-

mon hierarchy that exists in Utah and some of the neighboring Territories, and no one who feels greater anxiety for its being trodden down than I do. No one has considered the necessity as more imminent than I do that we should take all proper and legitimate steps for the purpose of crushing out this bane of all civil society in those Territories, this growing evil, which it seems to me if tolerated much longer must overwhelm that Western country, beautiful as it is, with the pall of destruction and despair. But, sir, I am not willing to persecute a Mormon at the expense of the Constitution of the United States. I am not willing to go to the Indian tribes where polygamy is practiced and take up those men and inform them that they shall not have the right to life or liberty because they are polygamists; and we have just the same right to tell an Indian that he shall not live because he is a polygamist as we have to tell a Mormon that he shall not vote because he is a polygamist, provided we make that the penalty of the crime and give the power to a legislative tribunal to declare his crime and punish it. We must be cautious in times like these how we employ our power. It is the power of a people who have a written constitution, but they should be careful when the circumstances arouse them to anger, as in that time we are apt to do something that may sap the foundations of our liberties. This is not the time for us to permit transgressions of the Constitution of the United States; it is a time when we should hold up the standard of the Constitution and ask all men to respect it.

Senator Wilkinson Call [Fla.] opposed the provision.

With all this argument and discussion, here is the Constitution of the United States, and here is the Fourteenth Amendment which the honorable Senator from Vermont was himself largely instrumental in passing, which declares that every person subject to the jurisdiction of the United States is a citizen and entitled to the equal protection of the laws. What equal protection of the laws is it between those men in Utah when five men say that "We believe, without evidence, without trial, without notice, without hearing, that you have been guilty of an act of impropriety with a female, and we deny you the right to that franchise, that eligibility to office, which you now possess. We deny you the right to a trial by a jury of your peers. We require you to be tried by men who are unfriendly to you, and we believe that your religious faith is an enemy of the country

and ought to be suppressed with fire and the sword." Your faith, says the Senator from Vermont, is a shame to Christianity and therefore must be destroyed by these cruel methods. Mr. President, I have not so learned the precepts of our Christianity—I have not so learned our Constitution. I have been taught that the Christian religion was one of peace and good-will, and that "no religious test" for office in the Constitution forbids the exclusion of Jew or Gentile because of his belief. Mr. President, it is useless to attempt to govern and control this question in this way. The honorable Senator from Delaware [Mr. Bayard] speaks of the Mormons as a theocratic government. Why? What right is there for that allegation here? What is the argument? Because the organization of the Mormon church rests in religious matters and in social, an absolute power in the head of the church. Does not another church do that? Does not our Christian church in one of its leading bodies, which is not to be spoken of anywhere except with the profoundest veneration, the ecclesiastical body that witnessed the beginning of Christianity, that certainly contributed no small part to its early history and its struggles with paganism and maintained it all through the generations of the past, assert the absolute infallibility of the head of the church upon all religious and social matters, and, when it speaks *ex cathedrâ*, command the absolute obedience of its millions of votaries?

There is nothing theocratic in the government of the Mormon church that is exhibited to the world. It does not claim to govern the Territory of Utah. It acknowledges the authority of the Government of the United States. You cannot assail it by declaring as a matter of opinion on the part of the American Congress that for a man to worship God according to his belief, as Mormons do (however contrary to our opinions and our wishes), is a theocracy to be suppressed with fire and sword. But, if you will make war upon it, let it not be by striking down the liberties of your people and doing violence to your own holy faith; but assail it with the red right hand of war, with the sword to stab it out, and say to them: "Proclaim your heresies and conduct your rites beyond the limits of this territory of the United States." Sir, this is worse than open, flagrant war. This is asserting to the people that what our fathers, acting under the teachings of the Christian religion, fought for more than a hundred years to accomplish, shall be thrown away. This is an assertion by the Congress of the United States that there may be a trial by a packed and prejudiced court, and by partial jurors—by a man's foes, and not his friends; and that,

in defiance of the principles which control our whole political system, a government shall be constructed through penal provisions and verdicts of courts selected and organized to try and convict, by which one-tenth of the people shall rule nine-tenths.

Mr. President, I would go to any constitutional extent necessary to suppress polygamy, and I believe that the way is open and easy to suppress this evil. I think that the women of the country, having a right, as I believe they have, to every occupation and every employment consistent with their health and their strength, and having a free and vigorous thought that is quite equal to that possessed by our own sex, when protected by the laws, will assert for themselves freedom and right without the use of unconstitutional and, I think, wicked processes for the accomplishment of public objects.

Give them the aid of the laws and the protection of the courts and juries fairly constituted. Enact your laws declaring what shall be crime, and, if necessary, change your place of trial in conformity to established law wherever and whenever proof is made before your court that the state of public feeling is such that a fair trial cannot be had. Make the way to the writ of *habeas corpus* easy and sure; make provision for the support of those women who, with their children, desire to leave the polygamous relation.

If the situation is so grave as to require extraordinary methods, these would seem to be the proper ones. Protect individuals in their freedom and choice in leaving this state of polygamy; provide for their support, and, above all, educate them and their children, and send among them ministers of the Gospel. Why seek to build up a local despotism in the name and under the false pretence of law to accomplish objects which are easily accomplished by lawful means?

Senator Edmunds defended his bill.

We take out by this bill from the present government of Utah all of its essential powers, because the statistics and the information that we have demonstrate that the government of the Territory of Utah from top to bottom now is and has been for a long time—I do not know but all the time—including both houses of its territorial assembly, in the hands of the polygamists. Every member of its council but one is a polygamist glorying in from two to six wives. Every one but two or three of the twenty-six members of its House of Representatives is also adorned with that distinction. And, when

you go into the executive offices of that Territory, much the same thing exists.

Now this act, if it has no other effect, will have the effect of displacing from political supremacy all the persons whom the laws of the United States for twenty years have said were people who ought not to be allowed to carry on a government. It will have that effect provided the President of the United States and the Senate of the United States, his constitutional advisers, select for the administrative and judicial offices of that Territory men who are wise enough and able enough to enforce the laws; and that, I may say, has been the great difficulty for the last twenty years that the Government of the United States is far from being free from criticism upon that point. It will do so much.

Now, if there be in this Mormon church a body of people, as we believe there are, who have no more faith in this idea of polygamy than any Senator who hears me has, as a fact, and who wish to discourage it and who wish to emancipate themselves from the tyranny of this hierarchy that now has its foot on their necks, there will be a chance for them to assert themselves.

Now I come back to the precise point that we have before us; the essential substance of this bill is that the distinction between the power of the people to regulate political rights and their power to deny civil rights is as plain as anything can be. In the case of the constitution of every State in this Union almost, there has always been the provision that no man who is an idiot, a pauper, or a lunatic shall be entitled to vote; and that question of whether he is entitled to vote is not submitted to a judicial tribunal to decide whether he is a pauper or an idiot; but it is decided in the first instance (subject, as in every case, and as it is here, to an appeal to a judicial tribunal) by the political authority of the State in which the question arises. That has existed in, I presume, every State constitution. Upon what principle does it stand? It stands upon the principle that the body of the people—and that for the Territories is the Congress of the United States and nobody else, for we might abolish them to-morrow—have the right to determine who shall exercise a political franchise as distinct from a private or civil right.

The Supreme Court of the United States, in the woman suffrage case, have recognized and affirmed exactly the same proposition that the right to vote or to hold office is not an inherent right of a citizen, but it is a conventional right dependent upon

the will of the majority of the community in which the right is claimed to exist. That is just what this does.

The Committee on the Judiciary recognize to the fullest extent all that has been said touching the right of every man and every woman to believe precisely what he or she likes. He may be an infidel and believe in nothing; he may be of any sect; he may believe that a hundred wives or no wives are right; he may believe in horse-stealing or whatever he likes; but, when it comes to what he has to do in the government of the country, it is a different thing. The horse-thief may not sit on the jury where a horse-thief is on trial, if he says on being asked that he thinks horse-stealing is a Christian duty; and yet some people have talked to us the idea that if you exclude horse-thieves from a jury that is to try a horse-thief you have packed the jury. That is not the case unless it be that every jury is packed in a sense. As I said some time ago, each jury, like every other agency of government, must believe in the law that they are called upon to enforce; otherwise the law itself becomes a mere mockery, and trial by jury a sham. You must, in that sense, pack it upon one side or the other; and upon which side? If you are to have a government at all, you must pack it on the side of the people who believe in the law that they are sworn when they take their places in the jury-box that they will faithfully and impartially execute. That has existed without statute at the common law; it is the common law now; it is the law of the United States in Utah now, and this jury clause that we have in this bill only puts into form and provides convenient methods of carrying out exactly what the Supreme Court of the United States has decided that the law now is.

This is not a question of religion at all—for there is no clause in the bill that can be tortured into affecting any man's faith; but there are clauses in the bill that deal with his conduct; and it is an essential principle of every organized community that conduct, be it of faith or of practice without faith, is subject to be dealt with by the authority of that community. Nobody questions that; and, when you deprive the pauper in Illinois or Georgia or Vermont of the right to vote, you do not say that he must be convicted of pauperism by a judicial trial in advance. You say that the political authority must decide in the first instance whether he is a pauper or not. If that political authority decides wrongfully against him, and his vote turns the question of how that election is to go, the judicial authorities come into play and put the right man in his place. That is exactly the effect of this bill.

Polygamy is not alone an evil in itself, but it happens to be an inherent and controlling force in a society which is the most intense and anti-republican hierarchy, as well as the most thoroughly organized and systematic government that has ever existed on the face of the earth. The Church of the Latter-day Saints, a corporation organized under the authority of law, controls in every respect every step in the territorial operations of that community. The three first presidents, as they are called—but I believe that the last one of those is the absolute ruler in point of fact—control the destiny and the fate of that people: polygamists, Mormons who are not polygamists, and Gentiles. Is that republican? Can you tolerate in the heart of this continent of republics the building up of a State of that character? If you cannot tolerate it, and have the power to dispose of it, are you willing to exert that power? This bill is only one step to that end. The Committee on the Judiciary have under consideration other and further measures, which I hope we shall report in due time, which will make up and supplement this measure, to eradicate, as far as just government may, not any man's faith or opinion, but to bring the political community that exists within the boundaries of that Territory into its republican relations with the great Republic that surrounds it. That is all.

You can always find reasons and flaws and difficulties for not doing a thing if you do not wish to do it, and the Committee on the Judiciary do not suppose that this measure alone is sure to have the effect that some people imagine it is to have; but we hope that this Senate, before it is through with this business, will do all—and that will be sufficient—that the absolute political power of this Government has within its reach to accomplish the purpose, not of breaking down any man's faith or his opinions, but making the practice of the government of the Territory of Utah and of its inhabitants conformable to what is essential to the republican safety of every one of the States of this Union and the republican safety of them all under the Union of the United States.

The bill was passed *viva voce,* the passage being greeted with applause in the galleries. It was passed by the House on March 13 by a vote of 199 to 42. It was approved by President Arthur on March 23, 1882.

The manner in which the law was executed during the first few years after its passage may be gathered

from the reference to it in the first annual message of President Cleveland, December 8, 1885.

In the Territory of Utah the law of the United States passed for the suppression of polygamy has been energetically and faithfully executed during the past year, with measurably good results. A number of convictions have been secured for unlawful cohabitation, and, in some cases, pleas of guilty have been entered and a slight punishment imposed upon a promise by the accused that they would not again offend against the law, nor advise, counsel, aid, or abet, in any way, its violation by others.

The Utah Commissioners express the opinion, based upon such information as they are able to obtain, that but few polygamous marriages have taken place in the Territory during the last year. They further report that, while there cannot be found upon the registration lists of voters the name of a man actually guilty of polygamy, and while none of that class are holding office, yet at the last election in the Territory all the officers elected except in one county were men who, though not actually living in the practice of polygamy, subscribe to the doctrine of polygamous marriages as a divine revelation and a law unto all higher and more binding upon the conscience than any human law, local or national. Thus is the strange spectacle presented of a community protected by a republican form of government to which they owe allegiance, sustaining by their suffrages a principle and a belief which sets at naught that obligation of absolute obedience to the law of the land which lies at the foundation of republican institutions.

There should be no relaxation in the firm but just execution of the law now in operation, and I should be glad to approve such further discreet legislation as will rid the country of this blot upon its fair fame.

Since the people upholding polygamy in our Territories are reënforced by immigration from other lands, I recommend that a law be passed to prevent the importation of Mormons into the country.

The recommendation of the President was not acted upon.

However, on March 3, 1887, a law was enacted to terminate the Mormon corporations known as the Perpetual Emigrating Fund Company and the Church of Jesus Christ of Latter-Day Saints, which was upheld

by the Supreme Court in 1890, the charters of the corporations being forfeited and their property, amounting to $800,000, being escheated. Upon the decision of the court, Brigham Young's successor to the presidency of the church, Wilford Woodruff, issued a manifesto in which he advised the Latter-Day Saints to "refrain from contracting any marriage forbidden by the law of the land."

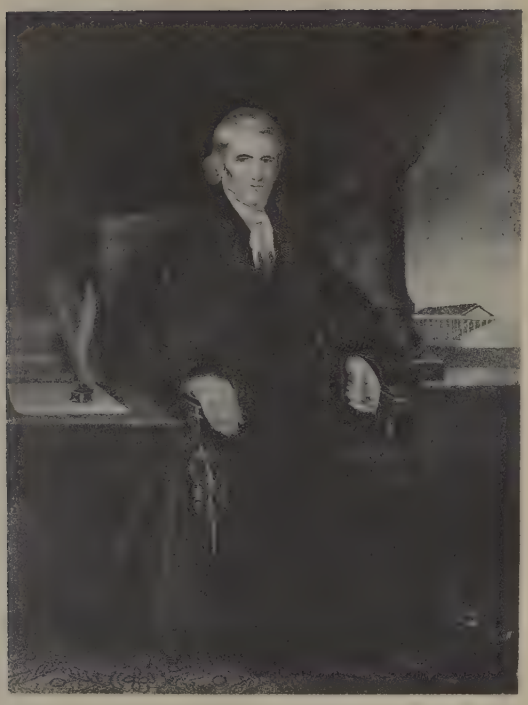
President Harrison, in his second annual message (December 1, 1890), commented upon this manifesto as follows:

The advice of President Woodruff has attracted wide attention, and it is hoped that its influence will be highly beneficial in restraining infractions of the laws of the United States. But the fact should not be overlooked that the doctrine or belief of the church that polygamous marriages are rightful and supported by Divine revelation remains unchanged. President Woodruff does not renounce the doctrine, but refrains from teaching it, and advises against the practice of it because the law is against it. Now, it is quite true that the law should not attempt to deal with the faith or belief of anyone; but it is quite another thing, and the only safe thing, so to deal with the Territory of Utah as that those who believe polygamy to be rightful shall not have the power to make it lawful.

Utah was admitted into the Union on January 4, 1896, with the following articles, among others, in its constitution:

Polygamy is forever prohibited.

Perfect toleration in religious matters is guaranteed, and the separation of church and state is decreed.



GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764–1765) to the Debates in Congress at the Close of the Taft Administration (1912–1913)

EDITED BY

MARION MILLS MILLER, LITT.D. (PRINCETON)

Editor of "The Life and Works of Abraham Lincoln," etc.

IN FOURTEEN VOLUMES

EACH DEALING WITH A SPECIFIC SUBJECT, AND CONTAINING A SPECIAL INTRODUCTION BY A DISTINGUISHED AMERICAN STATESMAN OR PUBLICIST

VOLUME NINE

DEPARTMENTS OF GOVERNMENT

With an Introduction by WILLIAM HOWARD TAFT, LL.D.
Ex-President of the United States

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INTRODUCTION

The Prime Object of Government[1]

THE history of the world seems to show that our form of government is more enduring and satisfactory than any other. We began as a small Union of thirteen States strung along the Atlantic coast, of three million of people, and under the same Constitution we have enlarged to be a world power of forty-eight sovereign States, bound into one, of more than ninety millions of people, and with a humane guardianship of ten millions more—nine in the Pacific and one in the Atlantic. We have fought, beginning with the Revolution, four foreign wars, and we have survived a Civil War of the greatest proportions recorded in history, and have united the battling sections by an indissoluble tie. From our body politic we have excised the cancer of slavery, the only thing protected by the Constitution which was inconsistent with that liberty the preservation of which was the main purpose of establishing the Union. We have increased our business and productive activities in every direction; we have expanded the development of our natural resources to be continent wide, and all the time we have maintained sacred those inalienable rights of man, the right of liberty, the right of privote property, and the right to the pursuit of happiness.

For these reasons we believe in popular government. Government is a human instrumentality to secure the

[1] From an address delivered at Toledo, O., on March 8, 1912.

greatest good to the greatest number and the greatest happiness to the individual. Experience, and especially the growth of popular government in our own history, have shown that in the long run every class of the people, and by that I mean those similarly situated, are better able to secure attention to their own welfare than any other class, however altruistic the latter class may be. Of course this assumes that the members of the class have reasonable intelligence and capacity for knowing their own rights and interest. Hence it follows that the best government, in the sense of the government most certain to provide for and protect the rights and governmental needs of every class, is that one in which every class has a voice. In recognition of this the tendency from earliest times in our history has been the enlargement of the electorate to include in the ultimate source of governmental power as many as possible of those governed. But even to-day the electorate is not more in number than one-sixth of the total number of those who are citizens of the nation and are the people for whom the Government is maintained, and whose rights and happiness the Government is intended to secure. More than this, government by unanimous vote of the electorate is impossible, and therefore the majority of the electorate must rule.

We find, therefore, that government by the people is, under our present system, government by a majority of one sixth of those whose rights and happiness are to be affected by the course and conduct of the Government. This is the nearest to a government by the whole people we have ever had. Woman's suffrage will change this, and it is doubtless coming as soon as the electorate can be certain that most women desire it and will assume its burden and responsibility. But, even then, the electorate will be only a one-third part of the whole people. In other words, the electorate is a representative governing body for the whole people for which the Government was established, and the controlling majority of the electorate is a body still less numerous. It is thus apparent that ours is a Government of all the people by a representative part of the people.

Now, the object of government is not only to secure the greatest good to the greatest number, but also to do this as near as may be by securing the rights of each individual in his liberty, property, and pursuit of happiness. Hence it was long ago recognized that the direct action of a temporary majority of the existing electorate must be limited by fundamental law; that is, by a constitution intended to protect the individual and the minority of the electorate and the nonvoting majority of the people against the unjust or arbitrary action of the majority of the electorate. This made it necessary to introduce into the Constitution certain declarations as to the rights of the individual which it was the purpose of the whole people to maintain through the Government against the aggression of any temporary majority of the electorate and to provide in the same instrument certain procedure by which the individual might assert and vindicate those rights. Then, to protect against the momentary impulse of a temporary majority of the electorate to change the fundamental law and deprive the individual or the voting minority or the nonvoting majority of inalienable rights, the Constitution provided a number of checks and balances whereby every amendment to the Constitution must be adopted under forms and with delays that are intended to secure much deliberation on the part of the electorate in adopting such amendments.

I cannot state the necessity for maintaining the checks and balances in a constitution to secure the guaranty of individual rights and well-ordered liberty better than by quoting from Daniel Webster. He said:

> The first object of a free people is the preservation of their liberty; and liberty is only to be preserved by maintaining constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretence of a desire to simplify government. The simplest governments are despotism; the next simplest, limited monarchies; but all republics, all governments of law, must impose numerous limitations and qualifications of authority and give many positive and many qualified rights. In other words, they must be subject to rule and regulation. This is the very essence of free political

> institutions. The spirit of liberty is, indeed, a bold and fearless spirit; but it is also a sharpsighted spirit; it is a cautious, sagacious, discriminating, far-seeing intelligence; it is jealous of encroachment, jealous of power, jealous of man. It demands checks; it seeks for guards; it insists on securities; it intrenches itself behind strong defences, and fortifies itself with all possible care against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and therefore it will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic purpose come along with it. Neither does it satisfy itself with flashy and temporary resistance to illegal authority. Far otherwise. It seeks for duration and permanence. It looks before and after; and, building on the experience of ages which are past, it labors diligently for the benefit of ages to come. This is the nature of constitutional liberty; and this is *our* liberty, if we will rightly understand and preserve it.
>
> Every free government is necessarily complicated, because all such governments establish restraints, as well on the power of government itself as on that of individuals. If we will abolish the distinction of branches, and have but one branch; if we will abolish jury trials, and leave it all to the judge; if we will then ordain that the legislator shall himself be that judge; and if we will place the executive power in the same hands, we may readily simplify government. We may easily bring it to the simplest of all possible forms—a pure despotism. But a separation of departments, so far as practical, and the preservation of clear lines of division between them, is the fundamental idea in the creation of all our constitutions; and, doubtless, the continuance of regulated liberty depends on maintaining these boundaries.

Mr. Justice Miller, of Iowa, was one of the greatest jurists that ever adorned the Supreme Bench of the United States. Speaking for that great court in the case of Loan Association *v.* Topeka (20 Wall., 655), in a case presenting the question of the constitutionality of a law imposing a general tax on all citizens to pay for a factory to be run and owned by a private company, after referring to the act as "an invasion of private right," he said:

> It must be conceded that there are such rights in every free government beyond the control of the State. A government

which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic repository of power is, after all, but a despotism. It is true it is a despotism of the many—of the majority, if you choose to call it so. But it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

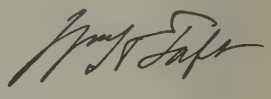
The theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power, which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. . . .

To lay with one hand the power of the Government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

I agree that we are making progress and ought to make progress in the shaping of governmental action to secure greater equality of opportunity, to destroy the undue advantage of special privilege and of accumulated capital, and to remove obstructions to the pursuit of human happiness; and in working out these difficult problems we may possibly have, from time to time, to limit or narrow by amendment the breadth of constitutional guaranties in respect of property and other rights. But, if we do it, let us do it deliberately, understanding what we are doing, and with full consideration and clear weighing of what we are giving up of private right for the general welfare. Let us do it under circumstances which shall make the operation of the change uniform and just, and not depend on the feverish, uncertain, and unstable determination of successive votes on different

laws by temporary and changing majorities. Such a proposal as this is utterly without merit or utility and, instead of being progressive, is reactionary; instead of being in the interest of all the people and of the stability of popular government, it is sowing the seeds of confusion and tyranny.



CHAPTER I

The President's Power of Removal

[TENURE-OF-OFFICE BILL]

Debate in the First Congress on the President's Power of Removal: Chief Speakers, John Lawrence [N. Y.], James Madison [Va.]—President Johnson Removes Radicals from Office—George H. Williams [Ore.] Introduces in the Senate Bill to Regulate Tenure of Civil Offices; It Is Committed, and Reported Again by George F. Edmunds [Vt.]—Debate: Timothy O. Howe [Wis.], Sen. Edmunds, Charles R. Buckalew [Pa.], Sen. Williams, George G. Fogg [N. H.], William P. Fessenden [Me.], Reverdy Johnson [Md.], Jacob M. Howard [Mich.], John Sherman [O.], Thomas A. Hendricks [Ind.], Edgar Cowan [Pa.], Frederick T. Frelinghuysen [N. J.], Charles Sumner [Mass.], James A. McDougall [Cal.], James R. Doolittle [Wis.]; Bill Is Passed—Thomas Williams [Pa.] Moves in the House to Include Cabinet Among Officers Affected; Motion Adopted, and Bill Passed—Senate Rejects House Amendment; Conference Committee Reports Bill Continuing in Office President Lincoln's Cabinet Appointees Unless Removed with Consent of Senate; It Is Passed; Vetoed by the President, It Is Passed Over the Veto.

IN organizing the departments of Government during the first year of Washington's Administration it became an important subject of inquiry in what manner, or by whom, the officers of these departments could be removed from office. This was a question as new as it was important, and was applicable to all other officers of Executive appointment. It depended on the construction of the Constitution itself, and occasioned long and learned debates, as well as great divisions in both branches of the national legislature. As the doors of the Senate were not open the debates of that body on this and other questions are not known. Some of the members in the House of Representatives were of opinion that the officers could not be removed without impeachment. The principal ques-

tion, however, on which Congress was divided was whether they were removable by the President alone or by the President in concurrence with the Senate. A majority, however, in both Houses decided that this power was in the President alone.

When the question first came before the Senate, on the bill establishing the Department of Foreign Affairs [State Department] that body was equally divided, and the casting vote was given by the Vice-President. On a subsequent bill there was a majority of two in favor of the same construction. That it might not be considered a grant of power by Congress, the law was so worded as to imply a constitutional power already existing in the President, the expression being, "that whenever the Secretary shall be removed by the President of the United States," etc.

Timothy Pitkin, in his "Political History of the United States," presents the following summary of the debate in the House on the question:

The President's Power of Removal

House of Representatives, 1789

The opponents of the measure urged, in the first place, that it was improper for the national legislature in this manner to give a construction to the Constitution; that it should be left with the judiciary, another coördinate department of the Government; or it should remain to be decided by the President and Senate, whenever the occasion occurred in which a decision should be necessary. In the second place it was said that this great and important power, by a fair construction of the Constitution, was in the President and Senate. It was an established principle, its opponents said, that the power of removal necessarily rested with those to whom was entrusted the power of appointment, except when there was an express restriction, as in the case of the judges, who held their offices during good behavior; and that the Senate had, in effect, an equal voice with the President in the appointment of officers when their

appointment was not by law vested in the President alone or in some other department of the Government, as no appointment could be made without the assent of that body. It was further said that, the Constitution being silent on the question, it was contrary to sound policy, as well as inconsistent with the principles of a free government, to give, by construction, such power to any one individual; and that it was liable to great abuses and would render officers entirely dependent on the will, perhaps the whim and caprice, of one man. Whatever confidence might be placed in the Chief Magistrate then at the head of the Government, equal confidence could not be expected in his successors. A concurrence of the Senate was as necessary and proper in the removal of a person from office as in his appointment.

The advocates for this clause in the bill agreed in its importance, and considered the genius and character of the Government itself, in no small degree, to depend upon it. In ordinary cases, they said, constitutional questions might be left with the Judiciary department without a legislative expression of opinion; but this case was of no ordinary character or magnitude—one which it would be difficult to bring properly before the courts. It was one on which it was highly proper that the legislature, particularly the House of Representatives, should express an opinion. This opinion, if assented to by the President and Senate, would put the question at rest. If left to be settled at a future time by the President and Senate a difference might arise between them which would create infinite difficulties and delays in the administration of the Government. They also contended that, by a fair construction of the Constitution, this power was in the President alone. It was a political axiom, they said, not to be disputed, that the legislative, executive, and judicial powers of government should be kept distinct, and blended as little as possible. By the Constitution the executive power was vested in the President; and the association of the Senate, in one executive function, was an exception to the general principle, and exceptions to general rules were

taken strictly. So, by the Constitution, all legislative power was vested in Congress; and the qualified negative given to the President was only a special restriction to this general power.

The power of appointment, they also said, was substantially in the President alone. He was authorized to nominate, and by and with the advice and consent of the Senate, *to appoint*. The President was the agent, and the Senate had only a negative on his agency.

Other parts of the Constitution were referred to in support of this construction. The President, they said, was directed to take care that the laws be faithfully executed; and it must have been the intention of the framers of the new system to give him power to an extent necessary for the accomplishment of that object. If an officer, once appointed, was not to depend on the President alone for his official existence it would be difficult to see how he could be answerable for a faithful execution of the laws.

It was urged with great force also that if the power of removal was divided between the President and Senate responsibility would be destroyed and the benefits expected from its exercise, in a great measure, lost. Secrecy and despatch were often necessary to secure and preserve the public interest. Facts relative to the malconduct of an officer might come to the knowledge of the President, rendering an immediate removal indispensable, and the delay in convening the Senate might be fatal to the best interests of the community. In answer to the objection that this power would be liable to great abuse in the hands of an individual it was said that all power wherever placed was liable to this objection; but that the mode of choosing the Chief Magistrate would insure the election of an individual of integrity as well as talents; and that the tenure of office would be as secure, and the liberties of the people as safe, in the hands of a President thus chosen as with the President and Senate.

With respect to removals from whim, caprice, or any unworthy motive, it was alleged that sufficient checks were provided against such a wanton abuse of

this power. The principal, if not the only, inducement for the removal of a meritorious officer would be to place some favorite in his room. The President, indeed, might remove, but he could not supply the vacancy without the assent of the Senate. The nomination of a successor would elicit inquiry in that body and produce a rejection of the favorite nominated to fill the vacancy.

It was also stated by some members, particularly by John Lawrence [N. Y.] and James Madison [Va.], that for such wanton abuse of power the President himself would be liable to impeachment and removal from office. Said Mr. Lawrence:

> "If the President abuse his trust, will he escape the popular censure when the period which terminates his elevation arrives? And would he not be liable to impeachment for displacing a worthy and able man, who enjoyed the confidence of the people?"
>
> "The danger, then," MR. MADISON observed, "consists in this: The President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints to operate to prevent it? In the first place, he will be impeachable by this House, before the Senate, for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."

A majority in both Houses decided that the power of removal was in the President alone.

This decision of a debatable constitutional question, says Mr. Pitkin, was of great importance to the new Government, giving a tone and character to the executive branch not contemplated, it is believed, by the framers of the Constitution. It greatly increased the influence and patronage of the President, making him the center around which the other branches of the Government revolve.

The President's power of removal was not contested again until the Administration of Andrew Johnson, who had angered his opponents in Congress by his use of Government patronage to secure support for his re-

construction policy. It was feared by the radicals that he might build up a party united "by the cohesive power of public plunder"—in the classic phrase coined at this time by Representative Samuel L. Warner [Ct.]—which might prove a serious obstacle in the way of their own projects. During the recess of the Senate, in 1866, the President had appointed a number of Administration Republicans to office, and the belief became general that, so soon as Congress should again adjourn, he would remove all the Federal officers throughout the Union who were not faithful to the Administration.

Against the unbroken practice of the Government for seventy-eight years the Republican leaders now determined to deprive the President of the power of removing Federal officers. Many were induced to join in the movement under the belief that it was important to test the true meaning of the Constitution in the premises, and that this could be most effectively done by directly restraining by law the power which had been so long conceded to the Executive Department. To that end George H. Williams [Ore.], on the first Monday of December, 1866, introduced in the Senate a bill "to regulate the tenure of civil offices." It was referred to the Committee on Retrenchment, and reported back with amendment by George F. Edmunds [Vt.], who thenceforward assumed parliamentary control of the subject.

> The first section of the bill provided that every person *except members of the Cabinet*, "holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to such office, shall be entitled to hold such office until a successor shall have been, in like manner, appointed and duly qualified, except as herein otherwise provided."
>
> The second section declared that "when any officer shall, during the recess of the Senate, be shown by evidence satisfactory to the President to be guilty of misconduct in office, or crime, or for any reason shall become legally disqualified or incapable of performing the duties of his office; in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office, until the next meeting of the Senate, and until

the case shall be acted upon by the Senate: and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case and the name of the person so designated to perform the duties of such office. And, if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But, if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease."

Tenure of Office

Senate, January 10-18, 1867

The bill came up for discussion on January 10, 1867. Timothy O. Howe [Wis.] wished to know why the Cabinet should be expected. Each of those offices was created by statute not for the personal benefit of the President but for the public service. The occupants should be independent of undue exercise of executive influence just as much as any other officer.

Senator Edmunds admitted the force of Senator Howe's contention, but said that the committee, after due consideration of the point, had concluded:

That it was right and just that the Chief Executive of the nation, in selecting these named secretaries, who, by law and by the practice of the country, and officers analogous to whom by the practice of all other countries, are the confidential advisers of the Executive respecting the administration of all his departments, should be persons who were personally agreeable to him, in whom he could place entire confidence and reliance, and that, whenever it should seem to him that the state of relations between him and any of them had become so as to render this relation of confidence and trust and personal esteem inharmonious, he should in such case be allowed to dispense with the services of that officer in vacation and have some other person act in his stead. It may happen that at some particular

time—some people may suppose that it has happened now—the Chief Magistrate for the time being ought not to be invested with such powers; but the committee have recommended the adoption of this rule respecting the tenure of officers as a permanent, systematic and, as they believe, an appropriate regulation of the Government for all Administrations and for all time.

On the whole, it seemed best for the interest of the nation that the President should be allowed during a recess of the Senate to change his confidential advisers if it should appear to him to be fit, subject to that general responsibility which every officer must be held to to the public and to the Senate when they meet again.

Senator Howe insisted on his point. The greater the importance of officers the greater was the need that their tenure of office be regulated by law. He denied to the Cabinet the right to the designation of "confidential advisers of the President."

They are the servitors of the country; they are placed there for the benefit of the people; and it is no more necessary that they should be on confidential terms with the President than that they should be on confidential terms with the representatives of the people. It is very true it may happen at some juncture that the head of a department may be on unfriendly terms with the head of the executive department; it may make their personal intercourse disagreeable to one or the other; but such contingencies happen in the administration of public affairs in other countries. I believe no attention is paid to the question whether a minister of Great Britain is personally agreeable or disagreeable to the sovereign. He is put in office because he is agreeable to the people, and he holds office no longer than he is agreeable to the representatives of the people; and, whatever may be the personal inclinations of the sovereign, he leaves office whenever he proves dissatisfactory to the people. Shall American executive officers be less responsible to the people than British officers?

Senator Howe therefore moved to strike out the exception of the Cabinet officers from the provisions of the bill.

Charles R. Buckalew [Pa.] asked whether Senator Howe "would have the head of the Executive Depart-

ment hampered and worried by political enemies in his Cabinet, held there by a political opposition in the Senate?"

Senator Howe denied that the Cabinet was "the President's Cabinet" in law, and claimed that it should not be so in fact.

Its members are to serve the people, and every duty prescribed to each one of those officers is prescribed by law; and there is no duty prescribed by law to any one of them that they may not execute just as faithfully and just as ably when not in accord with the President as when in accord with the President; and, unless I am greatly mistaken, there is no duty devolved by the Constitution or by law upon the President that he may not discharge just as well whether his Secretary of State, or his Secretary of the Treasury, or any other member of the ministry, or all other members of the ministry disagree with him or not. It is to enable him to exert powers and influences not given to him by the Constitution or by law that it is thought to be essential that he should have control of the tenure of these heads of departments; and it is precisely because you cannot give him control of the terms of these officers without giving him powers and influences which the Constitution never designed that he should have that I object to leaving that control in his hands.

Senator Edmunds enforced his view that the President should have the power, during a recess of the Senate, to dismiss a Cabinet officer who opposed him, by the query that, if he have not this power, when Congress reassembles who is to be reproached for the derangement of public business?

Senator Howe submitted that the power of suspension granted in the bill fully covered the point.

Senator Williams thought the exception of Cabinet ministers from the general rule was of no practical consequence, since, according to the unvarying practice from the formation of our Government, the President had only to suggest the retirement of one of his council to bring it about. The chief reason why he had made the exception in the bill was because of the responsibility of the President for the acts of the departments.

This bill undertakes to reverse what has heretofore been the admitted practice of the Government; and it seemed to me that it was due to the exalted office of the President of the United States, the Chief Magistrate of the nation, that he should exercise this power; that he should be left to choose his own Cabinet, and that he should be held responsible, as he will be, to the country for whatever acts that Cabinet may perform.

George G. Fogg [N. H.] asked Senator Williams if he believed that the President could be impeached for an act of a Cabinet officer, except where the President personally directed it.

Senator Williams replied in the negative. However, he put this case to the Senator:

Take the condition of the country during the late war; suppose the orders of the President of the United States, upon whom devolved the responsibility of the prosecution of that war, who is made by the Constitution commander-in-chief of the armies, and is therefore responsible to the country, had been disobeyed by the Secretary of War; and suppose the Secretary of War had set up an independent government, if I may so express myself, and undertaken to manage the armies of the United States without any respect to the wishes of the President; then there would have been a difficulty at once; the efficiency of the Administration would have been practically destroyed.

Senator Howe.—The President could suspend him under the second section.

Senator Williams.—That suggestion is sufficient, it seems to me, to answer the argument made by the Senator from Wisconsin. If any member of the Cabinet may be temporarily removed and another man put in his place to discharge the duties of the position until the next session of the Senate, why not let the President remove him?

Senator Howe.—Why not in all cases?

Senator Williams replied that something was due to the dignity of the office.

Notwithstanding the office may not be administered as it ought to be, it is well enough for the American people to maintain some little respect for the office of President of the United States.

William P. Fessenden [Me.] supported Senator Williams's view. He thought that naturally no man of a mental and moral character which fitted him to become a member of the Cabinet would stay in it against the will of the President "unless he was controlled by a sense of overruling public duty in a very dangerous and peculiar time."

He regretted that it was necessary to legislate at all on the subject of removals from office. Some time ago he had opposed putting a "rider" of the nature of the present measure upon an appropriation bill.

I stated at that time that I thought action would be required on our part if the President should go so far as to disregard the power of the Senate: that is, if he sent a nomination to the Senate and that nomination should be rejected or not confirmed, and then, after the Senate adjourned, he should appoint the same man again, and this should be recognized as the practice, the result would be that the Senate would lose entirely the power conferred upon it by the Constitution to have a voice in the appointment of officers. If I am not much mistaken, the honorable Senator from Maryland [Reverdy Johnson] said that that would be a decided outrage on the Constitution.

SENATOR JOHNSON.—I say so still.

Senator Fessenden, concluding, said that, despite his former opposition to limiting the President's power of removal, he believed that a contingency had now arisen where such limitation should be made. He believed, however, that exception should be made in the case of removals of Cabinet officers.

Senator Howe, on the question of the "dignity of the presidential office," drily remarked that he had not found that the respect of the American people for that high office was very much affected by the manner in which the occupant handled the patronage which lay in his hands.

Senator Fessenden asked Senator Howe if he expected the present incumbent to remain in his place always.

SENATOR HOWE.—I am not debating this bill, Mr. President, with the slightest reference to the person of the present incumbent.

SENATOR FESSENDEN.—The Senator will excuse me; he is just putting it precisely upon that ground, speaking of this President, as an argument, peddling offices.

SENATOR HOWE.—I beg the Senator's pardon. I made no allusion to the present President of the United States in the world. I do not undertake to say that the present President of the United States has not indulged somewhat in that habit which I call peddling offices; but I am very far from saying that he is the first one or the worst one who has done it. It is long since that became rather too much the habit of American Executives.

Senator Howe denied that the Constitution intended the Cabinet officers to be the President's "confidential advisers."

I think the whole practice of the President's consulting his ministers has grown out of this clause in the Constitution. Referring to the President, it says:

"He may require the opinion in writing of the principal officers in each of the Executive Departments upon any subject relating to the duties of their respective offices."

From which I understand, not that the President may convene all his Cabinet officers in secret conclave and hold a whispered consultation, from which the world is excluded, upon any measure of the Administration or of the Government; but that on any measure touching the interests of the country he may ask, not the private, but the written opinion of the secretary of the department particularly concerned.

Senator Williams asked Senator Howe if this clause of the Constitution did not assume that the President is responsible for the act concerned, and if asking for advice was not as to how he should *perform* the act, thus making the Cabinet officers his constitutional advisers.

SENATOR HOWE.—It does not follow that because he asks the opinion of the secretary he is bound to follow it. If his secretary is unfriendly to him, there is no reason in the world why he cannot criticize the advice the secretary gives. It does

not follow because the secretary is personally unfriendly that he will advise in reference to a public measure dishonestly, for then he damns himself just as surely as he prejudices the President.

It is said that it is essential that there should be harmony, not merely between the President and his ministers, but between the different ministers. Essential to whom? Doubtless essential to the President that he should have the personal support of all his ministers; but is it more essential to the nation, I ask you, that there should be harmony between the ministers and the President than that there should be harmony between the ministers and the people? The Constitution did not provide any such thing. If it had wished any such thing, it would have said the President may select for his confidential advisers such men as he pleases. The Senate has no business to have any voice in the confirmation of Cabinet officers if it is the purpose of the law to make them the echo of the President.

If the view of the Senator from Maine is correct, it is not only fatal to my amendment, but it is fatal to the whole bill; it is fatal to the bill as originally introduced, and it is fatal to the whole amendment reported by the committee; for he insists not merely upon the right of the President to remove a Cabinet minister who is obnoxious to him, but insists upon the right of a Cabinet officer to remove every one of his subordinates for the same reason. It happens, Mr. President, that you have no officer in the public employment who is not either directly the subordinate of the President or directly the subordinate of one or the other of his ministers; and, if the Senator from Maine is correct in his theory, you ought to abandon this bill altogether and say, as the practice is, but as the law never was and never ought to be, that the President may remove his Cabinet ministers for such reason as is satisfactory to him, and that they may remove in turn every one of their subordinates; for this is a bill, not, as the Senator from Maine seems to suppose, to vindicate the right of the Senate to confirm the nominations—the main purpose of this bill is to regulate the tenure and to restrict the right of the President to remove from office men who have been confirmed.

It was said by the Senator from Oregon, it was repeated by the Senator from Maine, that in practice this will have very little effect, because in practice it is said if a Cabinet minister comes to know that he is distasteful to the President he will not wait for an act of removal, but will retire voluntarily. That such cases have happened in the history of the country I sup-

pose is true; but I suppose it is true because you have abandoned the protection of these offices and the protection of these officers, because you have surrendered to the President of the United States this control over them. I hold, on the contrary, that the secretary who leaves an office created by law for the public good, not for the President's good, to which he has been appointed by the President and the Senate, and leaves that post of duty merely because the President, one individual of the great number that have to combine in making the appointment, intimates a wish that he should leave, is derelict to his duty and cannot be recommended as a faithful public servant. He has no more right to do it because the President may intimate such a wish than he has to do it because any one Senator who voted upon his confirmation asks him to do it.

Senator Johnson explained his position on the President, during a recess of the Senate, reappointing an officer who had been antecedently rejected by the Senate.

By the very terms of the Constitution the commission which the President is to issue in an appointment during the recess continues until the last day of the succeeding session of the Senate. The President, under this authority, may dispense with the action of the Senate altogether; for, if the commission which he gives to the officer continues until the last day of the session, there is then, when Congress adjourns, of course a vacancy in that office happening in the recess which he is to fill; and he may go on from time to time appointing during a recess so as to avoid entirely the authority and the controlling authority which the Constitution intended to give to the Senate of the United States over such appointments as the President is directed to send in to the Senate for confirmation.

But it is only for the President to say—perhaps all the Senate are not aware of it—that in what he has done in cases of this description he has but followed the example of his predecessors; and that example was in its origin supported, and, in the cases where it has been followed since, it has been supported by the opinions of the several Attorneys-General who happened to be in office at the time the instances occurred. Those Attorneys-General were, I think—at least I only recollect those—Mr. Wirt, Mr. Taney, Mr. Cushing, Mr. Crittenden, Mr. Mason, and I believe three or four others. The question was not submitted to me when I was an incumbent of that office; but I had occasion to say to the President [Taylor] at

that time that I certainly should not give that opinion, except upon the authority of the precedent, and, if I yielded to that authority, I should say that as an original question the law was really different.

The President has in some cases, I know—there are several nominations here that fall within that class—appointed during the recess persons whom he had before appointed during an antecedent recess, and who, upon being nominated to the Senate at the last session, were rejected. There may be cases in which the President would be justified in doing that, because of the particular circumstances of the case. He may be satisfied that the propriety of confirming the nomination was not brought entirely before the Senate, because all the facts which might exist in relation to the appointee were not before them. What I mean to say is that, in my judgment (and it is not a judgment recently formed, and it is one having no reference to the conduct of the present President for the time being, but it is an opinion long since formed), that a practice of that kind is altogether at war with the spirit of the Constitution, because it enables a President to avoid entirely the authority which the Constitution intended to give the Senate of the United States over such appointments as are to be made only by their consent.

But, upon the question of the power of removing officers, different considerations govern me. I believe it was at the first session of the first Congress—certainly at the time when the Treasury Department and the State Department were organized—that it became a subject of controversy in both branches of Congress whether the President had a right to remove without first consulting the Senate. A great many of the best men of that day thought that he had not; a great many of the lights that have adorned this Chamber since then thought that he had not the power; but, from the time it was settled by a majority of one, I believe, that majority being the casting vote of the Vice-President, up to the present time, it has not been seriously questioned that the President has the right to remove under the Constitution. Mr. Webster discussed the question during the presidency of General Jackson with the ability which marked all his efforts on this floor or anywhere else; but he offered no remedy; and every President from the time of General Washington up to the present time has exercised the power as one in his judgment clearly vested in him. I think he has the power.

But Mr. Madison, in the debate when the question was originally settled to which I have referred, stated, and I think

stated very properly, that that power to remove, which he held to be a clear power, might be so abused as to furnish a just cause for impeaching the President; but in after times a removal for such a purpose as Mr. Madison intimated would be a just ground for an impeachment was held to be no ground for impeachment at all, or not ground of censure. The most striking cases that have occurred during our existence as a nation were those that occurred, or one particularly which occurred, during the presidency of General Jackson. The Senator will remember that under the charter of the Bank of the United States the public moneys of the United States were to remain on deposit with that institution unless they were removed by the Secretary of the Treasury. I thought then, and think now, that it was the purpose of Congress in passing that charter to take from the President the power in that case to interfere with the duty which the section imposed upon the Secretary of the Treasury; but the President decided otherwise, and he actually removed the incumbent [Louis McLane]. The Senate will see that that case presented the strongest one that can be imagined upon which to bring before Congress and bring before the courts of the country the question of the President's power to remove. The bank had an interest so deep that her safety depended upon the reversal of that authority. The public moneys being withdrawn from her vaults, the credit of the institution almost at once fell, or everybody saw that it must fall in a very short time, as in the end it did.[1]

Senator Howe.—Did not the Senate concur in that change?

Senator Johnson.—No, sir; or, rather, it concurred in the way I am about to state. The bank, therefore, had a remedy, a clear remedy, provided she had a case, and she had a clear case if the President had no authority to force a removal of the deposits by the Secretary. She might have refused to pay over the deposits, and that would have brought the question immediately before the tribunals. There was no military law in force then, and the only way in which the moneys could have been recovered from the bank by the Government would have been by a suit, and, if there was under the charter a contract between the bank and the Government which entitled the bank to hold on to the deposits until they were removed under the authority conferred upon the Secretary of the Treasury, it would have been a complete defence to the removal which was actually ordered, provided it was true, and had been so adjudged, that the President had no control over the deposits;

[1] See Volume XIII, chapter IV.

but the bank acquiesced, and I have every reason to believe that they took counsel of the ablest lawyers in the country.

The President removed the Secretary of the Treasury during the recess, and he appointed his then Attorney-General [Roger B. Taney]. Mr. Taney was nominated to the Senate and rejected; and, if I had been in the Senate, I should have voted to reject him, upon the ground that, according to the opinion I held at that time and still hold, the President of the United States was guilty in that instance of a usurpation, of a violation of what I believed to be a contract between the Government and the bank in ordering himself his Secretary of the Treasury to remove the deposits, and, having removed him because he failed to comply with the order, appointing anyone to carry that out, or to act upon his own opinion of the propriety of that removal.

Senator Howe.—I ask if the statute creating the office of Secretary of the Treasury does not make the term dependent upon the pleasure of the President.

Senator Johnson.—That is so; but, if my friend will turn to the debates, he will find that it was said in a report made by Mr. McDuffie in the other House, and I think in a speech made by Mr. Adams, and in several of the speeches made upon the floor of the Senate upon the question, that, notwithstanding that the character of the bank constituted the Secretary of the Treasury the agent of Congress, and took him, therefore, out of the removing power of the President, Congress had the authority to place the public funds wherever they thought proper, and in the exercise of that admitted power they had placed the funds in the hands of the Bank of the United States, and had, with a view to secure themselves against loss, authorized the Secretary of the Treasury as their officer, not the officer of the President, if he should discover at any time that there was any danger of the Government losing the deposits to remove them.

I thought then that the President had no authority whatever over the subject, and that the ground assumed by McDuffie and others, and particularly in the debate in the Senate, was the sound one, that the Secretary of the Treasury was selected merely by virtue of his office as the most convenient and reliable person that Congress could select to watch over the funds of the Government, so as to see that at no time they should be endangered by the misconduct of the bank.

From that time until the last session the authority of the President to remove has never been questioned. The abuse of that authority is an entirely distinct question. The President is

not above Congress or above the people during his continuance in office. He is as liable to impeachment as any other officer. The only limitation upon the power of impeachment is that he shall be impeached only for high crimes and misdemeanors. If he commits a high crime or a misdemeanor in the sense in which those terms are used in the Constitution, the other branch of Congress may bring his case before the Senate in form of an impeachment, and this body has to act upon it.

The question whether the President has the power which he exercises in relation to removals from office or the power which he exercises in relation to the reappointment of officers who have been rejected by the Senate is one question. Whether he abuses either power is quite another question. And the question whether that abuse, if it be an abuse, is a high crime or a high misdemeanor is another question also upon which sooner or later, perhaps, if we are to be visited by such an affliction, the Senate may have to pass.

In my judgment, the President does go beyond the power conferred upon him when he reappoints a party whose nomination has been presented to the Senate and rejected, provided the case stands there and stands there alone. If he thinks proper to reappoint such a person, I think it is his duty to inform the Senate, when he sends that nominee in a second time for approval, what were the peculiar circumstances which caused him to disregard the opinion of the Senate. Any newly discovered facts, any evidence which he supposes would operate upon the judgment of the Senate, not in their possession at the time they voted upon the nomination in the first instance, he may produce; but to disregard the opinion of the Senate upon the exact case on which the Senate acted, in my judgment, is a clear abuse which must be remedied in some way or other, and the only way to remedy it is to reject those who may be nominated again.

John B. Henderson [Mo.] and John Sherman [O.].—And he may reappoint again.

Senator Johnson.—I know it, and it is for that reason that I said to him, and said to his Attorney-General at the last session, that cannot be justified by me or by the Senate, and certainly will not be by me, because that would be to avoid altogether the authority of the Senate; and, if he in the case supposed persevered in nominating and appointing again after one or more rejections, it would be, in my judgment, a very serious question whether that of itself would not constitute a ground for impeachment. If Mr. Madison was right in saying that

an abuse of the power of removal was a subject for an impeachment, *a fortiori* is the abuse of the power of appointment in a case in which, if it is submitted to, the whole authority of the Senate becomes a nullity and is set at defiance.

Now, a word upon the particular amendment offered by my friend from Wisconsin. I shall vote against the bill whether that amendment succeeds or not; but the effect of that amendment on the Government would be pretty much the same as the proposition which John C. Calhoun more than once advocated, and the late Senator Robert M. T. Hunter on this floor advocated, of a dual President.[1] It was said, and said with a force that must be obvious to us all, that the Executive, to be at all competent to the duties of such an office, must be a unit. There can be no divided executive. The proposition fell. It hardly received a vote.

Now, what is to be the result of the amendment suggested by my friend from Wisconsin? The President—you cannot get clear of that obligation; you cannot take from him that duty, and he cannot absolve himself from that duty—is to see that the laws are faithfully executed. How is he to do it? He cannot do it alone. This is a great Government of ours. Its transactions are not the ordinary transactions of a common counting-house. They extend not only over all our limits, but they go beyond the limits. We have negotiations with the rest of the world and transactions with the rest of the world, and we are likely to be called into a conflict, as we may discharge our duty properly or not toward the other nations of the world, at any moment.

Suppose he has a Secretary of State whom he does not trust, either because of some suspicion of want of integrity or a belief that he is incompetent to the duties, or a belief founded upon good evidence that he is for pursuing a foreign policy that will entangle us with other nations, and perhaps involve us in war and affect our commercial marine; what is he to do with him? Leave him in, says the honorable member; suspend him. What then? What is to become of the negotiations in the meantime? What will foreign nations say? "We have been negotiating with the United States upon the assumption that they had a policy; we have acted in good faith; we can only know the President; we know that under the Constitution the Secretary of State is but his mouthpiece; we know, and we have been taught to believe, that it is in his power to shape the foreign relations of the country; and now, when his secretary

[1] See Volume V, page 423.

has been shaping them, and he discovers that he is about, by the shape which he has caused them to assume, to involve us in trouble, he turns him out, and the whole negotiation is to begin again." And when he sends to the Senate his reasons for the suspension under this bill, as he will be obliged to do, and the Senate declares that they are unsatisfactory, this suspended officer becomes again the Secretary of State. What is the effect of that upon the President so far as the negotiation of which I have spoken is concerned? He ceases to have any control of it; he is a mere cipher; you might as well not have him. The organ, then, with foreign nations will be a Secretary of State of the Senate of the United States, and not the Secretary of State appointed to be an adviser of the President, and to carry out the policy which the President may think proper and may suppose should be adopted as between ourselves and foreign nations.

The observations which I have thus cursorily submitted to the Senate are equally applicable to any of the other departments. Take the office of the Attorney-General. The President finds he has made a mistake; he has appointed a man to that office who has proven his incompetency. What is he to do? Suspend the Attorney-General? Whom is he to get to take the place? I do not believe any man could be found fit for the place who would take the office which he is to hold only during the suspension of the previous incumbent, which may be for but three or four weeks, for the miserable consideration of the proportion of the salary of the office that he would get during those few weeks. Then what will the President do? He cannot get a competent officer under the provisions of this bill if my friend's amendment prevails. Then the public suffers, suffers sadly. Everything is placed in confusion. Nobody knows officially what the rights of the United States are; nobody knows officially what are the interests of the United States, and how they are about being sacrificed.

Then what becomes of the President? Why, in relation to that officer as well as in relation to the Secretary of State in the case supposed, he is made a cipher.

SENATOR FESSENDEN.—As the Senate is now.

SENATOR JOHNSON.—That is all wrong. I am not for making ciphers of any department of the Government, and, for the reasons which I stated just now, as far as concerns the reappointment of rejected officers, I am against it, because that is a practice which makes ciphers of us, and I am for claiming the whole of the power which the Constitution confers upon the

Senate or upon the Congress of the United States. All that I mean to say, in conclusion, is that it is all-important that the Executive shall be a unit. If he fails to perform his duty criminally, the remedy is in our own hands. If we unfortunately elect a man who is incompetent, not from wilfulness, but from incapacity, the remedy which the Constitution confers is in the succeeding election, and in no other way.

Senator Howe's amendment was rejected. Senator John Sherman [O.] then moved an amendment forbidding under penalty the Treasurer of the United States to pay the salary of an officer who had been rejected by the Senate, and punishing by heavy fine or imprisonment the signer of the reappointment of such officer.

Senator Edmunds said that this was impracticable.

They seem to have a system in the Treasury Department by which either it is everybody's business not to know whether any money is illegally paid out or else it is nobody's business in particular to know. Each officer in the routine takes the particular paper that he has as *prima facie* evidence of the propriety of the person receiving the money who is named in it.

Now, all that must be provided for. All that was considered by the committee who reported this bill with the amendment. It appeared to them that, inasmuch as the subject of this bill was one which was working a great practical change in the administration of the Government, one the propriety of which would be greatly doubted by many men, one the constitutionality of which would be greatly contested by many persons in the country, it would be better on the whole to report the simple proposition, first determining whether Congress should take any action on the subject, and provide simply by this bill for regulating the tenure of these offices and the method of removal and the substitution of other persons to the administration of them; and, if the Senate should think it fit to pass the bill and to provide for this general change in the administration of the Government, we would then prepare and report to the Senate immediately, and I promise the Senator that I will devote the skill I possess with his aid to such further legislation in the way of penalties and in the way of guarding the treasury against any evasion as should be necessary, when we decide that we will enter upon what may be called an experiment. Therefore it is that I hope my friend from Ohio will for the

present withdraw his amendment and let the sense of the Senate be taken upon the general question which is involved in the simple bill which we have submitted.

SENATOR SHERMAN.—I do not think the object of the Senator will be accomplished by this bill. There are no terms in it to enforce its provisions. There is nothing in this bill that is not already enacted with regard to other matters. Take the case I will put: we passed a law in February, 1863, declaring that no money should be taken from the Treasury of the United States to pay an officer who had been once rejected by the Senate. That is utterly disregarded, to my personal knowledge.

The attention of the executive officers was called to the law, and the President submitted it to the present Attorney-General, and the Attorney-General has given his opinion that the law is unconstitutional and that the President has the power. My amendment is so framed that if the President should make such an appointment, and authorize the payment of money under those circumstances, he would be guilty of a declared offence, a high crime and misdemeanor. If he should violate that law once or twice, the Senator from Maryland says that he would be willing to impeach him. I think it is important for us to declare this offence beforehand in a law fully considered, that we may punish him for its violation.

SENATOR EDMUNDS.—I will mention to my friend that that is precisely what the whole joint committee on full consultation thought it desirable should be done in supplementary legislation.

SENATOR SHERMAN.—It ought to be done in this bill.

SENATOR EDMUNDS.—We thought it more desirable, as a matter of expediency and convenience, to bring forward first the main measure as a separate proposition, and, if the main measure should meet the approval of the Senate, we would then immediately bring forward those additional measures which should completely protect it.

The committee adopted the suggestion of Senator Sherman and affixed to the bill the penalty which he advocated, and other penalties calculated to enforce the provisions of the measure. The amendments came up for discussion on January 11, 1867, and were adopted by a vote of 23 to 9.

Thomas A. Hendricks [Ind.] opposed the bill limiting the power which the Constitution broadly gives the

President to fill vacancies in his Cabinet occurring during the recess of the Senate.

Many have thought that that language means such a vacancy as takes place or begins during the recess; but the construction has obtained, and I suppose it is as settled as any construction well can be, that the words mean vacancies that may exist or be during the recess of the Senate. Where a vacancy exists during the session of the Senate, and is not filled before the adjournment, it has been understood and construed as a vacancy happening during the recess, and the President has uniformly filled such vacancies. If this be the proper construction of the Constitution, then there is no power to pass the section as it now stands.

But, sir, suppose that the Constitution does not forbid the legislation which is proposed; is it good policy to adopt it? Here is a period perhaps of some months during which the Senate may not be in session. The appointee of the President may not be agreeable to the Senate for that time; yet that appointee can only hold the office until the close of the next session; it is but a temporary appointment, and no great harm can take place or be suffered because a person holds office whose political views are not agreeable to the Senate for that length of time. What may be the consequences of the adoption of this section of the bill it is difficult for us to tell.

This section is framed as if, in case of a vacancy in any office, there is always provided by law somebody who may discharge the duties of the position; but I think, in point of law, that is not the case. It would be a very serious matter if in some of the districts the revenues, for instance, should not be collected.

JACOB M. HOWARD [Mich.].—I agree with the Senator from Indiana that the practical precedents of the Government lead to this interpretation of the Constitution, that it is competent for the President, during the recess of the Senate, to turn out of office a present incumbent and to fill his place by commissioning another. This has been, I admit, the practice for long years and many generations; but it is to be observed at the same time that this claim of power on the part of the Executive has been uniformly contested by some of the best minds of the country.

What is it, sir, to fill up a vacancy? The President and the Senate make the officer—give him his appointment. It is very true that the last act is to be performed by the President,

which is the issuing to the officer of a commission. Now, is it in accordance with the language used in the Constitution that one branch of the appointing power may create a vacancy? Is it according to the just and fair usage of language to say that the agent making the appointment may remove the incumbent and thus create the vacancy which by the terms of the Constitution is to "happen"? I suppose that when the framers of the Constitution used this language they used it in reference to the common law of England; and how by that law does a vacancy in an office "happen"; in other words, take place, come into existence? It happens, as we all know, by resignation, by death, by absolute inability to discharge the functions of the office; but it never is spoken of as happening in consequence of a removal from office by the executive power.

Then, sir, it is not in the power of the President to create such a vacancy by the appointment of a successor. The right of the Senate and the duty of the Senate is plain. An appointment proper cannot be made without consulting them and obtaining their consent. The country looks to them for their advice, for their opinion, for their interference, in order to secure suitable qualifications and to restrain the wayward exercise of this assumed power by the Executive whenever such a case shall exist; and it is beyond doubt that during the last year this power of removal has been exercised most wantonly and most injuriously in multitudes of cases, and greatly to the detriment of the true interest of the country. And the cases are almost innumerable in which the names of persons have been sent to us and put in nomination for offices, and those nominations rejected, and still, after the adjournment of the Senate, the President, in utter contempt of the opinions of the Senate, has proceeded to issue temporary commissions to persons thus rejected.

Sir, I believe there is no member of this body who will rise in his place and declare that under the Constitution it is competent for the President, after the rejection of such a nomination and during the succeeding recess of the Senate, to issue to that person a temporary commission; and why? Because it is too plain to every mind that in reference to the particular individual, the Senate having passed an unfavorable judgment, it was virtually forbidden that person to hold the office, and such a temporary appointment by the President is a complete contempt of the opinion of the Senate expressed in constitutional form.

Now, sir, I believe Congress have full power over this sub-

ject, and that it is our duty now to enact some statute which for the future shall restrain this wanton exercise of the power claimed by the President, and which, in my judgment, is forbidden by the Constitution. The country expects it and will not be content if we leave our seats at the present session without passing some such law.

The Senator from Indiana discovers an inconvenience arising from the construction of the Constitution for which I contend. Not only that inconvenience but a thousand others may possibly arise from this construction for which I contend; but the great question before us is: what does the Constitution itself mean, what is the true interpretation of its language?

If the power of the President in making these temporary appointments is, by the fair construction of the Constitution, confined to this particular period of time, then we must be content with it, and so must he. He cannot constitutionally issue a commission to fill a vacancy which did not occur during that exact period of time, mathematically ascertainable. If the vacancy occurred at any other time, it is not to be filled in that way; and I reject entirely the doctrine under which the Executive at present seems to be practicing, that it is perfectly immaterial at what time a vacancy takes place or occurs. That doctrine leads to the complete divestiture of the Senate of all its power over the question of appointments to office.

As to the broad, practical construction that has been given to the clause of the Constitution empowering the President to fill vacancies, I admit its force in legislation as well as law; but it is to be observed that this question of the power of removal has never been considered as completely at rest. The best minds in the country have all along doubted and disputed the unlimited right of the President to turn incumbents out of office in the recess. The example was first set to the country under the administration of General Jackson, who made an indiscriminate removal of all officers who were opposed to his policy, he going upon the ground, first probably suggested to him by the Albany regency, that "to the victors belong the spoils"; and I am free to say that I think no fact in our history has tended so strongly and effectually to corrupt the public mind, and, if I may so speak, the political morality of the nation, as this doctrine that "to the victors belong the spoils." It makes almost every man who gives a vote a scrambler and an aspirant for office, and "office," "office," from the dawn of day to the setting of the sun, is the cry of the hungry crowd besetting not only us here but every man throughout the country who is sup-

posed to exercise some influence in the bestowment of these precious articles. I hope this Congress will do something toward checking this spirit of office-seeking, fostered and upheld as it has been by this misconstruction and misuse of the Constitution of our fathers.

SENATOR JOHNSON.—There may be, as was the case during the War of 1812, negotiations going on between our minister and the minister of the nation with which we have been at war, upon which hangs the peace of the country, which is to decide whether the war is to be continued or is to terminate. We have a minister there to represent us upon that grave question, that vital question. He dies. On the 4th of March we hear for the first time of his death. The Senate has adjourned. As the law stood originally it could not meet again until the following December; so that during the whole period that is to elapse from the 4th of March in the year when we are advised of the death of our minister abroad and the succeeding first Monday in December that vacancy cannot be supplied.

SENATOR EDMUNDS.—I should like to ask the honorable Senator from Maryland whether the President has it not in his power to call the Senate together without a regular meeting of Congress, to advise him in respect to the filling of that very vacancy which may occur?

SENATOR JOHNSON.—Of course he can call the Senate together; but is he to call the Senate together on the happening of each such contingency as I have stated? The very provision of the Constitution which gives him the power to fill a vacancy necessarily shows that, in the judgment of the convention which framed the Constitution, it was not necessary to call the Senate together for any such purpose.

SENATOR EDMUNDS.—The Senator from Indiana [Mr. Hendricks] has stigmatized this measure as being one pushed forward for partisan purposes, reversing the settled construction of the Constitution, exposing the public service of the Government to great injury and inconvenience, in order that the political friends of the party in power may be protected or may be avenged if they have suffered anything, as the case may be. Now, sir, speaking for myself, and, I think, speaking for a majority of the party to whom I belong, I repudiate totally and absolutely any such accusation. The functions which we are endeavoring to protect will belong as much to the Senate (if that singular millennium should ever happen to come) when it shall be composed of a majority of the friends of the Senator from Indiana as they do as it is now constituted. We are not

legislating for men; this is a Government of laws, not of men. We are merely protecting the functions of a body to whom the Constitution has intrusted in part the execution of the laws in being a coördinate branch with the President and a concurring branch in the selection of all the agents of the Government. The bill is an attempt to restore the practice of the Government to its true original theory, and to preserve to this body, which Mr. Madison, one of the authors of the Constitution, declared to be the great anchor of the Government, some of those high powers and duties of which practically it has been stripped.

On January 14 Senator Williams, in the absence of Senator Edmunds, brought forward the bill again.

Edgar Cowan [Pa.] spoke:

I should like to ask the honorable Senator from Oregon how the Government is to get along in case the Senate refuses to confirm any of the President's nominations. I ask whether the purport of this bill is that the Government shall stop, cease to be, because of the want of concurrence between the two coördinate powers who have these appointments?

SENATOR WILLIAMS.—Mr. President, I hope the honorable Senator does not indulge in the supposition that the Senate of the United States will be more likely to act in a manner to overturn the Government than the President of the United States. There is nothing of that kind to be apprehended. Are the Senate to act upon the assumption that they themselves will arbitrarily and without reason reject nominations made by the President so as to prevent the administration of the Government? Are we not responsible to the people of the United States? Are we not as competent to decide upon the qualifications of a candidate for office as the President? Are we not as competent to determine whether a certain course will promote or prevent the administration of the Government as the President? Are we to surrender our power as the Senate of the United States and put it all in the hands of the President, upon the apprehension that we are incompetent to discharge our duty as Senators upon nominations made by the President? If the nominee be an unworthy or an incompetent man he will be rejected, and it will be the duty of the President to make another nomination in the place of the one rejected; and if he makes another nomination it is not at all probable that in many cases there will be a disagreement between the President

and the Senate; but, if it should so happen that in some few cases they should disagree and the duties of the office should devolve upon a deputy, or if the office should possibly be vacant for a short length of time, I say it is much better for the whole country than that this absolute and unlimited power over all the officers of this Government should be in the hands of any one man.

SENATOR COWAN.—The responsibility of the Senate to the people is not so direct as that of the President. If my honorable friend from Oregon has read very closely the history of the past he has found that the danger is far greater from a body irresponsible, because of its numbers, than it is from a single man. It also unfortunately happens for his theory here in this case that the President has the initiative. The office of the Senate is secondary; the office of the Senate is not to do good, it is to prevent mischief. It is not exactly in its nature active, but rather negative. The President appoints officers; the Senate advises and consents to those of them which are good; but it by no means follows from that that, if there is a disagreement, the President is to be deprived of his power of appointing officers, and it is too late in the day now to attempt to reverse the practice of seventy five years, when the Government has gone upon an entirely different theory and one which I may say resulted from the necessity of the case.

I think myself that this is revolution. I think this passionate conflict between two departments of the general Government, neither one willing to trust the other, neither one willing to abide upon the original foundation on which the Government was laid, is revolution. If it be revolution, the bill of the honorable Senator is perfectly in keeping. If it be so, and if it be necessarily so, that one or the other of these two powers or two parties or two factions (if you please to call them so) is to have the appointment of the officers and the regulation of the offices, revolution will bring about that result; but, if we are to remain where the Constitution put us, the President has that right, and the honorable Senator and his friends will have to submit to it. If you think you have the power to overturn it and have your way, where are you going to stop? The very moment you take that step you are obliged to take another and another and another; and what is the end of it? The end of it is that the Government will be crushed between the upper and nether millstone, and nothing else.

FREDERICK T. FRELINGHUYSEN [N. J.].—The other day the President commended to the Senate a long extract from Mr.

Justice Story against usurpation on the part of the legislature. Consequently he approves of the writings of that distinguished jurist. Now, I desire to read the Senate what that authority says on this very subject.

SENATOR COWAN.—What book does the honorable Senator read from?

SENATOR FRELINGHUYSEN.—I read from Story's "Commentaries on the Constitution"; not his extended commentaries, but a work based upon them and prepared for colleges:

"The power of appointment, one of the most important and delicate in a republican government, is next provided for. Upon its fair and honest exercise must, in a great measure, depend the vigor, the public virtue, and even the safety of the government. If it shall ever be wielded by any executive exclusively to gratify his own ambition or resentment, to satisfy his own personal favorites or to carry his own political measures, and still more if it shall ever interfere with the freedom of elections by the people, or suppress the honest expression of opinion and judgment by voters, it will become one of the most dangerous and corrupt engines to destroy private independence and public virtue which can assail the Republic. The framers of the Constitution were aware of this danger and have sedulously interposed certain guards to check, if not wholly prevent, the abuse of the power. The advice and consent of the Senate is required to the appointment of ambassadors, public ministers, as well as other high officers."

Then the learned jurist goes on to speak of the power of removal:

"If we connect this power of removal with another power, which is given in the succeeding clause, to fill up vacancies in the recess of the Senate, the chief guards intended by the Constitution over the power of appointment may become utterly nugatory. A President of high ambition and feeble principles may remove all officers and make new appointments in the recess of the Senate: and if his choice should not be confirmed by the Senate he may reappoint the same persons in the recess, and thus set at defiance the salutary check of the Senate in all such cases. The clause to which we have alluded is the clause giving the power to appoint in the recess. This is a provision almost indispensable to secure a due performance of public duties by officers of the Government during the recess of the Senate, and, as the appointments are but temporary, the temptation to an abuse of the power would seem to be sufficiently guarded if it might not draw in its train the dangerous consequences which we have before stated."

This is the opinion of one of the greatest jurists of this country—one commended to us as Senators by the President in his veto message vetoing the suffrage bill for the District of Columbia. [See Vol. VIII, p. 37.] I think we may safely be controlled and guided by what Mr. Justice Story says.

SENATOR COWAN.—Mr. President, I have a very high respect, not only for the memory of Judge Story, but also for his teachings, and I have read the same argument which has been quoted by the honorable Senator from New Jersey, and I think I have felt its force. But the honorable Senator should have informed us at the same time that the question has been decided the other way. I admit that a very strong and very forcible argument can be made upon this side of the question; but the difficulty about it is that it has been for seventy-five years the uniform rule of the Government of the United States to allow the President this power, and, as I think, from the very necessity of the thing. The power heretofore has never been deemed dangerous. The power may have been annoying, just as the power is now annoying to a dominant party who cannot have themselves all control of the offices. But why should the President appoint bad men to office? He may not appoint a member of your party; but he is interested as much as anybody can be to appoint a member of his own party who will creditably execute and perform the duties of the office, and that has been the safety of the country always.

I have another thing to say: that, whenever one or the other of the two parties of this country are afraid to trust the other, then the Government is in the throes of dissolution. The whole of its strength heretofore depended on the fact that the one party in this country was always willing to trust the other party. It is true they said it will not administer the Government as well as we would do if we had it; it will not appoint as good officers as we would do if we had the appointment of them; but still being in the same boat, interested in the same way, there is no reason to suppose they should desire the destruction of the Government.

But if you proceed upon the supposition that the President is a traitor, that the President is a destructionist, that he is given over body and soul to the devil, and that all his adherents and all those who believe as he does are likewise given over, what then? Then, of course, you must end this Government in order to correct that mischief. If, however, honorable Senators and everybody else were to come back to the common-sense view of this matter, rid themselves of their prejudices, rid themselves of their passions, and come to the conclusion to be patient and abide the regular normal working of our institutions, there would be no difficulty. But it is from this war of factions, roused passions, terrible prejudices, that the danger to all free governments has come. Parties cease to be parties; parties be-

come factions; and, over the ruins of the very fabric they intend to save, both have occasion to lament.

What will you gain by this crusade upon the President? What do you expect to achieve by curtailing him of his power? If the President abuses his power of appointment, how is that to be corrected? Heretofore it was corrected at the next election, and the next time you come to an election you correct it by electing a new President—a man who will not abuse his power; and why so? For the most obvious reason in the world that it was far better to endure all the ills which you can conceive of from bad and maladministration than that you should overturn the Constitution of the country—overturn its settled law and introduce revolution. I put it to any Senator on this floor whether, suppose you have the very worst President in the world, a man who is disposed to do all the mischief he possibly can do within the scope of his not only legal but possible power, is not that better than revolution?

Mr. President, this Government has existed for a long while—seventy-five years—under this rule. Annoyance, to be sure, heart-burnings, to be sure, grumblings everywhere there have been by those who had not the distribution of the "plunder" and the "spoils"; but nevertheless the Government was preserved; and upon looking back over its history I think that you will find that they all got about their share. If we preserve our tempers, and if we preserve our trust in the people (because trust in the people, as a matter of necessity, implies trust in the opposite party, in the other half of the people to which you belong), we shall secure the perpetuity of our institutions; but nothing else will do it. I wish to say here that I have the firmest conviction in the world that, if you take a single revolutionary step now in these excited times, if you overturn any well-settled principle of this Government, any well-settled principle of its Constitution, or I may say any well-settled item in its theory, you are on the brink of a precipice, and when you go over it you will have no Union, no Republic; you will have no free Government left.

SENATOR SHERMAN.—Mr. President, the Senator seems today to be in a mood not to do much business, and perhaps that may justify the honorable Senator in threatening us with revolution and all the dire woes unnumbered that may spring from it. In this bill Congress does not propose to do anything that is not sanctioned by the Constitution. It proposes to prevent the violation of the Constitution, that is all. And now we are threatened by those who have violated the spirit of the Con-

stitution with woes unnumbered, with revolution, with being on the brink of a precipice! Let me say to my honorable friend from Pennsylvania that the Senate of the United States is not the place for threats like these. We have already been placed on the brink of a precipice by a different set of antagonists whom we have overthrown by war. They attempted to revolutionize this Government, but they were met and subdued by the American people. Let me say to him that, whenever any other power in this Government or outside of this Government shall undertake to carry on a revolution or to carry the American people over the brink of a precipice, that power will be ground between the upper and the nether millstone.

Senator Williams gave a legal exposition of the question. He first referred to *ex parte* Hennen, 13 Peters, where the Supreme Court maintained the doctrine that:

"In the absence of all constitutional provisions, or statutory regulations, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment."

He then took up the case of Marbury *vs.* Madison.

During the administration of John Adams there were five justices of the peace appointed for the District of Columbia. Their nominations were consented to by the Senate; but before the commissions were issued James Madison became President and refused to issue commissions to these five justices of the peace, and application was made to the Supreme Court of the United States for a *mandamus* upon Mr. Madison to compel him to deliver to these justices their commissions. The court granted the *mandamus* upon Mr. Madison, compelling him to give to these men so appointed their commissions, upon the ground that, after these men had been nominated by the President and confirmed by the Senate, under that law they were beyond the reach of executive power and were entitled to hold those offices for the five years, and that Mr. Madison had no right to withhold their commissions.

SENATOR HOWARD.—If the Senator will permit me, in the case to which he refers he will discover that Mr. Adams had made out and signed the commission of Marbury, but that the commission had never been formally delivered, but was retained. Mr. Adams signed the commission just as he was going out

of office, and Mr. Madison refused to deliver it. I think it was made out and left on the President's table, but never formally delivered. The question was, in the first place, as to the power of the court to compel by *mandamus* the delivery of the commission to Marbury, and that was really the whole question before the court.

Senator Williams gave the opinion of Chief Justice Marshall in the case:

"Where an officer is removable at the will of the Executive the circumstance which completes his appointment is of no concern, because the act is at any time revocable; and the commission may be arrested if still in the office. But when the officer is not removable at the will of the Executive the appointment is not revocable and cannot be annulled. It has conferred legal rights which cannot be resumed."

The Senator continued his account of the case.

Mr. Madison's manifest object was to keep these men from having their offices, and he undertook to effectuate that object by withholding their commissions; but, if the doctrine that is now practiced upon had then been recognized, instead of doing that he would at once have removed those officers and appointed others in their places.

The Supreme Court of the United States, with Chief Justice Marshall at its head, was of the opinion that the President of the United States could not exercise the unlimited power of removal. Sir, you may bring on the opinions of your Attorneys-General and the arguments and speeches of your politicians, and I overwhelm them all with the authority of the Supreme Court of the United States, with Chief Justice Marshall at its head, a court that towered in its wisdom and purity above the partisan clamor and strife by which it was surrounded, as Teneriffe towers above the noisy and impotent waves that break around its base.

Now, sir, it is admitted by honorable Senators who contend for the existence of this power that there is no express provision for it in the Constitution. But the great argument that has been offered time and again and repeated here from day to day is that it would be inconvenient for the President not to have and to exercise this power. Sir, can a power of this magnitude be incorporated into the Constitution upon the argument

ab inconvenienti, because it is inconvenient that such a power should not exist? It is inconvenient very often that other powers which do not exist cannot be exercised by different departments of the Government. Take, for instance, if you please, the election of a Representative from any State, the State in which I live, where the law requires a candidate to have a majority, and suppose no man at the election receives a majority. It is inconvenient for the State not to be represented in Congress; but does it therefore follow that the Governor has a right to appoint a member of Congress?

It is very inconvenient, when we pass bills here by a large majority, in accordance with the wishes and interests of the people, to have the President interpose his veto; but the Constitution gives him that right; and can we, because it is inconvenient, because it is contrary as we believe to the will of the people for him to exercise his power in that way to defeat our legislation, disregard the veto and treat it as a nullity?

Sometimes it is argued that this power belongs to the President because the Constitution declares that the executive power shall be "vested" in a single person who shall be called the Executive of the United States. I answer any argument that may be derived from that source by saying that the clause of the Constitution referred to was evidently intended simply to create the office and not to confer power, because it is followed by other provisions defining and describing the powers of the office, and similar phraseology is employed as to this as is employed in creating the other departments of the Government; and, besides that, I find by reference to the proceedings of the convention that this portion of the Constitution when it was reported was in these words: "That there should be instituted an executive department to consist of a single person, which was referred to the Committee on Style," and that this committee changed the phraseology, substituting the word "vested" for "instituted," and it was passed without question, showing that the convention understood the word "vested" in that connection to be equivalent to the word "instituted," and did not understand it to convey any other or greater power than was conveyed by words necessary to create the executive department of the Government.

All executive powers are defined and described in the Constitution, and I claim, therefore, that a new and independent power cannot be drawn to the Executive by mere inference or by some imaginary reason for its existence. Beyond question, the men who framed the Constitution determined to restrict and

control the President, for Benjamin Franklin is reported to have said, notwithstanding the provisions which the Constitution contains, that the country was about to try an experiment with an Executive that would end in monarchy.

I know that in common parlance it is said that the President appoints an officer, but the Constitution does not give him that power. The President transmits a name to the Senate; but whether or not that person so named shall fill the office for which the President designates him is the province of the Senate to determine. I say that the Constitution of the United States, not in phraseology perhaps as explicit as might be employed, practically constitutes the Senate an electoral body, and so the power over the appointment is in the Senate of the United States.

Now, sir, if it is claimed that the Constitution confers upon the President the power of appointment in any of its general clauses, I will ask the honorable Senator from Pennsylvania what it means when it provides that "the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone"? Does not the Constitution clearly convey the idea that the President alone has no power to appoint unless that power is conferred by Congress? To assume that under the Constitution the President has the absolute power of appointment in all cases is to make the Constitution, so far as this clause is concerned, perfect nonsense; for, if all power to appoint was conferred upon the President by the Constitution, it would be absurd to confer such power in specific cases.

It is to be remembered, too, that the President is authorized to fill vacancies that may happen during the recess of the Senate. I argue that, if entire power of appointment was in the hands of the President, it would not be necessary to specify these particular cases in which he should exercise the power, and the inclusion of these cases is the exclusion of all others.

To concede the power of removal to the President is to concede the absolute power of appointment. Assume that the President of the United States may, without the advice and consent of the Senate, remove a man from office, and you *ex necessitate rei* assume that he may make an appointment to fill the vacancy so created.

Let us illustrate this view by the course of the present Executive. During the recess of the Senate he removed good men from office upon party grounds and then appointed his own creatures to fill the vacancies so made by granting to them

commissions that would expire at the end of the next session of the Senate. The nominations of some of these creatures were rejected by the Senate and thereupon the President, instead of nominating other persons, waited until the Senate adjourned, and then reappointed the persons so rejected, thus at his own will displacing good men and perpetuating his own creatures in office in spite of all efforts of the Senate to prevent it.

Sir, if the President can exercise the power in one case he can in all cases. I object, therefore, to this right of removal on the part of the President, because it necessarily involves the right of absolute and unlimited appointment, and I am confident that the Senator from Pennsylvania will not contend that the Constitution contemplates that the Executive should possess any such power.

I say that there are two noticeable ideas in this clause as to vacancies. One is that this filling up is to be temporary; and the other that it is to be exercised within a given time; and it is in disregarding this last idea that the President pretends to find his power to fill an office at any time that is not filled by a person appointed by and with the advice of the Senate. What is the use of taking the advice of the Senate as to an officer if as soon as the advice is taken that officer can be removed by the President and another appointed in his place without consulting the Senate? Such a power in the Senate is a shadow and a mockery. I understand this clause as to vacancies of the Constitution to be intended simply to bridge over that space of time which may intervene between different sessions of the Senate; but when this designation, or appointment if you choose, is made during the recess, then when the Senate convenes the control of the President over that vacancy ceases, and it then becomes a question between the President and the Senate as to whether the vacancy shall or shall not be filled.

The Senator from Maryland [Mr. Johnson] suggested that this clause ought to be construed as though it read, "vacancies that happen to exist." Now, sir, can it be said with any propriety that when the President of the United States, for personal ends or party objects, deliberately removes a man from office, and so makes a vacancy, that the vacancy has *happened*? Whenever an office during the recess of the Senate is made vacant by any power over which the President has no control, then a vacancy happens as to him; but when he proceeds and by his own deliberate act creates a vacancy, then it does not happen, but it is made. Sir, you might as well argue that when

the husbandman plants his seed and cultivates his crop the harvest which follows "happens" to him.

I do not understand that this absolute power of removal has ever been contended for until within a late period. If I am not mistaken as to the history of the country, removals without cause averaged about two for each Administration for the first forty years of the Government; and General Washington, instead of removing an officer during the recess of the Senate when he was found to be unfit to discharge its duties, suspended him, as this bill provides that the President shall now suspend in such a case. He did not claim this extraordinary power of removal; it was not claimed by his successors until within a comparatively late period; and in the discussions of 1789 it was not contended by Mr. Madison that the President had the unlimited power of removal; but it was argued that if an officer was incompetent or dishonest he might be removed by the President. When there was good cause the President, it was said, might remove; but it was admitted then by the advocates of this power that if the President of the United States, for any other purpose than to subserve the public interests, displaced a good officer it would be ground for impeachment.

Now it is claimed that the President has the unlimited control of all the officers in the Government, and that he may remove any or all of them at his pleasure and without any reason or any cause. This bill only undertakes to control what has been confessed by the advocates of this power to be an abuse of the executive authority. What does it propose to do? Take it altogether and it amounts practically to this: that the President shall not remove persons from office without cause; but, whenever an officer should be dismissed from the performance of his duties and another person put in his place, this bill provides that it may be done. It provides for every case where the public necessities or interests demand a change, and it only prohibits the abuse of executive power. I presume that no Senator will contend that Congress cannot prohibit by law the abuse of his authority by any officer of the Government.

Acknowledge, if you please, that the President has the power of removal, then cannot Congress by legislation declare and provide that he shall not abuse that power? It was admitted by Mr. Madison, and, for forty years after the Constitution was formed, by everybody, that a removal from office for personal ends or party purposes was an abuse of executive authority, and was a violation of the spirit if not the letter of the Constitution.

Now, sir, all we propose to do is simply to prohibit and prevent the abuse of that power. I referred to the case of *ex parte* Hennen, where the power of removal was held to be an incident of the power of appointment. All respectable authorities sustain that position, and I say that unless gentlemen can overthrow the opinion of Alexander Hamilton, the opinion of the Supreme Court in the case of Marbury *vs.* Madison, the opinion of the Supreme Court in the case of *ex parte* Hennen, they cannot escape from the conclusion that the consent of the Senate is necessary to the removal of an officer to whose appointment it was necessary to have the advice and consent of the Senate.

Congress has power to create an office; Congress has power to define the tenure of that office; and I ask why Congress has not power to say that when a man is appointed to an office which it has created, and the tenure of which it has fixed, he shall not be removed before the expiration of his term?

Sir, this bill is only intended to vindicate the constitutional power of the Senate. We have more light on this subject than the men who made the Constitution. Sir, they were good men and patriots, but they were born and educated under a monarchical form of government. Some of them had certain ideas about the executive power derived from their education. I do not intend to impeach their wisdom, but they lacked our experience. We have seen the operation and effect of this power; we have seen how dangerous it can become in the hands of a bold, bad man; we have seen how it can be used to debauch the public mind. When the mischief is so great and obvious it is our duty, regardless of precedents, to apply the remedy. Believing that there is nothing in the provisions of this bill which is in conflict with the Constitution, I hope that it will become a law. I trust it will not be regarded as any mere party measure, but as an honest effort to bring back the Government to the purposes and views of the men who made it.

Senator Johnson spoke on January 15.

The reasoning in support of the proposition that there is danger in clothing the President with the power of appointment is that he may use it for the purpose of rewarding favorites and continuing party ascendency to accomplish his reëlection. That is all true; but it requires no particular foresight to see that each one of these motives may operate upon the Senate, if not collectively, individually.

There are now in the Senate but very few who concur in what has been called "the policy" of the President, which was neither more nor less than the policy of his immediate predecessor, in the steps which have been taken to restore into the Union for all purposes the States which attempted to escape from it. A large majority of the Senate are of a different opinion, and they think that that is a subject vital to the interests and to the safety of the United States.

The Senate, supposing that under the administration of his immediate predecessor nearly all the offices of the Government were held by men who favor what is termed the congressional as distinguished from executive policy, will, if the President removes men of that description, not only not confirm those whom he appoints to take their places, but, if he removes and appoints as successors those who have been nominated and rejected by the Senate, says that these shall not receive any salary, and that every officer of the Government, through whose hands the money is to pass from the treasury in the payment of the obligation of the Government, who pays the salary to such a man is to be punished criminally.

Why does the Senate desire to take to itself that power? Why does the Senate charge as against the President an abuse of the power of appointment, founded upon the fact that he appoints those who concur with him instead of those who concur with Congress and differ from him? It is only because the Senate think proper to exercise the power of appointment which is in them to attain some political end or some party end, and to secure the continuance in power of the political party in the country to which they belong. And if my friend from New Jersey [Senator Frelinghuysen] would, if he has not already done so, recur to what has been said by some of the lights who carried the Government through in the beginning of its existence, he would see that there is such danger to be apprehended from the conduct of the Senate in this particular as from the conduct of the President. In this connection I wish to read from a letter written by the older Adams to Roger Sherman, a member of the convention from Connecticut:

"A Senator of great influence will be naturally ambitious and desirous of increasing his influence. Will he not be under a temptation to use his influence with the President as well as his brother Senators to appoint persons to office in the several States who will exert themselves in elections to get out his enemies or opposers, both in Senate and House of Representatives, and to get in his friends, perhaps his instruments?"[1]

[1] See Pitkin's Political History of the United States, Vol. II, p. 285.

I beg leave to say to my friend from Oregon, with all respect, that he has entirely misapprehended the case in the Supreme Court to which he referred. He cited the case of Marbury *vs.* Madison, reported in 7 Cranch, which I understood him to say decided that it was not in the power of the President to remove. There is no such doctrine in that case. The court went beyond the mere question of their power to issue a *mandamus* in that case, and for so doing were not censured as the Supreme Court in modern days has been; I mean the judges who decided the case of Dred Scott. The opinion in the Marbury case has never been assailed by either lawyer or judge upon the ground that that part of it was extrajudicial, and yet it was just as extrajudicial as was the opinion in the Dred Scott case. Marshall had been baptized in the blood of the Revolution;[1] he had served his country as diplomatist and as Secretary of State; he had illustrated the Constitution in judgments that challenged the admiration of the whole country; and no one ventured to assert, as against an officer of that description, that any improper motive, any desire to trench upon the legitimate power of the Executive, entered at all into the consideration of that judgment.

But, says my brother and friend from Oregon, that case decided that the President had no right to remove. Surely that is an entire misapprehension. The Constitution gives to the President the authority to appoint, by and with the advice and consent of the Senate, to certain high offices, but gives to Congress the power to vest the appointment and to give the removal of inferior officers to anybody they think proper; and these justices of the peace were inferior and not high officers within the meaning of those two terms in the Constitution. Congress, therefore, by providing that such an officer should hold his commission for four years, removed the officer from the power of removal of the President, as they could have taken from him the power to appoint. Nobody doubts that, if they were inferior officers, as they were, Congress might have given the power to appoint those officers to the people of the District by election, or to any individual that they might think proper, or to any tribunal other than the executive department of the Government. They had a right, although they thought proper to give it to the President himself, to provide that it should endure for four years as against any such power of removal. That is all the case decided upon that question.

On the same point I take occasion also to refer to the case

[1] Marshall fought at Brandywine, Germantown, and Monmouth.

of *ex parte* Hennen, 13 Peters, 250. Mr. Justice Thompson, delivering the opinion of the court in that case, said:

"This power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of this Government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate; and the great question was, whether the removal was to be by the President alone, or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove, where the tenure of the office was not fixed by the Constitution: which was a full recognition of the principle that the power of removal was incident to the power of appointment. But it was very early adopted as the practical construction of the Constitution that this power was vested in the President alone."—13 Peters, p. 259.

A word more, and I shall cease to trouble the Senate. My friend from Pennsylvania [Mr. Cowan] was supposed by some of the Senators to threaten another revolution if this bill or bills of a like character were passed. He disavows any such purpose; and those who know his frankness will have no hesitation in believing in the sincerity of that disavowal. I do not anticipate and do not fear any such revolution as that; but there may be a revolution of a different kind, the kind of revolution which changed the whole political destiny of the country for a time, and which was successfully brought about in 1800. The Congress of the United States, acting with the assent of the then President, Mr. Adams, because he approved of the bills, had passed the Alien and the Sedition laws. The country became alarmed. No force was threatened of a physical kind; but the subjects of the alleged usurpation of power by Congress became matters of political speculation and discussion in the papers of the day. The people of the country came to the rescue of the Constitution thus, in their opinion, invaded, and swept from power those who had adopted such measures. I am no prophet, Mr. President. I may not live to see the day when it shall occur, if it occurs at all, when the same revolution will be seen condemning many of the measures of the present day precisely upon the same ground that the people in 1800 censured and condemned what had been done at that time. A latitudinarian construction of the Constitution, the absorption of nearly all power into the legislative department of the Government, an unwillingness to submit to the judiciary, an interference with what have heretofore been considered the legitimate powers of the President—I do not say from any bad motive—these are the symptoms of the times.

We have just emerged from a war without example in the annals of civil strife or any other strife. Every house in our broad land is filled more or less with mourning for the departed dead who, upon one side or the other, have died in support of what they believed to be the principles of liberty. The angry passions have been excited. They more or less affect us all, for members of Congress are but men. They lead to a claim for power that would not have been thought of in the beginning of the Government. When everything becomes quiet and settled; when the particular circumstances to which the party who are now dominant owe their present condition shall cease to exist; when they shall have a President of their own choice (if that is to be the result of the present state of things), who will carry out what they believe to be the true policy of the country, reason then with them, and with the opposition (if it does not control us now) will control, and a better day will dawn upon a now distracted land. But, sir, that is not to be done through the instrumentality of a civil war. Its desolation; the affliction with which it has visited individual men and women; the loss of material wealth; the danger to which our very Government was subjected during its existence, and must be more or less subjected during any such strife—all are warnings to keep us again from entering into any such conflict. The conflict into which alone the people will enter will be that which the ballot will decide, for which that weapon alone will be used; and when, as I believe in my existence, the time shall come when the excitement of the day shall have terminated and the judgment of the people shall be what it was from the beginning of the Government up to the commencement of this strife, the Constitution will be restored in all its integrity and each department of the Government be permitted to exercise every power which the Constitution as construed in the past vests with it.

Charles Sumner [Mass.] moved an amendment to the bill, providing that all agents and officers now appointed by the President or by a head of a department be appointed only with the consent of the Senate, and that all such appointments made in the recent recess be vacated.

Is there any one who doubts, after what we have seen on a large scale, that the President, for the time being at least, ought to be deprived of the extraordinary function which he

has exercised? He has announced openly in a speech that he meant to "kick out of office" present incumbents, and it was in that proceeding, "kicking out of office," that on his return to Washington afterward he undertook to remove incumbents wherever he could. Now, sir, it seems to me that we owe our protection to these incumbents so far as possible. It belongs to the duty of the hour.

Why postpone what is in itself so essentially good? Why put off to some unknown future the chance of applying a remedy to an admitted abuse? Is there any one here who insists that this is not an abuse, that here has not been a tyrannical exercise of power? No one. Then, sir, let us apply the remedy. This is the first chance we can get. Let us take it.

One of the finest sentiments that has fallen from one of the most gifted of our fellow countrymen was that verse in which he says:

"New occasions teach new duties."[1]

We have a new occasion now teaching a new duty. That new occasion is the misconduct of the Executive of the United States, and the new duty which this occasion teaches is that Congress should exercise all its powers in throwing a shield over our fellow citizens.

On January 17 Senator Sumner continued his remarks in the same vein. At the close he said:

I return, then, to my proposition that the duty of the hour is protection to the loyal and patriotic citizen. But when I have said this I have not completed my proposition. You may ask, protection against whom? I answer, plainly, protection against the President of the United States. There, sir, is the duty of the hour. Ponder it well, and do not forget it. There was no such duty on our fathers; there was no such duty on our recent predecessors in this chamber, because there was no President of the United States who had become the enemy of his country.

Senator James A. McDougall [Cal.] rose to a question of privilege, but Senator Sumner refused to yield the floor.

[1] James Russell Lowell, in "The Present Crisis."

Senator McDougall.—I do not ask you to yield the floor. I rise to a question which gives me a right to be heard—a question of privilege.

The Presiding Officer [Henry B. Anthony in the chair].—The Senator from California rises to a question of privilege; he will state his question of privilege.

Senator McDougall.—It is that no Senator on this floor has a right to make use of such remarks of or about the Executive of the United States as those the Senator from Massachusetts has just uttered, when that Senator may be a judge upon a question of impeachment, if an impeachment should be preferred against the President. It has been held so always as the law of parliament. It was the law of the Senate in its better days, always maintained by the gentleman from Vermont, now called to his long home, who for so many years graced the chair [Mr. Foot].

If a remark or an accusation like that were made against a Senator it would be a grave offence and would deserve the condemnation of the Senate unless there was good cause why. But it is not within the courtesy of the Senate to assault a person not present on the floor who cannot defend himself. To assault here a judge of the Supreme Court on the bench would be a violation of parliamentary rules. If the Senator from Ohio should go into the Supreme Court to-morrow morning and should say a rude thing of the President of the Senate, he would be immediately told by the presiding justice to take his seat. It is not within the courtesy and the law that a person absent, belonging to an independent branch of government, should be assaulted by being accused of being an enemy of his country. Why? Because it is accusation of treason, if you please, substantially. When that question shall come here and the Senator from Massachusetts shall be its champion, it being brought up here by its promoters from the House of Representatives, then he may discuss it as carefully and well as he can as a member of the high court of impeachment, if he chooses to be one of the impeaching parties. Otherwise, it is not within the license of a Senator to say of the President things of that kind that involve his integrity as a public officer.

The Presiding Officer [Henry B. Anthony] decided that the words of Senator Sumner, to which exception was taken, did not exceed the latitude of debate which prevailed in the Senate.

Senator McDougall acceded to this decision, but Senator James R. Doolittle [Wis.] appealed from it. His appeal was tabled by a vote of 29 to 10.

On the next day (January 18) Senator Sumner continued his remarks:

At last the country is opening its eyes to the actual condition of things. Already it sees that Andrew Johnson, who came to supreme power by a bloody accident, has become the successor of Jefferson Davis in the spirit by which he is governed and in the mischief he is inflicting on his country. It sees the President of the rebellion revived in the President of the United States. It sees that the violence which took the life of his illustrious predecessor is now by his perverse complicity extending throughout the rebel States, making all who love the Union its victims and filling the land with tragedy. It sees that the war upon the faithful Unionists is still continued under his powerful auspices, without any distinction of color, so that all, both white and black, are sacrificed. It sees that he is the minister of discord, and not the minister of peace. It sees that, so long as his influence prevails, there is small chance of tranquillity, security, or reconciliation; that the restoration of prosperity in the rebel States, so much longed for, must be arrested; that the business of the whole country must be embarrassed, and that those conditions on which a sound currency depends must be postponed. All these things the country now sees. But indignation assumes the form of judgment when it is seen also that this incredible, unparalleled, and far-reaching mischief, second only to the rebellion itself, of which it is a continuation, is invigorated and extended through a plain usurpation.

I know that the President sometimes quotes the Constitution and professes to carry out its behests. But this pretension is of little value. A French historian has used words which aptly characterize an attempt like that of the President. I quote from the history of M. Thiers, while describing what is known as the resolution of the 18th Brumaire:

"When any one wishes to make a revolution or a counter-revolution it is necessary always to disguise the illegality as much as possible, and to this end to use the terms of the constitution in order to destroy it, and also the members of a government in order to overturn it."

In this spirit the President has acted. He has bent Constitution, laws, and men to his arbitrary will, and has even invoked

the Declaration of Independence for the overthrow of those equal rights which it so grandly proclaims.

In holding up Andrew Johnson to judgment, I do not dwell on his open exposure of himself in a condition of beastly intoxication while he was taking his oath of office; nor do I dwell on the maudlin speeches by which he has degraded the country as it was never degraded before; nor do I hearken to any reports of pardons sold, or of personal corruption. This is not the case against him, as I deem it my duty to present it in this argument. These things are bad, very bad; but they might not, in the opinion of some Senators, justify us on the present occasion.

But there is a reason which is ample. The President has usurped the powers of Congress on a colossal scale, and he has employed these usurped powers in fomenting the rebel spirit and awakening anew the dying fires of the rebellion. Though the head of the executive, he has rapaciously seized the powers of the legislative and made himself a whole Congress in defiance of a cardinal principle of republican government that each branch must act for itself without assuming the powers of the other; and, in the exercise of these illegitimate powers, he has become a terror to the good and a support to the wicked. This is his great and unpardonable offence, for which history must condemn him if you do not. He is a usurper, through whom infinite wrong has been done to his country. He is a usurper, who, promising to be a Moses, has become a Pharaoh. Do you ask for evidence? It is found in public acts which are beyond question. It is already written in the history of our country. And now in the maintenance of his usurpation he has employed the power of removal from office. Some, who would not become the partisans of his tyranny, he has, according to his own language, "kicked out." Others are left, but silenced by this menace and the fate of their associates. Wherever any vacancy occurs, whether in the loyal or the rebel States, it is filled by the partisans of his usurpation. Other vacancies are created to provide for these partisans. I need not add that just in proportion as we sanction such nominations or fail to arrest them, according to the measure of our power, we become parties to his usurpation.

The question then recurs, are you ready to apply the remedy, according to the measure of your powers? The necessity of this remedy may be seen in the rebel States, and also in the loyal States, for the usurpation is felt in both.

If you look at the rebel States, you will see everywhere the

triumph of presidential tyranny. There is not a mail which does not bring letters without number supplicating the exercise of all the powers of Congress against the President. There is not a newspaper which does not exhibit evidence that you are already tardy in this work of necessity. There is not a wind from that suffering region which is not freighted with voices of distress. And yet you hesitate.

The bill now before the Senate arises from this necessity. Had Abraham Lincoln been spared to us there would have been no occasion for this bill. But it does not meet the whole case. Undertaking to give protection, it gives it to a few only, instead of the many. It provides against the removal, appointment, or employment of persons whose offices, according to existing law and Constitution, are held by and with the advice and consent of the Senate. Its special object is to vindicate the power of the Senate over the offices committed to it according to existing law and Constitution. Thus vindicating the power of the Senate it does something indirectly for the protection of the citizen. In this respect it is a beneficent measure, and I shall be glad to vote for it.

The amendment which I have moved goes further in the same direction, so as in a certain measure to arrest the recent process of "kicking out." This proposition is simple enough; and I insist that it is necessary, unless you are willing to leave fellow citizens without protection against tyranny.

We are told, with something of indifference if not of levity, that it is not the duty of the Senate to look after the "bread and butter" of officeholders. This is a familiar way of saying that these small cases are not worthy of occupying the Senate. Not so do I understand our duties. There is no case so small as not to be worthy of occupying the Senate; especially if in this way you can save a citizen from oppression and weaken the power of an oppressor.

The effect of this amendment is to take from the President a large class of nominations and bring them within the control of the Senate. The old resolution of the House of Commons, moved by Mr. Dunning, is applicable here: "The power of the Crown has increased, is increasing, and ought to be diminished." In this spirit we must put a bit in the President, who is now maintaining an illegitimate power by removals from office.

We are in the midst of a crisis. On one side is the President and on the other the people. It is the old question between prerogative and Parliament which occupied our English fathers. But the form it now takes is grander than ever before. In this controversy I am with the people and against the President. I have great faith in the people, but I have no faith in the President.

Senator Sumner's amendment was rejected by 16 yeas to 21 nays. Senator Howe's amendment to include Cabinet officers in the provisions of the bill was rejected by 13 yeas to 27 nays. The bill was then adopted by 29 yeas to 9 nays.

When the bill reached the House, on February 1, every provision of it was readily agreed to except that which excluded Cabinet officers from its operation. An amendment offered by Thomas Williams [Pa.] to strike that out was at first defeated—ayes 76, nays 78. On February 2 the vote was reconsidered—75 ayes, 66 nays, and the amendment was at once adopted. The bill was then passed by a party vote—ayes, 111; nays, 38. When it was returned to the Senate that body refused, on February 6, by a vote of 17 yeas, 28 nays, to concur in the amendment which placed members of the Cabinet on the same basis with other officers respecting the President's power of removal.

Upon a conference between the two branches on the disagreement, a substitute was adopted, on February 18, declaring that the members of the Cabinet "shall hold their offices, respectively, for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate." The alleged violation by President Johnson of this provision was the direct cause of his impeachment by the House of Representatives a year later.

The President vetoed the bill on the 2d of March. In reviewing the measure he said:

"In effect it provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law, without the advice and consent of the Senate of the United States. The bill conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the

power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the Government. The question has often been raised in subsequent times of high excitement, and the practice of the Government has nevertheless conformed in all cases to the decision thus made. Having at an early period accepted the Constitution, in regard to the executive office, in the sense in which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction, or in any assumed necessity of the times, for changing those opinions.

For these reasons, I return the bill to the Senate, in which house it originated, for the further consideration of Congress which the Constitution prescribes. Experience, I think, has shown that it is the easiest, as it is also the most attractive, of studies to frame constitutions for the self-government of free states and nations but I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established."

"The veto message," says Mr. Blaine, "was a very able document. In all official papers of importance the President appeared at his best, having the inestimable advantage of Mr. Seward's calm temper and of his attractive and forcible statement of the proper argument. Few among the public men of the United States have rivaled Mr. Seward in the dignity, felicity, and vigor which he imparted to an official paper. No one ever surpassed him. In the veto message under consideration his hand was evident in every paragraph; and if it had been President Johnson's good fortune to go down to posterity on this single issue with Congress, he might confidently have anticipated the verdict of history in his favor."

The bill was promptly passed over the veto—in the Senate by 35 ayes to 11 nays; in the House by 133 ayes to 37 nays.

CHAPTER II

Impeachment of President Johnson

James M. Ashley [O.] Moves in the House to Impeach President Johnson; Resolution Committed—James F. Wilson [Ia.], Chairman of Committee, Presents Majority Report to Investigate President's Conduct; Andrew J. Rogers [N. J.] Presents Minority Report against Investigation—Debate: In Favor of Investigation, Mr. Ashley, Benjamin F. Butler [Mass.], George F. Miller [Pa.]; Opposed, Samuel J. Randall [Pa.], Benjamin M. Boyer [Pa.], Rufus P. Spalding [O.], James Brooks [N. Y.], John V. L. Pruyn [N. Y.], John W. Chanler [N. Y.]; Investigation Ordered—Gen. Ulysses S. Grant Testifies in Favor of the President—Committee Presents Majority Report in Favor of Impeachment, and Two Minority Reports against It—Debate: In Favor of Impeachment, George S. Boutwell [Mass.]; Opposed, Mr. Wilson; Majority Report Defeated—The President Suspends Edwin M. Stanton, Secretary of War, and Appoints Gen. Grant Secretary *ad interim*—Senate Reinstates Stanton—Grant Resigns Office, Leading to Quarrel with the President—The President Appoints Adj.-Gen. Lorenzo Thomas Secretary *ad interim*—Senate Declares He Had No Power to Do So—John Covode [Pa.] Moves in the House to Impeach the President for His Action; Resolution Committed; Thaddeus Stevens [Pa.], Chairman of Committee, Reports the Resolution—Debate: in Favor, John A. Bingham [O.], Gen. John A. Logan [Ill.], Ebon C. Ingersoll [Ill.], Mr. Ashley, Burton C. Cook [Ill.], George W. Julian [Ind.], Gen. Butler, Mr. Boutwell, Mr. Stevens; Opposed, Mr. Brooks, George W. Woodward [Pa.]; Impeachment Ordered; Mr. Bingham, Mr. Boutwell, Mr. Wilson, Gen. Butler, Thomas Williams [Pa.], Gen. Logan and Mr. Stevens Chosen Managers of Impeachment—The President Nominates Thomas Ewing, Sr. [O.], as Secretary of War; Senate Refuses to Confirm, Declaring No Vacancy—Trial of President Johnson before Senate, Chief-Justice Salmon P. Chase Presiding; Articles of Impeachment; Answers by President's Counsel (ex-Attorney-General Henry Stanbery, Judge Benjamin R. Curtis, Judge Thomas A. R. Nelson, William M. Evarts, Esq., William S. Groesbeck, Esq.); Addresses by the Prosecution, Including Brief on Impeachment by Representative William Lawrence [O.]; Addresses by the Defence; Additional Briefs Presented by Senators; Senate Refuses to Impeach on Articles XI, II, and III, and Adjourns *sine die* without Voting on the Others—Mr. Stanton Returns to Private Life; His Subsequent Career—Gen. John

M. Schofield Appointed Secretary of War—Senate Refuses to Confirm Renomination of Mr. Stanbery as Attorney-General, and Mr. Evarts Is Appointed to the Place—Gen. Benjamin F. Butler [Mass.] Introduces Bill in the House to Repeal Tenure-of-Office Act; Carried—Debate in the Senate: In Favor of Repeal, Allen G. Thurman [O.], Oliver P. Morton [Ind.], Richard Yates [Ill.], William P. Fessenden [Me.], Carl Schurz [Mo.]; In Favor of Suspension, Lyman Trumbull [Ill.], Jacob M. Howard [Mich.], George F. Edmunds [Vt.]; Bill Withdrawn—Sen. Trumbull Reports Substitute for the Act; Adopted by Senate and Refused by House—Conference Committee Reports New Act Virtually Abolishing the Old; Adopted; President Grant Unsuccessfully Tries to Have the Old Act Entirely Abolished.

A RESOLUTION was introduced in the House on January 7, 1867, by James M. Ashley [O.], impeaching Andrew Johnson of high crimes and misdemeanors.

"I charge him," said Mr. Ashley, "with an usurpation of power and violation of law: in that he has corruptly used the appointing power; in that he has corruptly used the pardoning power; in that he has corruptly used the veto power; in that he has corruptly disposed of the public property of the United States; in that he has corruptly interfered in elections and committed acts which in contemplation of the Constitution are high crimes and misdemeanors."

This resolution was referred to the Judiciary Committee (James F. Wilson of Iowa, chairman), who were empowered to make a thorough investigation by examining papers, witnesses, etc.

On March 2, on the eve of the session's close, the majority of the committee, being all Republicans, reported that they had entered into such an investigation, and found justification for its continuance. The one Democrat upon the committee, Andrew J. Rogers [N. J.], submitted a minority report declaring that the evidence was mostly of a secondary character, such as could not be admitted in a court of justice, and that none of it sustained the charges against the President. He therefore advised that the investigation be discontinued, since it served only to keep the country in a state of political agitation.

On Continuing Investigation of President's Acts

Debate in the House of Representatives, March 7, 1867

On the 7th of March, in the new Congress, Mr. Ashley introduced a resolution in the House directing the Judiciary Committee to pursue the investigation. The President, he said, had aggravated his offences by his message of March 2, 1867, in which he gave his reasons for vetoing the Reconstruction Bill.[1] This was, he said, "an invitation to revolution and civil war."

Sir, a man of Mr. Johnson's antecedents, of his mental and moral caliber, coming into the presidency as he came into it—and I say nothing now of the dark suspicion which crept over the minds of men as to his complicity in the assassination plot—I say such a man ought to have walked with uncovered head and very humbly before the loyal men of this nation and their Representatives in the American Congress.

Self-protection and a proper respect for the honor of the nation demand that the Representatives of the people shall declare, in a manner not to be misunderstood, that no man hereafter elected President or Vice-President shall present himself at his inauguration drunk; that no man discharging the duties of the office of President of the United States shall be permitted to turn the White House into a den of thieves and pardon brokers, nor shall he be permitted with impunity to address in vulgar, seditious language a drunken, howling mob from the steps of the executive mansion.

Sir, unless this committee take charge of this matter and proceed with it, this Congress might as well lay down its powers. If, however, nothing more should be done, I am sure that, when the evidence which has been already taken is published, it will operate as a deliberate and solemn protest against a repetition in the future of another drunken electioneering tour such as last year mantled the cheek of this nation with shame; that it will be a protest against the unpardonable attacks which the acting Executive made upon the national Congress, a protest against his usurpations and crimes and misdemeanors.

Sir, his crime is not, as many suppose, the mere perfidy of which he has been guilty to the men who in an evil hour elected

[1] See Volume VIII, page 62.

him Vice-President of the United States, black and infamous as it is; his crime is the highest known in our country, a crime against the Republic itself.

The nation cries out in its agony and calls upon the Congress of the United States to deliver them from the shame and disgrace which the acting President has brought upon them. They demand that the loathing incubus which has blotted our country's history with its foulest blot shall be removed. In the name of loyalty betrayed, of law violated, of the Constitution trampled upon, the nation demands the impeachment and removal of Andrew Johnson.

On the Speaker remarking that Mr. Ashley was exceeding the large license permitted in debate on impeachment, Samuel J. Randall [Dem.] of Pennsylvania, inquired, amid the laughter of the House, if there was "any insane asylum near here." Benjamin M. Boyer [Dem.] of Pennsylvania asked that Mr. Ashley be permitted to continue, "on account of the service he is doing to the President of the United States."

Mr. Ashley continued:

Mr. Speaker, I know, on this question, that the timid among the loyal hesitate, that the late rebels and their Northern allies are defiant, and that the camp followers of the President alternately threaten and supplicate, and that all unite in prophesying war and revolution, and in any event financial ruin to the country, if Congress shall undertake to arraign and depose the President as provided by the Constitution. Sir, I hope this Congress will not hesitate to do its duty, but that it will proceed with dignity and deliberation to the discharge of the high and important duty imposed upon it, uninfluenced by passion and unawed by fear. If, as has been happily suggested by one of our able and true men, the nation could stand the shock occasioned by the assassination of a beloved President by the hand of an assassin, it surely can stand the shock caused by the removal of one so detested as the acting President, if done in pursuance of law.

And, sir, has he not done enough? Before he had been one month in the presidency he entered into a combination with the enemies of the nation to usurp in their interest the prerogatives of Congress, and sought to bind hand and foot the loyal men of the South, who had aided us in putting down the rebellion, by

putting the governments of the South in the hands of their mortal enemies and ours. This with me is enough. When you add to this his other acts, which have become public history, the case for me is complete.

The duty of the President of the United States is to execute, not to make laws. His oath requires him to see that the laws are faithfully executed. That the President has neglected or refused to execute many of the laws of Congress no man ques-

THE BAD BOY [ANDY JOHNSON] IN THE NATIONAL SCHOOL

Cartoon by Frank Beard

From the collection of the New York Public Library

tions. That he has failed to execute the Civil Rights bill, nay, that he has not even attempted to execute it the whole country knows. On the other hand, he has not only failed to execute it, but in most indecent and offensive language he has assailed and denounced the law as unconstitutional.

Sir, in his failure to execute this just and most necessary law the crime of the President becomes perfectly colossal. Since the surrender of Lee and Johnston more than five thousand American citizens, guilty of no crime but love of country, have been murdered by men lately in arms against this country. Thousands more have been driven from their homes into exile.

Sir, there never was a nation on this earth guilty of the infamy of treating its loyal citizens as the President of the United States has treated the loyal men of the South.

I know how easy it is for the President and his co-conspirators to deny his guilty knowledge. I know also how difficult it is to prove by technical rules the guilt of a man occupying his position, although the whole country may know him to be guilty.

Why, sir, when the rebellion broke out, no conspirator, however flagrant his crime, could have been arrested, tried, and convicted before a court and jury in this District. It is much more difficult in a case of this kind, where the rebellion is not an open, armed rebellion, but a negative rebellion. In this rebellion the President is the recognized leader, and it is well known that he has coöperating with him nearly all the late rebels of the South.

Mr. Ashley declared that, if the trial of the President were not proceeded with, the section of the Constitution providing for impeaching the President was valueless.

Sir, if this man is not impeached, if he is not tried and deposed from the high place which he has disgraced, then no man who may succeed him need ever fear trial and conviction, no matter what his crime.

Rufus P. Spalding [O.] differed "the whole heaven" from his colleague. He denounced the scheme of impeachment as "consummate folly." Not one act amounting to a crime or misdemeanor had been proved against the President.

And I say more than that. It is not expected by some of those who charge the Executive with high crimes and misdemeanors that proof will be obtained. It is only necessary, as has been said in high places within the last week or ten days, that it should be known that the President is an "obstruction" in the way of what my friend from Ohio calls "progress," and the Radical party of the country will feel it to be their duty to remove him from office.

Sir, I hold to no such doctrine, and I say to my associates of the great Union party that they are mistaken if they suppose that the intelligent people of the United States are going to uphold them in a practice based upon any such principle.

Sir, we are bringing our republican institutions, our popular form of government, to a test such as no free nation ever yet imposed upon its government with impunity. I trust we are not yet called to exhibit the same temper with those who lived in the days of Oliver Cromwell in England, or with Robespierre

and Marat in France, when men who one day advocated the most extreme measures of the Radicals were the next day brought to the block or the guillotine because they were not far enough in the advance in the line of progress.

I have voted for every radical measure of reconstruction proposed in this House, and yet we have not adopted measures radical enough to suit the purposes of some gentlemen who are around me. They now cry for the head of the Executive.

Fernando Wood [N. Y.].—They want more blood.

Mr. Spalding.—And for what good purpose? Is it to make way for some other man or set of men? Is this whole nation to be convulsed; is our public credit to be trifled with; are our stocks to be brought down to forty, thirty, twenty, or perhaps ten cents on the dollar, just to gratify this eagerness to remove the executive head of the nation? I can, in conscience, support no such policy.

Benjamin F. Butler [Mass.].—I hold this Congress would be false to itself, false to the country, false to the principles of the American Government did they shrink from the investigation.

If a bare quorum of the Representatives elected to the first Congress of the United States, and only a majority of the States composing the Union, could make George Washington President, cannot this House unmake Andrew Johnson? [Laughter.]

George F. Miller [Pa.].—Give the President an impartial trial; wait for the evidence and report of your committee, and then, if evidence sustains the charges as to his guilt, do not hesitate to impeach him; and, on the other hand, if insufficient, dismiss the subject, and let the country understand that he escapes for want of proper evidence. But until the committee shall report let us forbear making any allegations as to his guilt or innocence.

We are told that if we impeach the President our governmental securities will depreciate in the market, and that it will bring upon us bankruptcy. I have no such fears, and Congress ought not to be intimidated by any suggestions of the kind. But, even if it would have that effect, it is no reason for shrinking from duty.

Had Andrew Johnson been true to his friends he had an opportunity of making himself popular, and been an honor to himself and his country. After the assassination of the much-lamented Lincoln, the mantle of that great and good man, at whose death the nation still mourns, was thrown on the shoulders of Mr. Johnson; but, alas! in an evil hour he was induced

to partake of the forbidden fruit in the form of modern democracy, which seemed pleasant for him to look upon, hence his great fall. His course will be a warning to all those in future that may occupy the presidential chair not to forsake the party that elected him.

James Brooks [N. Y.] scouted the charges brought by Mr. Ashley against the President as demagogic claptrap, entirely unsupported by evidence. He denied, in particular, that five thousand Union men had been killed in the South since the war, and adduced testimony of generals in charge of the Southern military districts to the contrary. Crime existed in all the States, but only in the South was political significance imputed to it. Every sort of an outrage occurring, or alleged to have occurred, in that outlawed region was garnered up and spread before the people to inflame their minds and induce them to support military reconstruction and the impeachment of the President.

The opposition to impeachment by the conservative Republicans, he said, would be unavailing.

History tells me that the destructive work of the revolutionists—the architects of ruin—must go on. And I appreciate also the fact that I and those who are politically associated with me must be prepared to endure our share of the disastrous future now opening on the country.

Mr. Brooks denied the expediency of impeachment, even if a great crime had been committed. The courts of law afforded a complete remedy.

Let me appeal to my Republican friends on the other side to consider what a precedent this is that they are called upon to establish as law. At some future time they will be in the minority; another party will be in the majority; and if the President of the minority stands in the way of the party of the majority that majority can suspend, impeach, and if he stands in their way remove him. If such a precedent, therefore, is established, this is no longer a constitutional government. Let it go to the country, then, that the chief leader of impeachment here has avowed, in substance, that no matter as to "the crimes or misdemeanors" of the President, whether he be guilty or not, so

long as he stands in their way that is enough—he must be taken off and stricken down.

The first movement of the honorable gentleman from Ohio [Mr. Ashley] has already cost the merchants, capitalists, manufacturers, and farmers of this country over a hundred million dollars by the decline in the stocks, obligations, and property of this country. And now he proposes to keep up this agitation for months and months longer.

What is the proposition which we are called upon to adopt? It is to provide the Committee on the Judiciary with an unlimited amount of money and means to enable them to go about the country hunting up scandals, drumming up witnesses, employing detectives, informers, spies, and the like to suborn perjury, informers of all classes and kinds, in order to recreate this agitation and reëxcite the people. Sir, we have already approached, if we are not in the midst of a financial crisis. The wages of labor are already being cut down in the State of Rhode Island; hundreds of operatives are being discharged from the factories of Massachusetts and Connecticut; thousands of laborers are stalking unemployed through the streets of New York; and elsewhere throughout the country the demand for labor is made by thousands who are dependent upon it for their daily subsistence.

Like operations will extend from the great heart of New York through all the country if this agitation is encouraged to go on. No more railroads can be built in the West, no more bonds of Western States can be sold, no more capital can be profitably employed in those States.

It is proper, therefore, that this impeachment should go on this very day, or it should stop this very day. Agitation, revolutionary agitation, financial agitation, is death to the commerce, the trade, the agriculture, the capital of this country. If the President of the United States is to be removed or deposed, take him now from the White House, and install there your newly elected President of the Senate [Benjamin F. Wade]. Do it forthwith, immediately; and then go on with no longer delay in this work of destruction and death.

John V. L. Pruyn [N. Y.] declared that, if the President were guilty, the members of his Cabinet were equally so, being accomplices. Would you impeach these also?

He counseled deliberation.

Look at the deliberate and orderly proceeding of the British Parliament in the impeachment of Warren Hastings, and contrast them with the hot haste in this Congress this day if this resolution be passed.

JOHN W. CHANLER [N. Y.].—The Committee on the Judiciary have reported progress, and in that report they have given assurance that the impeachment of the President upon the charges of the gentleman from Ohio [Mr. Ashley] never will take place. They have deserted the ground they took. They now ask for a continuance of the investigation to cover the impotency of their efforts and the fallacy of their charges. So far as revolution is concerned, if ridicule could stop revolution the speceh of the gentleman from Ohio [Mr. Ashley] would. He would put the mask of Laughter on the Muse of Tragedy.

This investigation has lost all the magnitude it had. It has dwindled into contemptible proportions. There is no fear now of the country from this agitation. They understand how weak and silly it is. There is no danger that the stock jobbers will consider it at all. My colleague [Mr. Brooks] has given too much importance to the gentleman and his agitation. There is no danger that the stock jobbers of Wall street will reward the gentleman from Ohio [Mr. Ashley] even with a leather medal.

My colleague has alluded to the suffering in our commercial, manufacturing, and agricultural interests. It is not because the impotent resolutions of this Congress are flaunted before the country. The prostration of the country is the result of an inflated currency.

So far, then, from this question of the impeachment being the cause, I look upon it as dead. It is dead—and stinketh.

Mr. Ashley's resolution was carried without a division, and the committee proceeded with their investigation, reporting on November 25, 1867.

The prophecy of Representative Brooks that the committee would employ itself in investigating wild rumors was borne out by the fact that it examined General Ulysses S. Grant upon the question of whether the President had ever sounded him upon securing the support of the army in the event of the President's admitting members from the ex-rebel States into Congress. General Grant's testimony was positively in the negative.

Three reports were submitted by the committee:

(1) a majority report [George S. Boutwell of Massachusetts, spokesman] directing impeachment; (2) a minority report by James F. Wilson [Ia.], the chairman, and Frederic Woodbridge [Vt.], asking simply that the committee be discharged from further investigation, and the subject be tabled; and (3) a minority report by the two Democratic members, Charles A. Eldridge [Wis.] and Samuel S. Marshall [Wis.], to the same effect, but in language denunciatory of the charge.

By agreement Mr. Boutwell spoke for the majority of five, and Mr. Wilson for the minority of four.

ON IMPEACHING THE PRESIDENT

HOUSE OF REPRESENTATIVES, DECEMBER 5-6, 1867

Mr. Boutwell admitted that the immediate interests of the country would not suffer by continuing the President in office for the fifteen months remaining of his term, since Congress could, and would, override his vetoes, and held power over the officers of the executive department. But it was the duty of Congress to furnish an example for the future.

He argued that impeachable offences were not necessarily those indictable in a court of law. The seventh paragraph of the third section of the first article of the Constitution provides that the party convicted by impeachment might be liable subsequently to indictment in a court, and the Fifth Amendment to the Constitution declares that no person for the same offence should be put twice in jeopardy of life or limb. Therefore, in order that these two provisions do not conflict, the Constitution provided as a penalty for impeachment only removal from office and inability to hold office. "Impeachment is not in this country, as in England it is a mode by which crimes are punished." Accordingly English precedents of impeachment are valueless.

But the meaning of English common law terms is, on the contrary, an absolute guide to the interpretation of legal terms used in the Constitution. So the Supreme Court has decided. "Treason, bribery, and other high

crimes and misdemeanors," which the Constitution (Article II, section 4) declares impeachable offences, therefore must be interpreted by the common law.

Blackstone has specified the acts which are "crimes and misdemeanors" under the general head of public wrongs: (1) crimes against justice, such as bribery and perjury; (2) crimes against peace, such as riots; (3) crimes against trade, such as smuggling; (4) crimes against health, such as selling unwholesome provisions; and (5) crimes against the police or public economy of the State, such as bigamy and nuisances.

Can there be any doubt that when our ancestors went to the common law of England as it was laid down by Blackstone and selected treason and bribery as two great public political crimes, thus indicating the nature of the crimes which by the Constitution they intended to make impeachable, and drew from Blackstone, or even older authorities than Blackstone, the intelligible and well-understood phrase, "other high crimes and misdemeanors," they intended to include those crimes which were as well known to the common law of England as were the crimes of treason and perjury.

If it be said that the circumstance that treason is defined in the Constitution has deprived Congress of the power to legislate upon this branch of the subject, and that its authority is therefore limited to "bribery and other high crimes and misdemeanors," it may be stated in answer that the Constitution did not create the crime of treason, but simply limited the definition of the crime to a single offence; while by the common law of England it included several distinct offences. It should be observed, however, that by the English law every form of treason was a crime or misdemeanor, and while by the Constitution of the United States only one of these forms is declared to be treason and other acts still rest in the class of crimes and misdemeanors.

Bribery was an offence as well known to and as well defined by the common law of England at the time the Constitution was framed as was the crime of treason. The phrase "high crimes and misdemeanors" had been in use in the courts and in the books of England for centuries.

Legislative wisdom is and ever must be incapable of rendering the meaning of these words more certain than it is when subjected to the principles which lie at the foundation of the

English common law. The Constitution makes the President and all civil officers liable to impeachment if guilty of bribery; is it to be assumed that this power in the Constitution was to remain dormant until Congress by law should declare what bribery is, and what acts are acts of bribery; and also provide that bribery as defined by law shall be an indictable offence? Be it remembered that, although bribery is named in the Constitution, it was not, when the Government was organized in 1789, an indictable offence, which the minority of the committee say it must be before it can be impeachable. The Government was in existence from the 4th day of March, 1789, to the 30th day of April, 1790, before a crimes act was passed, and during that time neither treason nor bribery was indictable by law in any court of the United States. Will anybody say in view of this provision of the Constitution that our fathers would have sat silently and submitted to the administration of a man who was elected by bribery, but whose offence was by no law of the land indictable?

Still further, it is constitutionally impossible for Congress to declare that certain offences are crimes and misdemeanors everywhere and under all circumstances within the territory of the United States. For example, the power of Congress to provide for the punishment of the crime of murder is limited to the forts and arsenals, to the District of Columbia, and to the Territories of the Union. Upon the theory that those offences only are impeachable which are made crimes by the laws of the United States a civil officer might be guilty of murder within the jurisdiction of a State where the crime is not and cannot be punishable by any law of Congress, and the House and Senate would have no power to arraign, try, and remove him from office. Practically it would be found impossible to anticipate by specific legislation all cases of misconduct which will occur in the career of criminal men. At the present moment we have no law which declares that it shall be a high crime or misdemeanor for the President to decline to recognize the Congress of the United States, and yet should he deny its lawful and constitutional existence and authority, and thus virtually dissolve the Government, would the House and Senate be impotent and unable to proceed by process of impeachment to secure his removal from office?

The theory that we must look to the statutes of the United States alone, and that the President and other officers, as long as they do not violate the criminal statute laws of the country, may do any act or thing, however detrimental to the public in-

terests, however contrary to the public morals, however heinous in its nature, and still retain their offices, is a theory so at variance with civilization, with the principles of law, and with the existence of the Government, that it ought not to receive our support or countenance unless the language of the Constitution imperatively requires us to yield to its authority.

I rest firmly in the conclusion that the phrase "bribery or other high crimes and misdemeanors" is used in the Constitution in accordance with and subject to the rule of reason, which lies at the foundation of the English common law. This rule is that no person in office shall do an act *contra bonos mores,* contrary to good morals; and subjecting the provisions of the Constitution concerning impeachment to that rule the result is that neither the President, the Vice-President, nor any civil officer of the United States can lawfully do any act, either official or otherwise, which in a large, a public sense is contrary to the good morals of the office he holds. Misconduct in office, misbehavior in office, misdemeanor in office, are equivalent terms. The principle of the English common law furnishes not only the foundation for the cases which have arisen, but for others that may arise and to which the same great principles of law must be applied.

This principle has been elucidated by the most eminent writers of England and of this country, and it is especially recognized, applied, and elaborated by one of the great jurists of modern times. I refer to Chief Justice Shaw, of the supreme court of Massachusetts.

By the Constitution this House may determine the rule of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member. But are we to sit here without authority to protect ourselves until those acts which amount to disorderly behavior are enumerated in the laws of the country or by the rules of the House? Our security is first in the reason and conscience with which we are individually guided and warned; and then in the reason and conscience of our judges applied in the light of the principle which lies at the foundation of the common law, municipal, public, and parliamentary. Upon the view of the Constitution which I present and maintain honest public officers are safe in all their rights. In the nature of the case, a civil officer, guided by his conscience and judgment, will do no act which the Senate of the United States upon its conscience and judgment, and by a two-thirds majority of the members present, will pronounce a high crime and misdemeanor. On the other hand, the theory that I

aim to refute seems to me to be fraught with danger to civil officers and with peril to the Government.

With this view of the law I turn now to the authorities, and then I shall pass briefly over the precedents which the history of this country furnishes.

Here the speaker quoted Wooddeson, the first English authority on impeachment, Alexander Hamilton in "The Federalist," No. 65, and Nathan Dane in his "Digest of American Law," chapter 222, articles 8 and 9.

It follows from these authorities that those acts are especially impeachable offences which affect the welfare or existence of the State, or render the officer unfit for the discharge of his duties. It does not follow that every act which is a crime at law is therefore impeachable, or that impeachable offences are indictable.

Justice Joseph Story, writing about the year 1830, when the cases of Blount, of Chase, and of Pickering were before him and known to him, says that no one of the cases of impeachment which had then been tried rested upon statutable misdemeanors.

The speaker then discussed the cases of impeachment in the United States.

William Blount [Tenn.], a Senator, was impeached by the House on July 3, 1797, for inciting the Indians of the Southwest to rise against the Government. The Senate discussed the case, holding that a Senator was not a civil officer, but dismissed Blount from the Senate because he was guilty of a high misdemeanor. Yet Justice Story said that he had not committed a statutable offence.

Samuel Chase [Md.], a justice of the Supreme Court, was impeached in 1804 by the House, of high crimes and misdemeanors, and on one count (haranguing the grand jury against the government of Maryland) a majority of the Senate, though not the requisite two-thirds majority, found him guilty. Yet he conducted his own case, and did not venture to risk it on the question of law.

John Pickering [N. H.], judge of the district court

of his State, was successfully impeached for being drunk and blaspheming upon the bench, which were not statutable offences under the law of the United States. It was pleaded in Judge Pickering's behalf that he was insane, and not that his offences, if they had been committed by a sane man, would not be high crimes and misdemeanors.

West H. Humphreys [Tenn.], judge of the district court of his State, was successfully impeached in 1861 for declaring in a public speech that Tennessee had the right to secede.

"No lawyer will maintain that Judge Humphreys could have been indicted for treason or for any other crime under the laws of the United States because of what he did say, or of anything that he could have said in a public speech at Nashville at that time."

Mr. Boutwell then discussed the facts in the case of President Johnson. At the end of his summation Mr. Boutwell admitted that the offences which he charged against the President were not in themselves "high crimes and misdemeanors," but "tributary" to the accomplishment of the great object he had in view—the treasonable seizure of the Government. In other words, he indicted President Johnson for "constructive treason."

Mr. Wilson in reply said that Mr. Boutwell had spent the major part of his speech in demolishing an unimportant point which the minority had made as a suggestion rather than an affirmative declaration of law—namely, that only crimes and misdemeanors indictable under the statutes of the United States will justify the impeachment of a civil officer. Nevertheless, though the matter was of no consequence, the minority of the committee adhered to their view.

Mr. Boutwell, he said, held that impeachment looks merely to a removal of an officer who may have conducted himself in a manner which the conscience of the House disapproves; that a trial on impeachment is not a trial for crime in its technical sense. I commend to him as an answer to his most singular sug-

gestion that part of section two of article three of the Constitution, which says:

"The trial of all crimes, except in cases of impeachment, shall be by jury," &c.

Can a non-indictable offence be tried by a jury? The gentleman from Massachusetts will not so affirm. Then, are not trials in cases of impeachments trials for indictable crimes, at least at common law? How will the gentleman avoid this conclusion except by rejecting the Constitution and affirming as its superior the conscience of this House, which may be Republican now and Democratic at no distant day?

The gentleman says, again, that impeachments look not to the punishment of persons, but to the removal of officers. Let this be granted for the sake of the present argument. What follows? The Constitution answers that for whatever purpose an impeachment may be instituted it must be based on "treason, bribery, or other high crime or misdemeanor." Now, sir, if this proceeding is not for punishment, if it is for something else, still it is plain we cannot put its machinery in motion unless we have the force of a crime or misdemeanor to move it.

And here we are told that for the meaning of the terms "high crimes and misdemeanors" we must resort to the common law of Parliament. If this be true what comes of the declaration that "English precedents should not influence the action of this House in its exercise of the power of impeachment"? Authority upon authority based on parliamentary law is presented by his report made to the House in this case, and yet we are told that English cases should not influence our action.

Sir, I accept the umpire offered by the gentleman. I am willing to go with him to the common law of Parliament to ascertain what the terms "high crimes and misdemeanors" mean. I have presented in the report of the minority two well-considered and thoroughly digested cases made up by this umpire. Both of these affirm that the terms "high crimes and misdemeanors" mean offences indictable by the common law of England or the statutes of Parliament.

I refer to the cases of Macclesfield and Melville—two of the best considered of all the English cases. Macclesfield was convicted upon the express ground that his offence was indictable under the act of Edward VI; Melville, on the contrary, was acquitted upon the ground that the case did not show, as committed by him, an offence which would support a presentment or indictment in any court of the realm.

These cases follow the current authority of England, and I ask the gentleman to cite a single case in opposition thereto entitled to the respect of this House.

The gentleman asserted with an air of triumph that the crime of murder might be committed by the President or any other civil officer of the United States in places and under circumstances which would not bring the crime within the jurisdiction of the courts of the United States, and demanded to know whether in such a case an objection would be interposed to an impeachment of the offending officer.

I answer this question by quoting the language of the gentleman's own report, as follows:

> "The legitimate causes of impeachment can have reference only to public character and official duty. In general, those offences which may be committed equally by a private person as a public officer are not the subjects of impeachment. Murder, burglary, robbery, and, indeed, all offences not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding, and neither House can regularly inquire into them except for the purpose of expelling the member."

This answers the gentleman's inquiry. It very plainly declares that the supposititious case stated by the gentleman would not sustain an impeachment of a civil officer, and this is sufficient for my present purpose. It might be difficult for the conscience of this House to determine which rule of conduct to follow in such a case—the one presented by the majority report or the one stated in the speech to which we have listened.

The gentleman has told us that the power of impeachment vested in this House is subject to no revision or control, and that its exercise is to be guided solely by the conscience of the House. Correctly interpreted, this doctrine, as it seems to me, comes to this: that whatever this House may declare on its conscience to be an impeachable offence, reduce to the form of articles, and carry to the Senate for trial, that body is only to be allowed to declare whether the officer impeached is guilty of the facts presented against him, but is not to be permitted to say that such facts do or do not constitute a crime or misdemeanor. For, if this conscience is not subject to any control or revision, having determined that a given state of facts constitutes a high crime or misdemeanor, it would seem to follow, logically, that the House must demand judgment of conviction on proof of the facts charged, regardless of the opinions of the members of the Senate respecting the presence or absence of those elements which alone can constitute any act a real crime.

This doctrine may carry this case to the determination desired by the gentleman. But can he not see that it may return to plague him and the country? He admitted that if the minority of the committee are right on the law the majority have no case whatever. And I may here say that if he is right in his views of the power of impeachment no law is needed, for the law might control the conscience of the House.

I agree with him in the statement that Congress cannot declare and punish as a crime an act which does not involve the elements of crime as they are known to and established by the common law. But this doctrine is fatal to his argument and destructive of his case; for if it be true the conscience of this House is as much bound by it when exercising the impeaching power as it is in matters of ordinary legislation. You cannot bind the ordinary legislative power of this House by the principle here laid down and then, when you come to exercise the impeaching power, brush it out of the way in order that the obnoxious officer may be removed without the presentation of some act involving the well-known elements of crime.

The position which the minority of the committee occupy in this case may be summed up in these words: that no civil officer of the United States can be lawfully impeached except for a crime or misdemeanor known to the law; that this body must be guided by the law, and not by that indefinite something called its conscience, which may be one thing to-day and quite a different one to-morrow. If the case now before us, tested by the principles of criminal law, discloses high crimes or misdemeanors coming within the rule I have stated, then the gentleman is right in demanding that the President of the United States be impeached; and I here throw open to the gentleman the range of both statutory and common law impeachable crimes. If these cannot be found in the record of this case, then no amount of conscience in House and Senate can justify us in proceeding further with it.

The gentleman quoted from Wooddeson to show that non-indictable offences may justify an impeachment of a civil officer, but he did not read far enough. The principles of which Wooddeson is treating in the lecture from which the passage read by the gentleman is taken involve more than the power of impeachment: they involve the power of attainder and the power to pass bills of pains and penalties. These powers have been confused and confounded by many of the elementary writers. Wooddeson has been more fortunate than most writers in presenting the lines which divide these powers.

Impeachments were for offences known to the law; were founded on the laws in being; for other offences the sharp and unlimited powers of attainder and bills of pains and penalties were used. These extraordinary powers are denied to us by the Constitution. We may provide for crimes and misdemeanors known to the law when the acts constituting them were done. "No bill of attainder or *ex post facto* law shall be passed."

The gentleman also referred to Story. But how loosely Judge Story wrote on this subject may be seen by reading a few lines from one of the sections of his "Commentaries":

> "The object of these prosecutions in America, as well as in England, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence or from the imperfect organization and power of these tribunals."—*Story's Commentaries*, Section 688.

Does this present a correct idea of the power of impeachment vested in this House by the Constitution? Sir, send out your committee upon charges preferred against some petty postmaster who has not influence enough in his neighborhood to change the result of an election for a justice of the peace, and he, within the contemplation of the Constitution, is one of these "high and potent offenders" who must be punished by an exercise of this grand power lodged in the House of Representatives, for he is a civil officer of the United States. Why, sir, it is simply ridiculous, and it only tends to show how loosely the text writers have written on this subject.

But the gentleman found in Story an authority to the effect that we may impeach for "political offences." What is a "political offence"? That is a broad and a very significant term in this country. Is it the doing of something that the dominant political party in the country do not like? That, in one sense, is a political offence. Are we to impeach for that? We did not like the removal of our own friends from office by the present President. Are we to impeach for that? He has done many acts of political littleness, meanness, and treachery. Are these impeachable political offences? Sir, it is unsafe for us to wander into the field of political or party action for offences upon which to rest the impeaching power of this House. Disaster alone could result from such a course of procedure.

The gentleman referred to cases which have occurred in this country. We have had, as he stated, the case of Blount, of Chase, of Pickering, of Humphrey. Blount's case was decided, as the gentleman informed us, upon a plea to the jurisdiction

of the court. Certainly, then, that case established no precedent beyond that involved in the one point passed upon by the court. In Chase's case the gentleman says he finds an approval of the doctrine he has argued here to-day, that something less than an indictable offence may be the subject of an impeachment. How is that ascertained? I have always supposed that before the action of a court can be treated as authority it must decide something in such a manner as to disclose the principle underlying its action and guiding its conduct. Chase was tried. What was the result? He was acquitted. Why? The record does not disclose the reason; but it must have been because the court did not believe him guilty of high crimes and misdemeanors. The proof of the facts charged was very strong, and an acquittal certainly does not tend to establish the doctrine that an impeachment may be properly had for a non-indictable offence. In what did the case originate? In the partisan feelings and excitements of the times. And this case of Judge Samuel Chase has gone into American political history as a partisan impeachment.

Then we come to the Pickering case. As the minority have said in their report, that case is a disgrace to the court that tried it. It is very manifest from the report of the case that, like the impeachment of Judge Chase, this was a partisan case. Notwithstanding the court permitted Judge Pickering's counsel to set up the plea of insanity, the case was disposed of without regard to that plea, although, if anything was proved in the case, it was that Pickering was insane. And if it is authority for any purpose or thing, it is that an insane man may be held criminally liable, and be punished for acts done by him in the midst of his insanity and caused thereby. Such a doctrine is monstrous. The Constitution has provided another remedy for such cases.

The Humphrey case, it is said, was not based, so far as the first article was concerned, on any act for which he could have been indicted. What are the facts? The South Carolina convention passed the ordinance of secession on the 17th day of December, 1860. The criminal act laid to the charge of Humphrey, and on which the first article rested, was alleged to have occurred on the 29th day of the same month, at which time he, being a judge of the district court of the United States, urged in a public speech the people of Tennessee to secede and make common cause with the people of South Carolina in the war which they had levied against the United States. This was an act of

treason. War having been levied, his conduct made him a traitor.

Mr. Wilson then took up the charges against President Johnson and argued that either they were unfounded or they related to non-impeachable offences. He said in closing:

When the gentleman from Massachusetts, in commenting on one of the alleged offences of the President, stated that we could not "arraign him for the specific crime," he disclosed the weakness of the case we are now considering. If we cannot arraign the President for a specific crime for what are we to proceed against him? For a bundle of generalities such as we have in the volume of testimony reported by the committee to the House in this case? If we cannot state upon paper a specific crime how are we to carry this case to the Senate for trial?

On the following day (December 7) the resolution of impeachment was put to vote and defeated—57 ayes, 108 nays. All the affirmative votes were Republican, but a still greater number of that party voted in the negative.

Removal of Secretary Stanton

The question seemed decisively settled. However, the President himself soon brought it forward again by engaging in a conflict with the Senate over his removal of Edwin M. Stanton from his position as Secretary of War.

The President and the Secretary had long been incompatible associates. The Chief Executive of the nation had plainly intimated to his military adviser that his resignation would be acceptable, but Secretary Stanton refused to act on the hint, and stuck to his post, because, believing the welfare of the country demanded that a man in sympathy with the anti-administration policy of military reconstruction should be in charge of the War Department, he feared that he would be replaced by one who would be opposed to this policy. Finally, on August 5, 1867, the President formally asked the secretary to hand in his resignation. Mr. Stanton

refused, giving his reason for doing so. On August 12 the President suspended him from his office until the next session of Congress under the power conferred by the Tenure-of-Office Act, and appointed General Ulysses S. Grant in his place.

On the 12th of December President Johnson reported his actions in the matter to the Senate, giving his reasons therefor.

On January 13, 1868, the Senate, by a party vote, violated assurances which had been made by leading members at the time the Tenure-of-Office Act was passed, that no Cabinet officer obnoxious to the President would be forced upon him, and reinstated Mr. Stanton. In a characteristically discourteous fashion Mr. Stanton took immediate possession from General Grant. The President was incensed at the General for his acquiescence in the order of the Senate, having trusted that he would resist it and so bring the Tenure-of-Office Act before the Supreme Court for adjudication, and wrote him an angry letter to which General Grant replied in kind, leading to irreconcilable enmity between the two—a state which was inestimably valuable to the General in restoring him to the good graces of the Republican party, which had become suspicious of the quality of his "radicalism" because of the trust imposed in him by the President.

On February 21 the President brought the issue with Congress to a head by informing it that he had designated Lorenzo Thomas, adjutant-general of the army, to act as Secretary of War, *ad interim*. The Senate went into executive session and passed a resolution that the President had no constitutional power to perform this action. When this action was reported to the House John Covode [Pa.] offered a resolution to impeach the President of "high crimes and misdemeanors." The House referred the communication of the President and the resolution of Mr. Covode to the Committee on Reconstruction.

On the following day Thaddeus Stevens [Pa.], chairman of the committee, reported the resolution.

On Impeaching the President

Debate in the House of Representatives, February 22, 1868

Mr. Brooks characterized the measure as "the ghost of impeachment," which had been successfully laid, stalking forth again from its grave at the strange spell exercised by the dominating radical minority of the Republican party. He realized that the familiar formula, the adjuration by the Constitution to begone, would not be effective this time—that proceedings to impeach the President would certainly be carried through. He therefore solemnly warned the opposition, amid its derisive laughter, that these proceedings must be conducted in strict accordance with law, that if any other process was adopted to throw the President out of office, "millions of the people of this country" would "never, never, so help me God! never, never submit."

The attack, he said, upon the President's constitutional power over the army had injected a new element into the contest: four-fifths of this army were Democrats, "and if you proceed to introduce politics into the army the Democratic soldier will follow the Democratic instinct, and stand by the Constitution and laws of his country," for in this matter Congress was the usurper.

Sir, all the offices of the departments of this Government are trusts. Congress has a high and august trust reposed in it; the judicial tribunals have also high and august trusts reposed in them. So, also, has the President of the United States an equally high trust reposed in him to maintain his constitutional powers, and to act and adjudicate upon those powers, subject to appeal to the Supreme Court of the United States. If he should throw away that trust; if he should abandon the powers and prerogatives given with that trust; if he should allow the executive department of the United States to be overthrown or disorganized, he would be guilty, not only of a high offence against the Constitution of the United States, but a high crime against the people of this country in not maintaining all the powers which the Constitution has given him.

You make a rule violating the Constitution, and you then impeach the President because he wishes to test the constitutionality of your rule. In other words, you claim the right to throw the President out of office, to abrogate or change the executive department of the Government, to strip it of its prerogatives and power, whenever, by a mere act of Congress, you can overrule a veto; and when you have thus done, unless the Executive obeys your act implicity, without any investigation or legal adjudication, you claim the right to snatch the case in contest from the Supreme Court of the United States and adjudicate it here in this House and in the Senate through the impeachment power, which destroys that Executive, even if he could afterward rule that all that has been done is right. You have a right, you contend, to pass any illegal and unconstitutional laws; you have a right to disfranchise all of the people of the United States, if you so choose, that are not of your party; you have a right to eject every Democratic member upon the floor of this House by some disqualifying law that you have passed; and if the President of the United States maintains and executes the laws as they have been adjudged by the courts hitherto you have a right then to impeach and depose him because in the exercise of this trust he has been executing what he deems to be the laws and the Constitution of the United States.

Sir, in my judgment, these doctrines and these principles are not maintainable, or if they are then we have ceased to have a written Constitution, and the whole Government which we have is an arbitrary majority on this floor or some arbitrary majority in the Senate. What is the Government? What is the Constitution? What is the law? What is the beauty of our free institutions? The arbitrary rule of a temporary House of Representatives or a temporary Senate? The mere will, the caprice, the tyranny of a majority of members of Congress elected two or four or six years ago?

Sir, these illimitable, uncontrollable forms of legislative government have been tried elsewhere, and everywhere they have been found to fail. A mere majority is often more tyrannical than a king or a despotism. An oligarchy such as you are creating is the worst form of government man ever devised. The worst of all tyrannies ever created, far more odious than any one-man despotism in history, was the illimitable, uncontrollable will of a legislative majority in the French revolution, acting from passion and caprice, beyond any law or written constitution whatsoever. Yet here, in this House, overriding our written Constitution, paying no regard whatsoever to its provisions,

overthrowing the whole executive authority to-day, and but yesterday destroying an august tribunal of the judiciary—the last resort of conflicting opinions short of arms—here, on this floor, in this House, misrepresenting the people in point of fact—for you do not represent the majority even of the people of the North, as the votes will show hereafter—representing now but the passion, the caprice, and the power of the past, not of the present—you are attempting to concentrate here in a majority uncontrollable and illimitable that absorption of power which destroys the two other branches of the Government, the Supreme Court of the United States, and the Executive of the United States, and which thus makes you not only supreme, but the worst sort of an oligarchy and despotism that ever cursed, unhappily, men.

Sir, the history of all such acts as this has been written by many historians and illuminates many pages of the past; but here, for the first time in the history of our country; here, on the natal day of Washington, whose farewell address invokes peace, quiet, forgetfulness of party, and devotion to the public good, whose very presence should inspire us on a great occasion like this, you, by a mere party majority, in order to obtain possession of the Executive of the United States and to have the distribution of a few offices—you propose to depose the President of the United States and to substitute a President of your own, the present president of the Senate [Benjamin F. Wade].

Go on; go on, if you choose. If I were your trusted adviser and wished to accomplish your overthrow I would hurry you on. Andrew Johnson has no power now as President of the United States. He is without authority or influence or patronage, you have so manacled whatever influence or patronage that he has. By your violent acts, by your unconstitutional proceedings, by your revolutionary overthrow of executive rights, you may succeed, if not in reëlecting him to that office, at least in immortalizing him on the pages of history as the most glorious defender of liberty that ever lived under any constitutional government. You may strip him of his office, but you will canonize him among those heroic defenders of constitutional law and liberty in whose ranks it is the highest glory of human ambition to shine. You may sacrifice him as a President, but long, long after the very name of President—a free President—shall have been forgotten in the clouds of the past his will be blazoned forth in the foreground of the present as the pole star of liberty and law to be reverenced among men.

But why is this attempted? Because it is believed that the

Northern people of this country are now with the Democratic party; because it is believed now, previous to a presidential election, it is necessary so to manipulate and control the executive and judicial departments of the Government, by the annexation of some African states of the South, that the so-called Republicans of the North, in spite of the majority of the Northern people, shall obtain control and possession of this Government. The sacrifice of two of the three branches of government is deemed indispensably necessary to keep the Republican party in power.

I beg the party upon the other side to consider the fatal danger of establishing such a precedent as this. Suppose you succeed, suppose you make the president of the Senate President of the United States, you settle that hereafter a party having a sufficient majority in the House and the Senate can depose the President of the United States. You establish a precedent which all future parties in all time to come will look to. The curse of all other countries, the curse of France, the curse of the South American republics, has been that they have followed such a precedent as you call upon us to establish here—the overthrow of their executive, not by law, not by Constitution, but by the irregular and arbitrary and revolutionary exercise of power, in order merely to obtain a temporary possession of the Government. Is the possession of the Government, the possession of these offices from now until March, 1869, worth the sacrifices of our country, the sacrifice of our institutions we are called up to make by the report of the Committee on Reconstruction? I beg you, then, to desist from that precedent with more than common earnestness and with a horror of the future if you follow on in this wild, revolutionary course. In the name of all history as well as all right, in the name of the present, in the name of the future, in the name of your children and of mine and of our children's children, I implore you to respect the institutions of your country and to fly from and beware of this terrible, fatal precedent of the deposition of the executive branch of the Government.

John A. Bingham [O.], who had formerly opposed impeachment, replied to Mr. Brooks.

The issue involved is whether the supremacy of the Constitution shall be maintained by the people's representatives. The President of the United States has assumed, sir, to set himself above the Constitution and the laws. Heretofore I have kept

myself back and have endeavored to keep others back from making any unnecessary issue between the President and the representatives of the people touching the manner in which he discharged the duties of his great office. So long as there was any doubt upon the question of his liability to impeachment within the text and spirit of the Constitution I was unwilling to utter one syllable to favor such a proposition or to record a vote to advance it.

I stand here, however, to-day, filled with a conviction as strong as knowledge that the President of the United States has deliberately, defiantly, and criminally violated the Constitution, his oath of office, and the laws of the country in the removal of Secretary Stanton.

The gentleman tells us to beware, beware, beware. Beware of what, sir? To beware of rendering a faithful obedience to our oaths as the Representatives of the people? To beware of taking the steps authorized by the Constitution and demanded by the public safety to put this usurper of authority and criminal violator of public trusts on trial before the only tribunal on earth authorized to try him for his crimes?

The gentleman assumed—and I thank him for the assumption; his warning would have been wholly unintelligible without it—that this is not the House of Representatives. He ventured to say, in order to find some justification for his significant words of warning, that this was but a partial Congress. And yet he affects to be the friend of the Constitution. I aver, and I challenge contradiction of any man living whose opinion is entitled to any respect, that a partial Congress can neither impeach anybody nor pass any law. It is a Congress composed of a Senate and House of Representatives of the United States, which alone, by the Constitution, is vested with legislative power under that great instrument. A partial Congress is unknown to the Constitution. I protest against the gentleman's pretended affection for the Constitution when he stands here before the country warning us against the discharge of our duty, and in the next breath, in order to justify himself in his strange position, telling us that we have no Congress. If we have no Congress—if this be not the House of Representatives of the United States—of course our legislation is void. If there be no Congress to impeach and remove this recusant President, there is no remedy left but for the great people themselves to come to the rescue.

I undertake to say that there is enough in the facts already disclosed in the correspondence between the President and the Secretary of War and his appointee as Secretary *ad interim* to

justify this House in drawing the inference—and inference is for the grand inquest of the nation—that the President of the United States was by that act guilty of another crime under another act of Congress additional to that defined in the sixth section of the act of 1867. I refer to the act of 1861, which makes it a high crime, punishable by fine and imprisonment, for two or more persons to conspire together by force or by intimidation or by threat to attempt to prevent any person from accepting or holding any office under the United States. I undertake to say that, upon a full investigation of this case, the President of the United States will be found to have been guilty, in conjunction with Lorenzo Thomas, of attempting, by threats, by intimidation, and, if need be, by force, to prevent the Secretary of War from holding or executing the duties of the office to which he had been appointed under the Constitution, and to which he was entitled by the solemn judgment of the Senate.

And I go a step further: I undertake to say, not upon any fact proved before the committee, but upon knowledge that has been communicated to me through original sources, that this appointee of the President was giving it out in the streets of your capital on yesterday that on this day he would demand a surrender of the war office, and if it were refused and the doors closed against him he would take it by force.

The President now comes in here and tells us, and tells the country that he is to construe the Constitution for himself; and his advocate takes his place upon this floor and reiterates the offensive assumption of the President, declaring that it is the right of the President to determine for himself the constitutionality of every act we pass, and to reject, disobey, or repeal it at his pleasure, and in defiance of the power of Congress. The law-making power is the supreme power of the Republic, and its acts may only be reviewed by the civil tribunals of justice. Your Constitution nowhere gives to the President the power claimed to defy and repeal the laws of Congress at his pleasure.

I insist, sir, that the President himself is as much the subject of law as the humblest citizen of the Republic; and God save the Republic when he may assert the prerogative of declaring what is law and what is not law at his own pleasure, and defy the power of the people to call him to account for it.

For one, sir, I would be willing to delay indefinitely, if you please, the final action of the House upon this question, if I were fully assured that the President from this time forth would have respect to the obligations of law, and not undertake to usurp the authority of this Government in defiance of the people's Consti-

tution and the people's laws. But, sir, I have had evidence enough in the transaction, as it is spread upon your record, to satisfy me that the President of the United States is so bent upon his own destruction, or upon the destruction of the peace of this great country, that he is capable of rushing to any extreme of madness whatever. I propose to curb him at the threshold. I propose to do it, not in the spirit of a partisan, but in the spirit of a Representative of the people, acting under the obligations of his oath, and having due regard to the requirements of the Constitution and the laws.

No one in this land would rejoice more than myself to know that when this case shall have been presented to the Senate of the United States as a high court of impeachment it shall become clear to the satisfaction of that body that the President of the United States has only erred in judgment, and has not intended to invade the Constitution or to defy the authority or set aside the supremacy of the laws. I would rejoice at his acquittal thus honorably, for his own sake and for the sake of the Constitution of my country. But, sir, in the light of what he has already declared and placed upon the record, I am precluded from the conclusion that he meant anything else than to defy your power.

The gentleman talks about liberty. I stand here to-day for that liberty which is regulated by law, that liberty which belongs alike to us all, and which is not the exclusive right of those who hold high official station.

There was surely nothing in this statute that operated oppressively upon the President of the United States. It was simply a statute under the Constitution of the United States, enabling the people of the United States to exercise their own powers as to the mode and manner of executing their own laws. I ask the President to submit to it, to submit to it gracefully, to submit to it decently, to obey it, and to set the example to all the people of the land that the first duty of the citizen is obedience to the people's laws, as it is the first duty of their Chief Magistrate to see that they be faithfully executed.

I leave the final issue where it belongs under the Constitution —with the Senate—to determine whether the President has been guilty of a violation of the law, of wilfully, deliberately, criminally violating it, and violating as well the Constitution of his country, and disregarding as well the obligation of his oath.

General John A. Logan [Ill.], answering those who feared that the impeachment might lead to revolution, said that:

A country which in time of war and excitement can stand the assassination of so good and just a President as Abraham Lincoln can and will stand the impeachment of as bad a President as Andrew Johnson.

Ebon C. Ingersoll [Ill.] read a telegram from Richard Oglesby, Governor of Illinois, saying that the people of that State demanded the impeachment, and would heartily sustain Congress in such action.

Mr. Ingersoll said that this telegram was "but the voice of the people of the whole country. I know of no man who loves his country more than party who will not pronounce a verdict against the President. And I shall for one be grievously disappointed if, within ten days from this time, honest old Ben Wade (president of the Senate) is not President of the United States."

The Democrats attempted in vain to have Washington's Farewell Address read as a rebuke to the factious spirit of the Republicans.

Sunday intervened before the House reassembled (on February 24). Mr. Ashley reopened the debate with a characteristic bitter attack upon the President.

Burton C. Cook [Ill.] followed with a short, incisive legal argument in favor of impeachment.

George W. Julian [Ind.] expressed his gratification that the President, by removing Secretary Stanton, had brought his contest with Congress to a clear issue, "beautifully consolidating into a unit all the friends of the country in the House and throughout the nation." He admitted, however, that in itself this removal "would be regarded as scarcely sufficient grounds" for impeachment, but that it was so when "considered in the light of far greater previous offences," such as the President's action in regard to the New Orleans "Massacre."

Benjamin F. Butler [Mass.] recited the acts of the President which rendered him liable to impeachment, and said in conclusion:

"For a tithe of these acts of usurpation, lawlessness, and tyranny our Fathers dissolved their connection with the government of King George; for less than this King James lost his

throne, and King Charles lost his head; while we, the Representatives of the people, adjudge only that there is probable cause shown why Andrew Johnson should be deprived of the office he has desecrated and the power he has abused, and if convicted by the court to which we shall send him, be forever incapable of filling that office—the ambition to be again nominated to which has been the moving spring of all these crimes."

George W. Woodward [Dem.], of Pennsylvania, formerly Chief-Justice of the Supreme Court of his State, urged the legal reasons against impeachment. He said that, since all the States were not represented in the House and Senate, there was no competency in the former chamber to impeach an officer, nor in the latter to try him.

"If I were the President's counselor I would advise him, if you preferred articles of impeachment, to demur to your jurisdiction and to that of the Senate, and issue a proclamation giving you and all the world notice that, while he held himself impeachable for misdemeanors in office before the constitutional tribunal, he never would subject the office he holds in trust to the irregular, unconstitutional, and fragmentary bodies who propose to strip him of it."

Mr. Boutwell stated what in his opinion was "the plot in which the President is engaged."

He desires, first, to get control of the war department, in order that, as in 1861, the munitions of war, arms, and material might be used for the purpose of enabling him to succeed in his aspirations to be President of the United States. He knows that if he can corrupt the officers in charge of the Southern military departments these ten States will be in his control, and that he can send to the Democratic convention, on the 4th of July next men who would sustain his claim for the presidency. Then he can secure the electoral votes of those ten States by excluding the negroes whom we have enfranchised from all participation in the election. If by fortune he should receive a sufficient number of votes in the North to make a majority, then, with the support of the army which he had corrupted he has determined to be inaugurated President of the United States at the hazard of civil war. To-day we escape from these evils and dangers.

Later in the day Mr. Stevens [Pa.] closed the debate, which had broken all previous records in the number of speeches made in a single day, these, together with the speeches not delivered, but printed, filling more than 200 columns of the *Congressional Globe*.

Mr. Stevens prefaced his remarks by adverting to the importance of the issue.

The charge, if falsely made, did a cruel wrong to the Chief Executive of the nation; if true, proved him guilty of so atrocious usurpation as was "ever perpetrated by the most detestable tyrant who ever oppressed his fellow-men. The question, therefore, should be discussed in no partisan spirit, but with legal accuracy and impartial justice. The people desire no victim, and they will tolerate no usurper."

In order to sustain impeachment under our Constitution I do not hold that it is necessary to prove a crime as an indictable offence, or any act *malum in se*.[1] I agree with the distinguished gentleman from Pennsylvania [Judge Woodward], on the other side of the House, who holds this to be a purely political proceeding. It is intended as a remedy for malfeasance in office and to prevent the continuance thereof. Beyond that it is not intended as a personal punishment for past offences or for future example.

The speaker then recounted the "official misdemeanors" of the President, beginning with the latest, the removal of Secretary Stanton. In connection with this removal he admitted to the quarrel which had arisen between the President and General Grant. In this recrimination, he said, if the President told the truth, "he is guilty of a high misdemeanor, for he avows his effort to prevent the execution of the law." If the General tells the truth, the President is again proved guilty, for the General corroborates the President's avowal, but denies complicity in the effort.

We propose to prove on the trial that Andrew Johnson was guilty of misprision of bribery by offering to General Grant, if he would unite with him in his lawless violence, to assume in his stead the penalties and to endure the imprisonment denounced by the law. Bribery is one of the offences specifically enumer-

[1] "Evil in itself."

ated for which the President may be impeached and removed from office.

The speaker then reviewed the course of the President beginning with the inauguration of his reconstruction policy, and asserted that it was in defiance of the Constitution.

If Andrew Johnson escapes with bare removal from office, if he be not fined and incarcerated in the penitentiary afterward under criminal proceedings, he may thank the weakness or the clemency of Congress and not his own innocence.

I trust that when we come to vote upon this question we shall remember that, although it is the duty of the President to see that the laws be executed, the sovereign power of the nation rests in Congress, who have been placed around the Executive as muniments to defend his rights, and as watchmen to enforce his obedience to the law and the Constitution. His oath to obey the Constitution and our duty to compel him to do it are a tremendous obligation, heavier than was ever assumed by mortal rulers. We are to protect or to destroy the liberty and happiness of a mighty people, and to take care that they progress in civilization and defend themselves against every kind of tyranny. As we deal with the first great political malefactor, so will be the result of our efforts to perpetuate the happiness and good government of the human race. The God of our fathers, who inspired them with the thought of universal freedom, will hold us responsible for the noble institutions which they projected and expected us to carry out. This is not to be the temporary triumph of a political party, but is to endure in its consequence until this whole continent shall be filled with a free and untrammeled people or shall be a nest of shrinking, cowardly slaves.

The resolution that the President be impeached was then adopted by a strictly partisan vote of 126 yeas, 47 nays, 17 absent or not voting. Of the absentees and non-voters, only one was a Democrat.

The speaker appointed Mr. Boutwell, Mr. Bingham, Mr. Wilson, General Logan, Mr. Julian, and Hamilton Ward [N. Y.] as a committee to draw up the articles of impeachment.

On February 29 the committee made its report, which was adopted on March 2 by a party vote. The House

THE SMELLING COMMITTEE
From the collection of the New York Historical Society

then elected the following managers of impeachment. There were, in the order of number of votes received: Mr. Bingham, Mr. Boutwell, Mr. Wilson, General Butler, Thomas Williams [Pa.], General Logan, and Mr. Stevens. The Democrats refused to vote.

On February 22 the President had sent to the Senate the nomination of Thomas Ewing, Sr. [O.], as Secretary of War. The choice of this distinguished statesman, who was known as a staunch Republican, was a shrewd challenge to the Senate, but that body refused now to accept as the issue the qualifications of the appointee, and insisted that it was whether or not a vacancy existed. To uphold their contention that Edwin M. Stanton was still Secretary of War, the Senate, on February 24, refused to accept the nomination of Mr. Ewing. Nevertheless the action of the President in making so unexceptionable a nomination tended to impress the country that he was standing upon his rights and not seeking a partisan advantage.

The trial of President Johnson before the Senate began on March 5, 1868. As the report of it belongs more properly to a work entitled "Great Trials" rather than "Great Debates" in American history, only a bare account of it will be given here. Besides, the Government published the full proceedings in a separate volume, which may be obtained by those interested as a public document.

The Trial of President Johnson

Chief-Justice Salmon P. Chase presided. Mr. Bingham, chairman of the managers, read the articles of impeachment. They related chiefly to the President's removal of Secretary Stanton, though minor offences, such as the President's harangues against Congress, in which he stated that the Thirty-ninth Congress was illegitimate, were also charged.

At the conclusion of the reading of the articles the Senate adjourned to March 13. On this day Henry Stanbery, who had resigned his position as Attorney-General to become counsel for the President, asked for

a further adjournment of forty days to prepare his answer. The Senate granted him only ten days (until March 23). Associated with Mr. Stanbery as the President's counsel were Benjamin R. Curtis [Mass.], Thomas A. R. Nelson [Tenn.], William M. Evarts [N. Y.], William S. Groesbeck [O.]. Judge Curtis and Mr. Evarts took the leading part in the conduct of the case. The managers of impeachment from the House were assisted by Judge William Lawrence [O.], another Representative, who prepared a brief of the authorities upon the law of impeachable crimes and misdemeanors.

The proceedings were opened on March 13 by counsel for defence reading an answer to the articles of impeachment. The answer defended the removal of Secretary Stanton on the ground that the President was acting in the matter within his constitutional rights, and within the latitude permitted him by the Tenure-of-Office Act. The answer denied the minor charges, pointing to the President's official recognition of the Thirty-ninth Congress, etc.

On March 30 General Butler opened the case for the prosecution. While his carefully prepared agreement covered the entire ground, it dwelt upon the removal of Secretary Stanton as the impeachable act in comparison with which all the others were insignificant. By such a declaration he established this removal as virtually the only issue in the case.

At the conclusion of General Butler's argument, the managers submitted their testimony in support of the charges brought by the House. The President's speeches attacking Congress were put in evidence. The managers concluded their testimony on the fourth day of April and the Senate took a recess for five days.

On the 9th of April Judge Curtis of the President's counsel opened for the defence. He went directly to the argument, supporting *seriatim* the answers to the articles of impeachment.

Although his speech occupied two days, it was notable for precision and directness of logic and clearness and economy of expression. It made a profound impression upon the Senate and the country.

"SPOONS" [GENERAL BUTLER] AS FALSTAFF MUSTERING THE IMPEACHMENT MANAGERS
From the collection of the New York Historical Society

At the close of the judge's address, witnesses were called for the President. The defence sought to introduce evidence to prove that the President, when the Tenure-of-Office bill was before him for approval, had submitted it to the Cabinet for their advice; that these ministers had declared the bill unconstitutional, and that Secretaries Seward and Stanton had prepared the message to Congress accompanying the President's veto.

Chief Justice Chase decided that the evidence was admissible for the purpose of showing the President's intent in his subsequent actions wherein it was claimed that he violated the Tenure-of-Office Act.

Manager Wilson objected to this as "immaterial, incompetent, and irrelevant." The advice which the President may have received, and the belief which he may have formed touching the constitutionality of said act, cannot be allowed to shield him from the consequences of his criminal acts.

Senator Jacob M. Howard [Mich.] called for the yeas and nays on the decision, and the Senate, by a vote of 20 yeas and 29 nays, overruled the chair and decided that the evidence was inadmissible.

This action of the Senate, says Mr. Blaine in his "Twenty Years of Congress," impressed the public most unfavorably, offending their desire for "fair play."

When the evidence on both sides had been submitted General Logan of the prosecution, on April 22, filed his argument. In addition to being a well-prepared legal presentation of the position of the prosecution, clear in analysis of the evidence and forcible in logical deductions therefrom, it was also highly rhetorical.

Mr. Boutwell followed General Logan, speaking also for the managers of impeachment. He concluded his address on the next day, April 23. His long argument covered every point of the case, and was presented with an earnestness which gave evidence of deep personal conviction.

Judge Nelson, who hailed from the President's State and was his close personal friend, having stood with him for the Union in the trying days at the outbreak of the war and during its continuance, made a moving

plea for the man who had fought his way from poverty to the chief position of the nation from which it was now purposed to hurl him into ignominy and disgrace.

Mr. Groesbeck, who followed Judge Nelson, appeared also for the defence. He particularly attacked the position taken by Mr. Boutwell that the President cannot prove nor plead the motive by which he professes to have been governed in violating the laws of the country, the necessary legal presumption being that he acted with a bad motive.

Mr. Groesbeck said that under this construction President Lincoln ought to have been convicted for suspending *habeas corpus* in the loyal States and making military arrests there, since this was without authority from Congress, and the Supreme Court had decided that it was against the express provisions of the Constitution. Lincoln, however, pleaded that his motive was to save the Union, and the Senate and House of Representatives had accepted this as a sufficient warrant, and had validated the action.[1]

Mr. Stevens of the managers was ill (he died a few weeks after the trial), and, after addressing the Senate a short time, he handed his manuscript to General Butler, who completed the reading. The address dwelt chiefly upon the attempted usurpation by the President of the powers of Congress in the matter of reconstruction, and his use of patronage and illegal attempt at the removal of officers, chiefly Secretary Stanton, to effect the same.

Mr. Williams, one of the managers, then spoke. His speech, which occupied parts of two days, introduced few new arguments of the prosecution, but materially strengthened the old ones, as well as tended to stagger the chief arguments of the defence.

In closing, Mr. Williams made what was considered by Mr. Blaine, in his account of the impeachment, to have been an "imprudent" appeal to the Senate to do what the country expected of them—not that which, regardless of popular demand, justice required of them.

Mr. Evarts, of the defence, followed. His argument

[1] See Volume VI, page 61ss.

was a long and exhaustive one, occupying three days. With the opening address of ex-Justice Curtis it was considered the strongest presentation of the President's case, and established Mr. Evarts as without a superior in the American bar. Indeed, in the combination of convincing logic and chaste rhetorical style, he probably was unequaled by any lawyer of his generation. He logically brought the charge against the President to an issue, not of political, but of personal guilt.

Mr. Stanbery, Attorney-General, who closed the argument of the defence, was suffering from illness, and delivered his address only in part, the remainder being read by a friend. Like Judge Nelson, he spoke not only as counsel of the President, but as his close personal friend. His chief legal argument was that the office of Secretary of War was not included within the Tenure-of-Office Act, and, if it were, there was still no removal of Mr. Stanton from the office.

Mr. Bingham closed for the prosecution. He spoke for three days, devoting himself to rebutting the points of the defence, especially as advanced by Mr. Evarts. He presented his argument in clear and forcible fashion, and with marked sincerity of personal conviction which profoundly impressed the Senate. By close analysis of the positions of the defence and powerful logical deduction he assembled the questions before the court of impeachment into one great issue: Has the President the right to construe for himself the Constitution and judicially to determine for himself as a guide to his actions the validity of the laws of Congress? This was for the Senate to decide, and not the Supreme Court.

At the conclusion of Mr. Bingham's address (on May 6) a certain period of time was permitted in which Senators should be allowed to prepare and record opinions on the case. Twenty-nine Senators did so, and, being eminent lawyers, their arguments compare favorably with those of the managers of impeachment and the President's counsel.

The Senate was ready to vote on May 11. Public interest in the result was intense, since the opinions of a deciding number of the Senators, who had maintained

strict secrecy in regard thereto throughout the trial, could not be inferred, save from their votes on excluding testimony favorable to the President, and these were not sure indications of what would be their final determination of the case. The Senate floor was crowded by the admission to it of Representatives. Correspondents of all the great newspapers of the country were in the space allotted to the press. The diplomatic gallery was filled with representatives of foreign governments "eagerly watching," says Mr. Blaine, "the possible and peaceful deposition of a sovereign ruler"; and the galleries open to the public were packed with citizens, not only of Washington, but of States near and far, so profound was the interest of the whole nation in the decision of the unique and, next to secession and slavery, the greatest constitutional question that had arisen in the history of the nation—the conviction or the vindication of a chief magistrate charged with usurpation of the Constitution and laws which he had sworn to support.

Article XI was first voted upon. As the name of each Senator was called he arose in his place and spoke his answer "Guilty" or "Not Guilty." Thirty-five votes were in the affirmative and nineteen in the negative; this fell short by one vote of the two-thirds majority required to convict. The anti-Administration Senators who voted in the negative were William P. Fessenden [Me.], Joseph S. Fowler [Tenn.], James W. Grimes [Ia.], John B. Henderson [Mo.], Edmund G. Ross [Kan.], Lyman Trumbull [Ill.], and Peter G. Van Winkle [W. Va.].

The friends of impeachment then fought for delay in voting upon the other articles, and, by the parliamentary device of moving to rescind the resolution in regard to the order of presenting these, secured an adjournment until May 26. In the intervening time rumors were afloat that pressure was bringing to bear on Senators who had voted in the negative, but that these rumors were baseless, or, if not, that the pressure had been ineffectual, was shown, when the Senate reconvened, by the vote on Article II, which was next taken,

the result being the same as before. The fifth Senator from the last to vote in the negative was Senator Ross of Kansas, who, rumor had it, would change his vote to the affirmative on this and the subsequent articles. On Article III the vote still remained the same. Thereupon George H. Williams [Ore.] moved that the Senate, sitting as a court of impeachment, adjourn *sine die*. The vote upon this was 34 yeas, 16 nays, 4 Senators not voting. So the Senate adjourned. It was never reconvened as a court of impeachment on the case of Andrew Johnson.

The impeachment having failed, Mr. Stanton returned to private life. He was appointed Associate Justice of the Supreme Court by President Grant on December 20, 1869, but, broken in health by his devoted official labors during the Civil War and the strain of his contest with President Johnson, he died four days thereafter.

President Johnson nominated General John M. Schofield as Secretary of War a few days after the close of the trial, and the Senate confirmed the nomination. The General served until the close of Johnson's Administration, March, 1869.

Immediately after the trial the President renominated Mr. Stanbery for his former position as Attorney-General. The Senate refused to confirm the nomination, and gave no reason for their action. Thereupon the President nominated William M. Evarts, another of his counsel, for the position, and the nomination was confirmed. Mr. Evarts served until the close of Johnson's Administration.

As President Grant had shown in his military career, he was not a man to submit to interference with his subordinates. Consequently, when at the beginning of the short session of Congress following his inauguration he realized that after its close and until the Senate should meet again he would have his hands tied with respect to his removal and appointment of Federal officers by the Tenure-of-Office Act, he used his influence with Republican leaders in the Senate and House to have the act repealed.

Amendment of Tenure-of-Office Act

Congress, March 9-31, 1869

Accordingly, on March 9, 1869, General Benjamin F. Butler [Mass.], one of the managers who had prosecuted President Johnson for violating the very act obnoxious to President Grant, introduced a bill in the House absolutely repealing the act. His demand for the previous question on the bill was granted, and the bill was passed by a vote of 138 to 16, the minority being composed entirely of Republicans.

The Senate refused to act in such haste, and referred the bill to the Judiciary Committee. On March 16, Lyman Trumbull [Ill.], chairman of the committee, reported the bill with an amendment changing the repeal into "suspension until the next session of Congress."

Allen G. Thurman [O.], a member of the minority of the committee, scouted this "cowardly evasion" of the issue, which, he said, was whether or not the power of removal is vested in the President alone.

Oliver P. Morton [Ind.] was in favor of absolute repeal of the Tenure-of-Office Act. The act was unconstitutional. It had been passed for a special purpose, which now did not exist. If it were not on the statute books no Senator would think of proposing it.

"I am of the opinion that the country gained nothing by the operation of the law even during the administration of President Johnson; and as a party man I will say that the Republican party has gained nothing by it. It was a mistake from the first."

Richard Yates [Ill.] said that he had voted for impeaching President Johnson and would do so again, for the reason that he deserved a bill like the Tenure-of-Office Act to restrain him in his conduct. It was imposed on him for a special reason: for his treachery to his party and his treason to the Government. But the case of Grant, the favorite of the people, the victorious general, the chosen administrator of Republican principles, was altogether different.

William P. Fessenden [Me.], who had voted against both the Tenure-of-Office Act and the impeachment of President Johnson, was in favor of its repeal. He expressed his weariness at hearing fulsome adulations of the new President.

Jacob M. Howard [Mich.] was not prepared to swallow his words of two years before when he supported the act. Therefore, while he would vote for its suspension, he would never vote for its repeal.

George F. Edmunds [Vt.] also favored suspension and opposed repeal. The act was a good one and ought to have been passed many years before it was, in order, at need, to restrain the abuse of executive patronage.[1]

Carl Schurz [Mo.] opined that an independently thinking man might well be in favor of the repeal of the Tenure-of-Office Act without the least inclination of prostrating himself at the foot of the throne, or without any desire to betray the constitutional prerogatives of the Senate into the hands of the Executive. He confessed that he had an ulterior purpose in the vote which he should give upon the bill: the reform of the civil service.

Senator Edmunds, fearing that the majority of Senators would vote for repeal instead of suspension, withdrew the bill, and it was recommitted on March 23. On the next day Senator Trumbull reported a substitute for the Tenure-of-Office Act which left the President free

[1] Upon this admission of his purpose by Senator Edmunds, Mr. Blaine, in his "Twenty Years of Congress," remarks:

"Coming from a Senator of the United States, this declaration was regarded as extraordinary. The 'bad men' to whom Mr. Edmunds referred were the appointees of President Johnson, and every one of them had been confirmed by the Senate of the United States when the Republicans had more than two-thirds of the body. If these appointees were 'bad men,' why, it was pertinently and forcibly asked by the aggrieved, did not Mr. Edmunds submit proof of the fact to his Republican associates and procure their rejection? He knew, the accused men declared, as much about their characters when their names were before the Senate as he knew now when he sought, behind the protection of his privilege, to brand them with infamy. To permit them to be confirmed in the silence and confidence of an executive session, and then in open Senate, when their places were wanted for others, to describe them as 'bad men,' seemed to them a procedure not to be explained on the broad principles of statesmanship, or even on the common law of fair dealing."

to suspend any officer without assigning a cause, and to nominate his successor. If the Senator should refuse to confirm this nominee, the President might present one nominee after another until one was reached who was satisfactory to the Senate. If the session should end without a confirmation of any, the suspended officer should be restored.

This was adopted by 37 votes to 15. The House refused to accept it, desiring to give the President a free hand in appointments. A joint conference committee was thereupon appointed, which proposed a new amendment. It was passed on March 31—in the House by a vote of 108 yeas to 67 nays, and in the Senate by 42 yeas to 8 nays. The President approved the amendment on April 5.

This amendment provided that the President, during recess of the Senate, might suspend until the end of its next session any civil officer, approved by consent of the Senate, except a Federal judge, and that he might designate, subject to removal by similar designation of another person, some suitable person to perform in the meantime the duties of the suspended officer. Thirty days after the beginning of each session of the Senate the President should present to that body a list of vacant offices, and, if the Senate refused to advise and consent to appointments for these offices, he should make nominations to fill them.

The law virtually repealed the old act, although by its involved language it could be construed as a retention of some authority by the Senate in regard to removals, thus "saving the face" of that legislative body which has ever been jealous of its dignities.

President Grant, equally insistent upon his official rights, was displeased that the act had not been wiped entirely off the statute books. In his message to Congress at the opening of the next session he presented his objections to the act and made a plea for its repeal, which, however, was not granted.

FIRE AND WATER MAKE VAPOR

[Caricature of Henry Watterson and Murat Halstead]

Cartoon by Thomas Nast in "Harper's Weekly"

CHAPTER III

The Electoral Commission

[Hayes-Tilden election]

Disputed Contest for the Presidency in 1876—Electoral Commission Appointed to Decide It; It Reports in Favor of the Republican Candidates; Report Adopted by Congress—Speech in the House against the Seating of Hayes and Wheeler by Benjamin A. Willis [N. Y.]: "The Basest of Conspiracies"—Reply by Simeon B. Chittenden [N. Y.]: "Who Are the Conspirators?" and by John R. Tucker [Va.]: "The Fruitlessness of Fraud"—Debate in the House on the Constitutionality of the Electoral Commission: Affirmative, George F. Hoar [Mass.]; Negative, Gen. James A. Garfield [O.]—Clarkson N. Potter [N. Y.] Introduces Bill in the House to Create Commission to Investigate Hayes's Southern Vote; It Is Passed; Investigation Finds Democratic Attempts at Bribery, and Is Discontinued.

IN the Presidential campaign of 1876 the Democratic candidates, Governor Samuel J. Tilden [N. Y.], and Thomas A. Hendricks [Ind.], carried New York, New Jersey, Connecticut, and Indiana, and the Republican candidates, Governor Rutherford B. Hayes [O.], and William A. Wheeler [N. Y.], the other Northern States. The contest depended on the vote in the South. Governor Hayes's manager, Senator Zachariah Chandler [Mich.], declared on the morning after election that he had information that South Carolina, Louisiana, and Florida had gone Republican, giving Governor Hayes 185 electoral votes—a majority of one.

It was charged by the Democrats that Senator Chandler's announcement was not based on information, but was a mere claim, preparatory to an endeavor to have the votes of these States counted for Governor Hayes, even though Governor Tilden had won them. It was pointed out that the three States named were likely

to have given a Republican majority, since in South Carolina and Louisiana there were more negroes than whites, and in Florida, where the whites were slightly in the majority, a number of these were Northern settlers, and, therefore, if the cry of fraud were raised in the event of Hayes being declared the winner in these States, the presumption would be against the cry.

The legal convassing boards gave the electoral votes of the three States to Hayes and Wheeler. The Democrats at once declared that these were false returns and that the Tilden and Hendricks electors had really been elected, but "counted out." Committees of investigation were sent to the States by both parties, the members of the Republican one being named by President Grant, who later submitted their report to Congress.

On December 6, 1876, the day prescribed for the meeting, the Electoral College sat, and declared Hayes elected by a vote of 185 to 184 cast for Tilden.

The indignation of the Democrats was at boiling point. Henry Watterson [Ky.] declared that one hundred thousand Democrats should assemble in Washington in protest against the usurpation. Joseph Pulitzer, then editor of the St. Louis *Post-Dispatch*, followed this with the declaration that they should come armed. Watterson was credited, however, with Pulitzer's proposal.[1] Against the possibility of the fulfillment of this declaration, President Grant took military precautions.

By a joint rule of Congress, adopted in February, 1865, it had been agreed that "no electoral vote objected to shall be counted except by the concurrent votes of the two Houses." The Democrats, with the intention of objecting to enough Republican votes to leave Tilden with a majority, claimed that this rule was still in force. The Republicans held that it was applicable only to the occasion of its adoption, and that the Vice-President had resumed his constitutional right to open the returns of the Electoral College and declare the result. Finally (on December 14, 1876) the House passed

[1] See Mr. Watterson's article on the Hayes-Tilden contest in the *Century* for May, 1913.

the issue by, and provided for the appointment of a joint committee of House and Senate to report a measure for deciding upon a proper method to count electoral votes in the present case. The Senate on December 18 adopted the resolution. The joint committee consisted of fourteen members equally divided between the two Houses and the two parties.

On January 18, 1877, Senator George F. Edmunds[1] [Vt.] made the committee's report, to which all the members but one (Oliver P. Morton, of Indiana) had agreed. The report declared that "no electoral vote or votes from any State from which but one return has been received shall be rejected, except by the affirmative vote of the two Houses." Where more than one return had been received a reference to an Electoral Commission was provided—the commission to be composed of five members of the Senate, five members of the House, and five justices of the Supreme Court of the United States. When this Electoral Commission should decide any question submitted to it, touching the return from any State, the bill declared that the decision should stand, unless rejected by the concurrent votes of the two Houses. After an elaborate and very able debate the bill was passed in the Senate on the 24th of January by 47 ayes, 17 nays. Two days later it passed the House by a large majority—191 ayes, 86 nays.

The Electoral Commission was organized in such a manner that both parties were equally represented in the Senate and House membership, and that the Supreme Court membership would be, so far as could be foreseen, non-partisan, or, on the whole, equi-partisan. Only one place on the commission was left virtually unindicated, that of the fifth appointee from the Supreme Court. It was expected that Associate-Justice David Davis [Ill.], who had been first a Republican, and then a Liberal Republican (in 1872), would be chosen for this place. The Democrats believed that he would be favorably disposed toward their contention; indeed, it was said that Governor Tilden would have objected to the

[1] See Senator Edmunds' article on the Hayes-Tilden contest in the *Century* for June, 1913.

appointment of the commission, but for the assurance of his adviser, Abram S. Hewitt [N. Y.], that such was the case. However, on January 25, 1877, the day after the Electoral Commission bill was passed in the Senate, Justice Davis was elected as Senator from Illinois, and he accepted the election. Accordingly, the fifth place fell to another, and Joseph P. Bradley [N. J.] was chosen.

The Electoral Commission sat on January 31, 1877. Leading Republican counsel were William M. Evarts [N. Y.], Stanley Matthews [O.], Edwin W. Stoughton [N. Y.], and Samuel Shellabarger [O.]; leading Democratic counsel were Jeremiah Black [Pa.], Charles O'Conor [N. Y.], John A. Campbell (ex-Associate-Justice), Senator Lyman Trumbull [Ill.], Montgomery Blair (ex-Postmaster-General).

The vote of Florida was made the chief issue. On this, as well as upon one contested vote in Oregon, the commission voted 8 to 7 in favor of the Republican contention, Justice Bradley being of the majority.

Thus the commission reported in favor of Hayes and Wheeler. A long fight was made in Congress over the acceptance of the report and the decision based thereon. It was not until March 2, 1877, two days before the constitutional date of the inauguration of the new President, that Congress decided that Hayes and Wheeler had been elected.

During Hayes's Administration the House was Democratic. Believing that the title of President Hayes was invalid speakers of that party allowed few opportunities to pass by for expressing their opinions on this point.

On January 20, 1877, Benjamin A. Willis [N. Y.] spoke in the House as follows:

The Basest of Conspiracies

Benjamin A. Willis, M.C.

The morning after election day almost every newspaper in the land contained the intelligence that Samuel J. Tilden was the President-elect of the United States. Democratic editorials

abounded with exultant expressions of joy, hope, and thanksgiving. Republican editorials were crowded with philosophic reflections counseling acquiescence and submission. All save basest partisans indulged in a sigh of relief that the ordeal was over. American securities became buoyant and advanced in value. Confidence sprang into life. Joy and prosperity were, seemingly, just ahead.

But, gentlemen, when unprincipled party leaders recovered from the shock of their defeat they conjured up a fiend in their hearts. Audacious assertions that Tilden had been defeated were made and persisted in. Though the people disbelieved, apprehension and distrust came, and with them a period of gloom and depression which veils us in the black darkness of night. The people seized the meaning of these reckless assertions. They knew by sad experience that the authors of them were men wholly wanting in scruples, wholly strangers to honor. They knew instinctively that a conspiracy was determined upon involving the overthrow of popular government by the inauguration of a defeated candidate as President. They know it to-day, and ere long those plotters will realize the existence of a power before which their conspiracy will break away as do unstable dams when overridden by a flood—a people terribly in earnest to avenge their wrongs.

They who but a few weeks before declared that the South was a solid unit for Tilden and Hendricks now vociferously proclaim that South Carolina, Florida, and Louisiana have voted for Hayes.

Why South Carolina, Florida, and Louisiana? Palpably because they cast just enough votes to give Hayes and Wheeler a majority of one in the electoral college.

Does any man, knowing the conspirators, familiar with their methods and their desperation, doubt that, had it been necessary for their purpose, they would have insisted just as emphatically that North Carolina or Mississippi, or both, had voted the same way?

But those three States were sufficient for the end in view; they abounded in apt agencies, in men who could escape righteous retribution only by a continuance of this administration in power. Election laws were in force there, enacted for the express purpose of perpetuating their authority. Returning boards were there whose crimes, already exposed and denounced by honest men of all parties, by the voice of honorable committees appointed by both Houses of Congress, were such as to give assurance to their masters that they were equal to any infamy;

even to that infamy which towers above all others, as does the giant peak above the surrounding earth: the murder of American liberty. They had a Chief Magistrate already practiced in assaults upon the rights of his countrymen, who had already caused every honest cheek to blush with shame and every honest heart to throb with madness by the use of bayonet and cannon in suppressing the voice of the people. Could not the men who had perpetrated the foul crime against Louisiana in 1874 perpetrate anew the same crime in 1876? So they, instigators of this conspiracy, believed, and so they trusted not vainly.

Armies were hurriedly forwarded to the States in question, with orders to sustain the criminal returning boards and uphold the tottering wretches who misgovern and oppress their peoples; sent sometimes on a plea of suppressing domestic violence, as in Louisiana, where no violence occurred; sometimes, as in Florida, without any pretext whatever, where no justification is even claimed; sometimes, as in South Carolina, for the pretended reason that the National Government had been called upon to secure to the people a republican form of government. Where no outbreak had occurred the army has—shame—a shame human lips cannot express—upon its officers!—overthrown republican government by stamping upon the mandates of its highest courts.

Oh, how American manhood is debased, how American soldiership is sullied by the example of a Ruger! Unhappy Republic, when the defenders of its people become their oppressors! This is no novel experience. Strange these soldiers have such poor memories! After Sheridan had by his cold-blooded, heartless crime against the people of Louisiana oppressed the people with sadness and shame, provoking a feeling of wrathful resentment in the heart of every honest man, Democrat or Republican, the President in his annual message denounced the wrong and declared its commission to be without his authority.

He evidently had learned a lesson from Cæsar Borgia, who, after conquering Romagna, appointed Ramiro d'Orco as governor and gave him limitless authority. He oppressed the people by his baseness and cruelty; when Cæsar Borgia, who had instigated all, intent only upon his schemes, with a view of escaping the reproaches which were justly his due, caused Ramiro to be massacred in the market-place, before the eyes of all the people.

Our President did not massacre Sheridan, nor even cashier him, but he did not hesitate to do that which to a soldier of honor should be deemed a punishment more disgraceful than death. He made him the scorn of his countrymen.

In Gen. Thomas H. Ruger he found another Ramiro, and soon poor Ruger will be abandoned and disowned; at least so soon as the purposes of the Executive or of his party can be subserved thereby.

The President then, to resume the narrative, issued an order, in language which justly inspired the whole people with pride and confidence, insisting that a fair count should be had, and called upon certain gentlemen to proceed to New Orleans and elsewhere, and supervise the action of the returning board.

The President assumed the boards were dishonest, or wherefore have them watched? Why shoot arrows at the stars?

Then, indeed, very many believed that the President, a man who had carved through hostile legions a pathway to victory; whose brow had been laureled with glory by a grateful people; who had been honored, even as he who was first in war, first in peace, and first in the hearts of his countrymen, by a reëlection as Chief Magistrate, would in the hour of supreme peril have a proper consciousness of duty, and once more place his countrymen under an obligation which would cause him to be glorified in remembrance by after-generations. They dared, in a moment when hope was in the ascendant, to be oblivious of his political offences and to think that he might agreeably disappoint the country by asserting an honorable manhood as he did so unexpectedly before when he vetoed what was known as the inflation bill. By satisfying a hope so just the President could have climbed upon the heights of Olympus. He chose rather to descend.

The committee then sent to those States, as I have remarked, refused to confer with political opponents who were there in the interest of justice; they encouraged the returning boards in their work of infamy; they gave the plotters to understand that the military arm of the Government was behind them and would sustain them in any crime they might commit against a bleeding and oppressed people; they entered into conclave with conspirators, and, so well assured were they of the result already agreed upon, that weeks before any adjudication upon the returns was had, and when they showed *prima facie* an acknowledged majority for Tilden electors, telegraphed over the North that a given number of parishes would be thrown out sufficient to secure the electoral votes of those States for Hayes. What I have said everybody knows to be true; every step taken by this election board, either through the Administration or its agents, gives indubitable proof of a conspiracy to overthrow popular government.

Now, let it be understood, when I say the American people will never submit to the overthrow of self-government by conspirators.

There lives not an honest, patriotic citizen, Democrat or Republican, but would, if he could, suffer death a hundred times rather than behold the wreck of liberty, wrought by a scoundrelly returning board, upheld and spurred on by unworthy rulers. Such a conspiracy under the auspices of a Cæsar or a Napoleon might be borne; but submission to a conspiracy under the auspices of a returning board composed of scalawags and Federal officers would imply a moral degradation disgraceful even in a South American republic. Anglo-Saxon manhood will never fall to such a depth in the world's scorn and contempt.

This conspiracy has exposed the nation to a peril mightier than any it has ever encountered. It has aiders and abettors in every branch of the Government. Foreign war means expenditure of blood and treasure and the glory and shame consequent upon victory or defeat. Rebellion meant a Union saved or a divided Republic; in either case liberty would not perish. Today we are staggered by an unhallowed attempt to blight and destroy, utterly and forever, the divine right of the people to govern themselves. How to avert this peril, how to rescue this people from a destiny the contemplation of which curdles the blood and palsies the lips, is the fearful problem to be solved, wisely, if at all, by the sworn Representatives, not of a party, but of a people.

If we fall not far short of our obligations the toils will be speedily broken; the chains forged by conspirators will melt in the hot wrath of the people; it is our especial province to right every wrong, to pursue every fraud, until a just result is reached and self-government made triumphant. Some gentlemen seem to doubt our power, and to regard with nonchalance the fraudulent manipulation of canvassers and returning boards, because they are State officers, subject only to State laws, beyond the reach of Federal interference or Federal authority. Such a shallow pretence cannot stand alone or be supported for an instant. It only occurs to them as a convenience, as a dodge. It is belied by their own acts!

Why did Federal troops proceed to the State of South Carolina, and there, under the direction of an unprincipled and insignificant man by the name of Dennis, interfere with the organization of a State legislature and give moral support to Chamberlain and his confederates?

Why was a Federal judge dispatched there to spit upon the

mandates of the highest State court and to give impunity to the men who were in contempt for a disregard of its orders?

Why were troops hurried to Florida to overawe Democrats and encourage fraud? Why were United States bayonets and cannon put at the service of unconscionable partisans; and why were they sheltered by United States authority?

Why were partisans commissioned to go to Louisiana and elsewhere, on the plea of securing an honest count and in consummating a conspiracy?

Why all these things, I inquire, if those counts were State matters, with which the people had nothing to do?

This reasoning was not employed until villainy had done its worst, until the popular result in three States had been reversed by Federal interference, Federal intimidation, and Federal support. Now you want to profit by the frand, it becomes necessary to abandon old tactics. You say a wrong done by the Federal Government the Federal Government cannot undo.

To the winds with such false logic. You may urge the troops were sent to secure a republican form of government. If no republican form of government existed in these States, assuredly they could not participate in that sovereign duty which implies a free exercise of choice on the part of electors, the election of President and Vice-President of the United States, and it follows their votes cannot be counted. If republican government was not overthrown the army had no business there, the rights of the people were invaded and trampled upon without possible justification.

In any case the result of the elections in those States would not have been reversed but for the interposition of Federal authority. What has been done by Federal authority will be undone by Federal authority.

The President is a mere agent of the people; the Constitution and laws made pursuant thereto are together the letter of his authority.

What he has done in the South is outside of the Constitution, is in defiance of the Constitution, and must be disowned and made of no effect by us. The product of this unconstitutional interference is, the people of the United States have had their will nullified and their sovereignty usurped.

Some justify the conduct of the Executive by the assumption that those States are naturally Republican. Distinguished party leaders have asserted that they will never permit the electoral vote of a State where negroes are in a majority to be counted for Tilden and Hendricks. The same men who assert this to-day

before the election endeavored to rekindle the furious hates of a struggle ten years ago well ended by the cry of a solid South.

Gentlemen, this will not do. Ten years of misrule and oppression have brought starvation and sorrow to the freedmen!

Wherever Republican rule has obtained, chaos still presides —social order and security are unknown.

Wherever virtue and intelligence have dominated over carpet-bag rule business has revived and peace reigns.

The colored men have been robbed of their earnings by fraudulent savings-banks; they have been stuffed with lying promises; they have been deceived until deception no longer availeth.

The negroes are intelligent beings. Why wonder, then, that they are undeceived? Why wonder that they prefer peace rather than tumult; plenty rather than want; honest Democrats rather than dishonest Republicans; their old friends and masters rather than adventurers, who have proved to them devouring vultures.

Gentlemen, no man in this country detested slavery more than I; no man welcomed the proclamation of emancipation more than I; and therefore do I, for humanity's sake, protest against the attempt to bind the black man with chains more galling than those which, by God's providence, were snapped asunder in war.

The colored men understand all this; they are turning away with a sense of loathsomeness from their deceivers, and when the arm of Federal power is withheld, under the auspices of a benigner rule, they will overthrow the last vestige of carpet-bag rule on this continent.

Gentlemen, dismiss all thought of further prosecuting a conspiracy against the people, forego your plans of insisting that the President of the Senate shall count the vote, or that a decision shall be delayed until after the 4th of March; abandon any project which will result in an interregnum, and meanwhile expose the country to the terrors of revolution and blast with ruin the industries of the land; by one grand sacrifice suffer your ambitions, your plans, your prejudices, your hates, to be lost in a devotion to country which is as much beyond the fealty to party as the religion of Christ excels the creeds of the heathen.

Do not suppose you will profit by the conspiracy. Whether it fails or wins it will be the same to you. You will find all the comfort you are entitled to in the words Addison causes Sempronius to speak when urged to wrong:

Know, villains, when such paltry slaves presume
To mix in treason, if the plot succeeds
They're thrown neglected by, but if it fails
They're sure to die like dogs.

No trifling can be borne. Depart from precedents, trample on the Constitution, you defy the will of forty millions of freemen; you proclaim revolution.

Why, a crime of such tremendous magnitude as that contemplated has not been committed in the world's history. It might be tolerated were it of temporary consequence, but it involves the destruction of all confidence, all hope. If a party can prolong its authority for four years, why not for forty years? Why not for all time?

We are to-day standing face to face with a monster peril which must be met now if ever. The conspirators who threaten with rebellion our laws and liberties are criminals indescribably base; but infinitely more guilty will we be if by indifference, neglect, or cowardice we permit the success of the conspiracy. We shall have no excuse to urge. We have the power; what we need is the inclination to use it. The Constitution of our fathers is all-sufficient; wise precedents all along our history light our pathway.

Public opinion, burning with indignation at the commission of unequaled frauds, is urging us to be firm and constant. If we waver or betray, may Omnipotence crush with the thunderbolts of His wrath the walls of the Capitol, for they are hallowed by memories too sacred to survive such awful sacrilege!

The sovereign prerogative, the exalted duty of vindicating the right of the people to govern themselves, is ours. That prerogative, God helping us, we will assert; that duty we will piously perform. If we fail we will blacken our souls with cowardice, perjury, treason; we will permit and connive at the most unhallowed conspiracy ever planned against liberty and civilization. We will summon from the depths of hell the red demon war, and unchain his furies over this fair land.

But, Mr. Speaker, let us have a clear and accurate sense of what our duty is and resolutely determine to do it. All will then be well. We will cause the centennial year to surpass in glory all other years, for we will secure all through the coming ages a Government based upon the law of equal freedom. Despite the corruptions of our latter years, the reign of vice and profligacy which has poisoned as the blight of death; despite false notions of government, false sense of duty and responsi-

THE PIRATES UNDER FALSE COLORS—CAN THEY CAPTURE THE SHIP OF STATE?
Cartoon by Thomas Nast, in campaign of 1872
From the collection of the New York Public Library

bility engendered by war, there is a reserve force of virtue in this land; there is a moral consciousness in the minds of our people which will evoke from chaos a reign of peace, purity, and plenty.

Simeon B. Chittenden [N. Y.] replied to his colleague.

Who Are the Conspirators

Simeon B. Chittenden, M.C.

Two hundred and one of the two hundred and ninety-two members of this body have studied law. I do not doubt that the legal members of this House are entirely competent and equipped to discuss the great constitutional questions which now agitate the country, including the status of the Louisiana returning board and the horrible conspiracy which my colleague, Mr. Willis, this morning so vividly revealed to us on this side of the House.

I have no doubt that the legal members of this body are fully prepared to discuss these questions to the end of the session or the century without coming to any practical conclusions thereon. It is the easiest and most natural thing in the world that lawyers should love to discuss such questions. But I say, Mr. Chairman, that the people of this country at this hour do not enjoy these eternal diatribes. Scourged by war and debt, sunk to the deepest pit of commercial and political demoralization, by reason of a genuine conspiracy, which culminated in the wickedest rebellion in all history, to which my friend did not allude, the people of this country cry to-day for wise and temperate counsels, for patriotic and practical statesmanship to lift them from a horrible pit to a better national life.

I wish to say to my colleague that, if I understand the popular thought and heart of the country, the priceless boon which the people craved in those hours and days of supreme peril, now in my judgment happily passed forever, were voices of genius and patriotism, which, ringing through these halls, should be heard in every hamlet and city in the land, speaking light and peace to the dark currents of party spirit.

Sir, let us not deceive ourselves. The people thank God for the report of the joint committee made the day before yesterday. The mass of the people will confirm that report with a unanimity which has scarcely been matched since the election of Washington to the presidency in 1789. The spirit and con-

clusion of that report will, unless I am entirely mistaken in regard to the popular sense, sweep and control the popular judgment of the people of this country as fire driven by the wind sweeps and burns the browned and parched prairies of the West in autumn. I hope, Mr. Speaker, that the voice of the people will be listened to. It must be listened to, or our institutions are gone. We have descended as far as we can go. We have to look upward, to act upward, not in the spirit of partisans. I say it without any disrespect—not in the uncharitable spirit my good friend and colleague [Mr. Willis] manifested this morning, in broadly intimating that the party of this side of the House and all who believe as I do in the election of Hayes and Wheeler are conspirators. Let us have done with all such stuff. Let all hard words be dropped. We have had partisanship enough. The people of the country will not be misled by such nonsense. They think and act, and will expect and compel us to act, on principles of eternal justice in regard to this matter, now soon to be settled.

Corrupt elections are no new thing under the sun. From the time of the consular republic of Rome to the last election in New Orleans it has been so. Everybody knows that corrupt elections are as old as the history of republics. Why, then, all this howling about corrupt elections at the South? Was there no such thing ever heard of before? My colleague knows perfectly well that never on the face of the earth, since the name of republic was heard, have there been more shamefully corrupt elections than he and I have both submitted to in the State and city of New York. Every attempt to make the American people or the world believe that there was anything exceptional in the corruptions which have happened in this last presidential election, when made by an intelligent man, is insincere and untruthful, and designed to mislead.

I believe that the latest elections in at least three of the Southern States were an absolute farce. I do not think there is any other word to express it. I believe that must be the final conclusion of every fair-minded man. I believe that the leaders of both parties did all they could to carry their tickets, and the result was what I have stated, and according to the forms of law Hayes and Wheeler have been elected President and Vice-President of the United States. And I claim and sincerely believe that all the advantages of fair consideration are in favor of their inauguration; the cheating on both sides having been so absolutely universal that it is impossible for anybody to determine where the real truth lies. I venture to say that there is

not a candid gentleman on either side of the House who, sitting by my fireside, will not admit most, if not all, that I claim.

It is a crime for us to threaten to tear this country to pieces or to mar or to destroy its material interests under such a condition of things for either party. I moreover wish to confess myself, according to the doctrines preached by my colleague this morning, a conspirator. I am a conspirator, if his conspiracy exists, and, while I do not court anything disreputable, I think I can stand his indictment. If I understood him, he included among the conspirators those who believe that the President of the Senate has a right to count the electoral vote in case of need. But it will forever remain in the archives of the Government that the framers of the Constitution, when they came to interpret their own words in regard to counting the electoral vote for the first time, elected a president of the Senate, there being no Vice-President, for the sole purpose of counting the vote, and it was in that way that the first president was elected.

On January 23 John R. Tucker [Va.], at the close of a long and learned discussion of the power of Congress in regard to the election of the President, said:

The Fruitlessness of Fraud

John R. Tucker, M. C.

If the chicanery and false devices of the day shall succeed in placing in the presidency one whose title is tainted with fraud, then may we, in the language of an unpublished poem of a half century ago, follow the method therein described in respect to our children:

> Hence, if you have a son, I would advise—
> Lest his fair prospects in the State you spoil—
> If you would have him in the State to rise,
> Instead of Grotius, let him study Hoyle!
>
> And if he show
> A turn for petty tricks, indulge the bent;
> A dextrous cut may rule some great event,
> And a stocked pack may make a President!

God forbid, Mr. Speaker, on the threshold of our second century, a President should ascend the chair of state with hands stained with blood or begrimed with fraud. His triumph would be fruitless. A people's wrath would

> Hurl the wretch from high;
> To bitter scorn a sacrifice,
> And grinning infamy!

A title to the presidency fifty years ago tainted with the mere suspicion of fraud consigned a great son of Massachusetts [John Quincy Adams] to comparative retirement and barred the doors of the executive department forever against the favorite son of Kentucky [Henry Clay]. God in His mercy grant that we may start our second century with the noble purpose to elevate and purify our public morals; to return to the simple virtues and principles of our fathers; to cherish mutual respect, where self-respect has not been violated; to repair the breaches in our Constitution, by subordinating the military always and everywhere to the civil power; and so to reduce the army that, while it shall shield our borders from the invader and the savage, it can never be a sword to pierce the vitals of our liberties; to check expenditures; reduce taxation; and diminish the patronage of the purse, twin foe, with the sword, of a people's freedom; to forget the troubles of our civil strife, except as admonitions to the practice of forbearance, justice, and truth, and as an incentive to deeper devotion to our federative Republic of self-governed commonwealths; and, clearing the deck of the old ship Constitution of the *débris* of civil convulsion and of the corruption of maladministration growing out of the war, may we, with one heart, as a gallant crew of brother-patriots, trusting with simple faith in the God of our Christian land, spread again her sails, direct her course by the chart of our free institutions and by the pole star of honor to the haven of an enduring peace, with our freighted liberties safe, and the true happiness and glory of the people of these sister States, in one common and united country, assured to them and their posterity forever!

On January 25 George F. Hoar [Mass.] spoke in the House in support of the bill to appoint the Electoral Commission.

Constitutionality of the Electoral Commission

George F. Hoar, M.C.

Mr. Hoar.—Mr. Speaker, the danger which our wisest writers on the Constitution years ago predicted and dreaded now confronts the American people. The Constitution contains no

express provision for that determination of disputed questions of law or fact which it terms counting the electoral vote. The wisest students of its complicated mechanism have expressed their fear that it would give way, not in resisting foreign force or civil dissension, not even by decay or corruption, but because of its vague and imperfect provisions for determining that most vital of all questions, the title to executive power. With that peril, under circumstances of special difficulty, we have now to deal.

In estimating this danger I am not affected by any fear of civil war or any menace of violence. Such threats, if made in the spirit of empty bluster, deserve nothing but contempt; if serious, the swift and indignant scorn and condemnation of the whole people.

I do not dwell upon any apprehension of violent resistance to the lawful authority of the Government. The evil of civil war—so great that even to threaten it is a grievous crime—is only surpassed by the greater evil of yielding one jot of lawful authority to menace. But I do hold that nothing could be more injurious to the whole Republic, nothing more destructive to the principles that I myself hold dear, than that a man holding them shall be placed in the presidential office whom at least one-half of the American people will regard as an usurper by an act of power which at least one-half of the people will regard as an usurpation.

I shall not attempt to add another to the arguments of the constitutional question: With whom is the power to determine those grave questions of law and fact which may arise in determining what votes have been lawfully cast for President and Vice-President by the electoral colleges? I admit that those persons who believe that the Constitution requires the president of the Senate in all cases to perform that office must deem this bill unconstitutional. I do not expect the votes of such persons for the bill, unless they think that the recent almost unanimous acquiescence of Senate and House in a different construction, supported by a current of great authorities, including John Marshall, Daniel Webster, and Abraham Lincoln, may induce them to treat the question as concluded, or at least so far to yield their individual judgment as to deal with it as one of doubt.

This consideration may perhaps especially commend itself to those gentlemen who in the presence of a great temptation have honestly changed their opinions on a grave question of constitutional law. Fortunate is that statesman to whom

long-settled and matured convictions are sufficient for the solution of the ever new and various problems of his public life,

> Who in the height of conflict keeps the law
> In calmness made, and sees what he foresaw.

For myself three considerations make me deem it incredible that the framers of the Constitution, or the people who accepted it, ever meant or could mean to intrust the power of deciding these vast questions to the president of the Senate, subject to no control of the two Houses of Congress or of the law-making power.

First. They were a generation of men that dreaded above all other things the usurpation of executive power.

Second. They expected that the president of the Senate would ordinarily be one of the candidates whose claim to the office was to be decided. They provided that two persons should be voted for for president, of whom that one having the second highest number of votes was to become Vice-President, and President of the Senate. The President of the Senate, therefore, must within four years have been a leading candidate for the presidency. The habit of continuing the same persons in public station doubtless led them to anticipate that he would be a leading candidate for the succession, as has first happened when Adams succeeded Washington, when Jefferson succeeded Adams, when Van Buren succeeded Jefferson, and in many cases of unsuccessful competition. The same suggestions apply to all cases where the Vice-President is a candidate for reëlection.

Third. As in Great Britain, from which our institutions were derived, Parliament for centuries has regulated the inheritance of the Crown and determined all questions of right to the succession, so, in every American State in existence when the Constitution of the United States was adopted, the legislature, at that time, either itself elected the governor or counted the votes of the people and decided all disputes as to the popular choice.

As the Vice-President—

Says Alexander Hamilton—

may occasionally be a substitute for the President, all the reasons which recommend the mode of election prescribed for the one apply with great, if not equal, force to the manner of appointing the other.

There are three other theories, with none of which is this bill in conflict:

First. That the President of the Senate must count the vote in the absence of concurrent action by the two Houses, or of other provision by the law-making power.

Second. That under the power expressly conferred by the Constitution upon Congress to make "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," the law-making power may provide a method for counting the vote.

Third. That the power of counting the vote is vested by the Constitution in the two Houses voting separately. The two Houses of Congress are the tribunal which, according to this bill, is to execute this grave authority. If they have it by the Constitution it is left undisturbed. If it needs the forces of the law-making power to confer it this bill confers it. The only case when any other aid comes in is when the two members of which the final tribunal is composed differ in their judgment. Certainly it is within the law-making power to provide what shall happen when the members of a constitutional tribunal composed of even numbers are equally divided in judgment. We may surely provide by law that, if the Supreme Court, composed of six or ten members, be equally divided in opinion, the judgment of the court below shall stand, or a report of a reference shall be accepted. The commission is not an umpire. It is not an arbitration. It is an agency inferior to the two Houses, reporting to them, its action wholly subject to theirs, but only to stand when the two Houses are divided. The warmest advocate of the constitutional powers of the Houses must concede that this bill comes within the very letter of the definition of the law-making powers of Congress; a "law necessary and proper for carrying into execution the powers vested in the Government and in every department thereof." Unless this power exist in Congress of providing by law for the case where the two members of this tribunal composed of an even number, House and Senate, stand divided on any question one to one, the advocates of the power of the two Houses to count the vote must believe that the framers of the Government meant it should perish when the not improbable case should arise of a division in sentiment between two political bodies on any question of law or fact which should arise in counting the vote.

Some gentlemen have spoken of this as a *compromise* bill. There is not a drop of compromise in it. I do not mean that, after it was found that the principle of securing an able and

impartial tribunal conformed to the opinions and desires of all the committee, there was not some yielding of individual views as to detail. But how can that man be said to compromise who, having a just and righteous claim, asserts it, maintains it, enforces it by argument and proof, yields no jot or tittle of it before a tribunal so constituted as to insure its decision in accordance with justice and righteousness so far as the lot of humanity will admit? I think justice and right are compromised when they are submitted for their decision to force. They are compromised when they can only be maintained by doubtful disputed exercises of power. They never can be compromised when they are permitted to stand before a tribunal clothed with judicial powers, surrounded by judicial safeguards, invested with legal authority by the law-making power of the country.

Let it not be said that this reasoning implies that truth and error stand on an equality; that it makes no difference whether matters be settled right or wrong provided only they be settled. It is precisely because truth and error differ; it is because of the *vast* difference between the righteous result and its antagonist, that we propose to submit the differences between them not to force, not to heat and passion, but to that tribunal which, among all mechanisms possible to be executed by law, is least liable to be diverted from the truth.

But it is charged that this commission is in the end to be made up of seven men who of course will decide for one party, and seven men who of course will decide for the other, and who must call in an umpire by lot, and that therefore you are in substance and effect putting the decision of this whole matter upon chance. If this be true, never was a fact so humiliating to the Republic confessed since it was inaugurated. Of the members of our National Assembly, wisest and best selected for the gravest judicial duty ever imposed upon man, under the constraint of this solemn oath can there be found in all this Sodom not ten, not one to obey any other mandate but that of party? Far otherwise was the thought of Madison when with exultant aspiration he commended the Constitution to his countrymen:

> In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms and tearing the State to pieces, than the representatives of Confederate States not heated by the local flame? To the impartiality of judges they would unite the affection of friends. Happy would it be if such a remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual could be established for the universal peace of mankind.—*James Madison, in "The Federalist," No. 43.*

But I especially repudiate this imputation when it rests upon those members of the commission who are to come from the Supreme Court. It is true there is a possibility of bias arising from old political opinions even there, and this, however minute, the bill seeks to place in exact equilibrium. But this small inclination, if any, will in my judgment be overweighted a hundredfold by the bias pressing them to preserve the dignity, honor, and weight of their judicial office before their countrymen and before posterity. They will not consent by a party division to have themselves or their court go down in history as incapable of the judicial function in the presence of the disturbing element of partisan desire for power, in regard to the greatest cause ever brought into judgment. Mr. Speaker, the act we are about to do will, in my judgment, be one of the greatest in history. Our annals have been crowded with great achievements in war and peace, in art, in literature, in commerce. But other countries, other republics have equaled us in these things. But in this great act we shall stand without a rival or an example. For a thousand years our children, with tears of joy and pride, will read that while in the fierce strife for executive power the sun of other republics has gone down in darkness and in blood, in their own country, too, the same great peril has arisen. Their sky has been darkened by the same cloud; their ship with its costly freight of love and hope encountered the same storm and was driven near the same rock; but in the midst of storm and darkness and conflict the august and awful figure of law rose over the face of the waters, uttering its divine, controlling mandate, Peace, be still! [Applause.]

General James A. Garfield [O.] replied to Mr. Hoar.

Unconstitutionality of the Electoral Commission

James A. Garfield, M. C.

I desire in the outset to recognize whatever of good there is in this bill. It has some great merits which I cheerfully recognize. It is intended to avoid strife in a great and trying crisis of the nation. It is intended to aid in tiding over a great present difficulty, possibly a great public danger. It will doubtless bring out a result. And, when it has brought out a result, it will leave the person who is declared to be the elect of the nation with a clearer title, or, rather, with a more nearly undisputed title, than any method that has yet been suggested.

These are certainly great results. At a time like this, no man should treat lightly a bill which may and probably will produce them all. Furthermore, I feel bound to say, if I were to speak of this bill only as a partisan—a word much abused just now—I should say that I am not afraid of its operation. The eminent gentlemen who are to compose the commission, eminent for their character and abilities, will, I have no doubt, seek to do and will do justice under its provisions. And, therefore, believing as I do that Rutherford B. Hayes has been honestly and legally elected President of the United States, I confidently expect that this commission will find that to be the fact and will declare it. Should they find otherwise, all good men everywhere will submit to their decision.

But neither the wishes nor the fate of Mr. Hayes or Mr. Tilden should be consulted in considering this bill. I presume no one here is authorized to speak for either of these gentlemen on the question. I certainly am not. It is our business to speak for ourselves and for the people whom we represent.

Before considering the bill itself, I pause to notice one of the reasons that have been urged in its favor.

We have been told to-day in this chamber that there is danger of civil war if the bill does not pass. I was amazed at the folly which could use such a suggestion as an argument in favor of this or any measure.

The Senate at Rome never deliberated a moment after the flag was hauled down which floated on the Janiculum Hill, across the Tiber. That flag was the sign that no enemy of Rome, breathing hot threats of war, had entered the sacred precincts of the city; and, when it was struck, the Senate sat no longer. The reply to war is not words but swords.

When you tell me that civil war is threatened by any party or State in this Republic, you have given me a supreme reason why an American Congress should refuse, with unutterable scorn, to listen to those who threaten, or to do any act whatever under the coercion of threats by any power on the earth. With all my soul I despise your threat of civil war, come it from what quarter or what party it may. Brave men, certainly a brave nation, will do nothing under such compulsion. We are intrusted with the work of obeying and defending the Constitution. I will not be deterred from obeying it because somebody threatens to destroy it. I dismiss all that class of motives as unworthy of Americans.

On this occasion, as on all others, let us seek only that which is worthy of ourselves and of our great country.

Self-reverence, self-knowledge, self-control—
These three alone lead life to sovereign power.
Yet not for power (power of herself
Would come uncalled for), but to live by law,
Acting the law we live by without fear;
And, because right is right, to follow right,
Were wisdom in the scorn of consequence.

Let such wisdom and such scorn inspire the House in its consideration of the pending measure.

What, then, are the grounds on which we should consider a bill like this? It would be unbecoming in me or in any member of the Congress to oppose it on mere technical or trifling grounds. It should be opposed, if at all, for reasons so broad and so weighty as to overcome all that has been said in its favor, and all the advantages which I have here admitted may follow from its passage. I do not wish to diminish the stature of my antagonist; I do not wish to undervalue the points of strength in a measure before I question its propriety. It is not enough that this bill will tide us over a present danger, however great. Let us for a moment forget Hayes and Tilden, Republicans and Democrats; let us forget our own epoch and our own generation; and, entering a broader field, inquire how this thing which we are about to do will affect the great future of our Republic; and in what condition, if we pass this bill, we shall transmit our institutions to those who shall come after us. The present good which we shall achieve by it may be very great, yet, if the evils that will flow from it in the future must be greater, it would be base in us to flinch from trouble by entailing remediless evils upon our children.

In my view, then, the foremost question is this: What will be the effect of this measure upon our institutions?

The creation of a President under our Constitution consists of three distinct steps: First, the creation of the electoral colleges; second, the vote of the colleges; and, third, the opening and counting of their votes. This is the simple plan of the Constitution.

The creation of the colleges is left absolutely to the States, within the five limitations I had the honor to mention to the House a few days ago: first, that it must be a *State* that creates it; second, that the State is limited as to the number of electors they may appoint; third, that electors shall not be members of Congress, nor officers of the United States; fourth, that the time for appointing electors may be fixed by Congress; and, fifth, the date when their appointment is announced, which must be

before the time for giving their votes, may also be fixed by Congress.

These five simple limitations, and these alone, were laid upon the States. Every other act, fact, and thing possible to be done in creating the electoral colleges was absolutely and uncontrollably in the power of the States themselves. Within these limitations Congress has no more power to touch them in this work than England or France. That is the first step.

The second is still plainer and simpler, namely, the work of the colleges. They were created as an independent and separate power, or set of powers, for the sole purpose of electing a President. They were created by the States. Congress has just one thing to do with them, and only one; it may fix the day when they shall meet. By the act of 1792 Congress fixed the day as it still stands in the law; and there the authority of the Congress over the colleges ended.

There was a later act, of 1845, which gave to the States the authority to provide by law for filling vacancies of electors in these colleges, and Congress has passed no other law on the subject.

The States having created them, the time of their assemblage having been fixed by Congress, and their power to fill vacancies having been regulated by State laws, the colleges are as independent in the exercise of their functions as is any department of the Government within its sphere. Being thus equipped, their powers are restrained by a few simple limitations laid upon them by the Constitution itself; first, they must vote for a native-born citizen; second, for a man who has been fourteen years a resident of the United States; third, at least one of the persons for whom they vote must not be a citizen of their own State; fourth, the mode of voting and certifying their returns is prescribed by the Constitution itself. Within these simple and plain limitations, the electoral colleges are absolutely independent of the States and of Congress.

These colleges are none the less sovereign and independent because they exist only for a day. They meet on the same day in all the States; they do their work summarily, in one day, and dissolve forever. There is no power to interfere, no power to recall them, no power to revise their action. Their work is done; the record is made up, signed, sealed, and transmitted; and thus the second great act in the presidential election is completed. I ought to correct myself: the second act *is* the presidential election. The election is finished the hour when the electoral colleges have cast their votes and sealed up the record.

Still there is a third step in the process; and it is shorter, plainer, simpler than the other two. These sealed certificates of the electoral colleges are forwarded to the President of the Senate, where they rest under the silence of the seals for more than two months. The Constitution assumes that the result of the election is still unknown. But on a day fixed by law, and the only day, of all the days of February, on which the law commands Congress to be in session, the last act in the plan of electing a President is to be performed.

How plain and simple are the words that describe this third and last step! Here they are:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

Here is no ambiguity. Two words dominate and inspire the clause: They are the words *open* and *count*. These words are not shrouded in the black-letter mysteries of the law. They are plain words, understood by every man who speaks our mother-tongue, and need no lexicon or commentary.

Consider the grand and simple ceremonial by which the third act is to be completed. On the day fixed by law the two Houses of Congress are assembled. The President of the Senate, who, by the Constitution, has been made the custodian of the sealed certificates from all the electoral colleges, takes his place. The Constitution requires a "person" and a "presence." That "person" is the President of the Senate and that "presence" is the "presence" of the two Houses. Then two things are to be *done*. The certificates are to be opened and the votes are to be counted. These are not legislative acts, but clearly and plainly executive acts. I challenge any man to find anywhere an accepted definition of an executive act that does not include both these. They cannot be tortured into a meaning that will carry them beyond the boundaries of executive action. And one of these acts the President of the Senate is peremptorily ordered to perform. The Constitution commands him to "open all the certificates." Certificates of what? Certificates of the votes of the electoral colleges. Not any certificates that anybody may choose to send, but certificates of electors appointed by the States. The President of the Senate is presumed to know what are the States of the Union; who are their officers; and when he opens the certificates he learns from the official record who have been appointed electors; and he finds their votes.

The Constitution contemplated the President of the Senate

as the Vice-President of the United States, the elect of all the people. And to him is confided the great trust, the custodianship of the only official record of the election of President. What is it to "open the certificates"? It would be a narrow and inadequate view of that word to say that it means only the breaking of the seals. To open an envelope is not to "open the certificates." The certificate is not the paper on which the record is made; it is the record itself. To open the certificate is not a physical, but an intellectual act. It is to make patent the record; to publish it. When that is done the election of President and Vice-President is published. But one thing remains to be done, and here the language of the Constitution changes from the active to the passive voice, from the personal to the impersonal; to the trusted custodian of the votes succeeds the impersonality of arithmetic; the votes have been made known; there remains only the command of the Constitution: "They shall be counted," that is, the numbers shall be added up.

No further act is required. The Constitution itself declares the result.

The person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed.

If no person has such majority, the House of Representatives shall *immediately* choose a President; not the House as organized for legislation, but a new electoral college is created out of the members of the House, by means of which each State has one vote for President, and only one.

To review the ground over which I have traveled, the several acts that constitute the election of a President may be symbolized by a pyramid consisting of three massive, separate blocks. The first, the creation of the electoral college by the States, is the broad base. It embraces the legislative, the judicial, and the executive powers of the States. All the departments of the State government and all the voters of the State coöperate in shaping and perfecting it.

The action of the electoral colleges forms the second block, perfect in itself and independent of the others, superimposed with exactness upon the first.

The opening and counting of the votes of the colleges is the little block that crowns and completes the pyramid.

Such, Mr. Speaker, was the grand and simple plan by which the framers of the Constitution empowered all the people, acting

under the laws of the several States, to create special and select colleges of independent electors to choose a President, who should be, not the creature of Congress, nor of the States, but the Chief Magistrate of the whole nation, the elect of all the people.

Now, Mr. Speaker, contrast with the plan I have sketched the theory of this bill. I have studied its provisions in the light of the Constitution; and I am compelled to declare that it assails and overthrows, to its very foundation, the constitutional plan. Congress, finding itself excluded from every step in the process of electing a President until the very last, from the mere fact that its presence is deemed necessary at the opening of the certificates and counting of the votes, takes occasion of that presence to usurp authority over the whole process from beginning to end. Coming only as an invited guest to witness a grand and imposing ceremony, this bill makes Congress the chief actor and umpire in the scene, and, under cover of the word "count," proposes to take command of every step in the process of making a President.

Recurring again to the illustration I have used, Congress, having a simple part to play in reference to the little block that crowns the pyramid, proposes to reach down through all the others and supervise the whole from apex to base; or, rather, it proposes to overturn the whole pyramid and stand it upon its apex, so that it shall rest not upon the broad base of the people's will, but upon the uncertain and despotic will of Congress.

This is usurpation in every meaning of the word. Though the Constitution has sought to keep Congress away from all the process of making a President, this bill creates and places in the control of Congress the enginery by which Presidents can be made and unmade at the caprice of the Senate and House. It grasps all the power, and holds States and electors as toys in its hands. It assumes the right of Congress to go down into the colleges and inquire into all the acts and facts connected with their work. It assumes the right of Congress to go down into the States, to review the act of every officer, to open every ballot-box, and to pass judgment upon every ballot cast by seven millions of Americans.

I know the bill is not proposed as a permanent law; but I know equally well that if the Congress of our centennial year pass this measure they will destroy forever the constitutional plan of electing a President. Pass this bill, and the old constitutional safeguards are gone. Congress becomes a grand returning board from this day forward; and we shall see no

more Presidents elected by the States until the people rebuke the apostasy and rebuild their old temple.

Gentlemen on the other side of the House have expressed their indignation that one or two States in the Union have established returning boards to examine and purge the returns from the ballot-boxes of their States; and I must say for myself that I would not tolerate such a board unless intimidation, outrage, and murder made it necessary to preserve the rights of voters. All the evils that have been charged against all the returning boards of the Southern States this bill invites and welcomes to the Capitol of the nation. It makes Congress a vast, irresponsible returning board, with all the vices of and none of the excuses for the returning boards of the States.

The radical and incurable defect of this bill is that it puts a vast, cumbrous machine in the place of the simple, plain plan of the Constitution; it adopts a method which invites and augments the evils from which we now suffer. That there are difficulties in the present situation I freely admit; that there may be doubt, honest doubt, in the minds of honest men as to who is elected President I admit. But I think the bill introduced by my colleague from Ohio [Charles Foster], which provides for submitting to the Supreme Court those questions of constitutional law about which we differ, would be far better. To the adjudication of that great and honored tribunal all would bow with ready obedience; but this novel, dangerous, and cumbrous device is, in my judgment, unwarranted by the Constitution. If we adopt it, we shirk a present difficulty, but, in doing so, we create far greater ones for those who come after us. What to us is a difficulty will be to them a peril.

Mr. Speaker, I have trespassed too long upon the indulgence of the House; but I cannot withhold from the gentleman from Massachusetts [Mr. Hoar] the tribute of my admiration for the earnestness and eloquence with which he closed his defence of this measure. I even shared his enthusiasm when, looking forward to the future of this nation, he pictured to our imagination the gratitude of those who may occupy these halls a hundred years hence, for the wisdom which planned and virtue which adopted this act, which my friend believes to be the great act of the century; an act that solves a great national difficulty, that calms party passion, that averts the dangers of civil war. Let us hope, Mr. Speaker, that they will not be compelled to add that, though this act enabled the men of 1877 to escape from temporary troubles, yet it entailed upon their children evils far more serious and perils far more formidable; that

it transmitted to them shattered institutions, and set the good ship of the Union adrift upon an unknown and harborless sea. I hope they may not say that we built no safeguard against dangers except the slight ones that threatened us. It would be a far higher tribute if they could say of us: "The men of 1876, who closed the cycle of the first century of the Republic, were men who, when they encountered danger, met it with clear-eyed wisdom and calm courage. As the men of 1776 met the perils of their time without flinching, and through years of sacrifice, suffering, and blood conquered their independence and created a nation, so the men of 1876, after having defended the great inheritance from still greater perils, bravely faced and conquered all the difficulties of their own epoch, and did not entail them upon their children. No threats of civil war, however formidable, could compel them to throw away any safeguard of liberty. The preservation of their institutions was to them an object of greater concern than present ease or temporary prosperity; and, instead of framing new devices which might endanger the old Constitution, they rejected all doubtful expedients; and, planting their feet upon the solid rock of the Constitution, they stood at their posts of duty until the tempest was overpassed, and peace walked hand in hand with liberty, ruled by law." [Applause.]

During the many calm years of the century our political pilots have grown careless of the course. The master of a vessel sailing down Lake Ontario has the whole breadth of that beautiful inland sea for his pathway. But when his ship arrives at the chute of the La Chine there is but one path of safety. With a steady hand, a clear eye, and a brave heart he points his prow to the well-fixed landmarks on the shore and, with death on either hand, makes the plunge and shoots the rapids in safety.

We, too, are approaching the narrows; and we hear the roar of angry waters below, and the muttering of sullen thunder overhead. Unterrified by breakers or tempest, let us steer our course by the Constitution of our fathers, and we shall neither sink in the rapids nor compel our children to "shoot Niagara" and perish in the whirlpool. [Great applause.]

Investigation of the President's Title

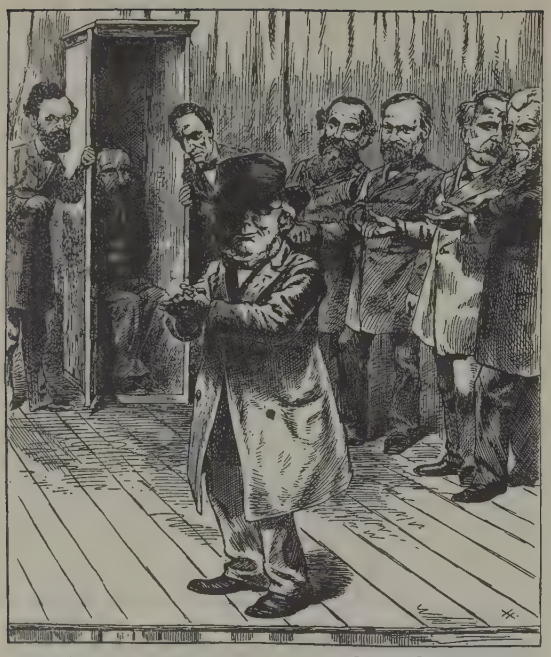
On May 13, 1878, Clarkson N. Potter [N. Y.], at the instigation of Samuel J. Tilden and his advisers, had introduced in the House a resolution to appoint

a select committee of eleven to inquire into the Presidential vote of 1876 in Louisiana and Florida. The resolution was adopted. Mr. Clarkson was made chairman of the committee, which consisted of seven Democrats and four Republicans. It entered upon its labors during the succeeding vacation.

A great number of cipher telegrams between Mr. Tilden's managers had been brought into the custody of an earlier investigating committee of the Senate by a subpœna issued to the Western Union Telegraph Company. Mr. William M. Grosvenor, of the New York *Tribune,* now turned his attention to these, and ingeniously deciphered them. They showed clearly that attempts had been made, though ineffectually, to bribe members of the election canvassing boards in the disputed States to count at least one of the electoral votes for Tilden and Hendricks, which would secure their election. These facts were proved before the House investigating committee during the Congressional session of 1878-9. Mr. Tilden appeared before the committee, and swore that at the time of the negotiations he knew nothing of them, and, when afterwards informed of them, had commanded such procedure to be stopped. Nothing transpired in the evidence to refute his statement, or to connect him in any way with the attempted fraud.

On account of these disclosures no further attempt was made to impeach President Hayes's title at this or a later time.

President Hayes adopted a conciliatory policy toward the South, appointing a Southern Democrat to his Cabinet (David M. Key, of Tennessee, Postmaster-General), and in other ways attempting to unite the sections. His appointment of Senator Carl Schurz [Mo.] as Secretary of the Interior was a similar offer to the Liberal Republicans, who had seceded in 1872, to come back into the regular Republican fold.



HAYES'S GREAT CABINET TRICK—UNCLE HORACE [GREELEY] MATERIALIZES

[*The Great Materialization Trick on the Platform. Mesium Hayes tied in the Cabinet; when the door is opened by Schurz and Ewarts, the Ghost of Horace Greeley steps forth and astonishes the Liberal Committee*]

H. G. [LOQUITUR]: "HA-HA! HOORAW, BOYS, WE'VE GOT 'EM! JEST AS I WANTED IT, ONLY YOU'RE FOUR YEARS TOO LATE. SAM BOWLES THERE, HOB-NOBBING WITH STANLEY MATTHEWS—IT ALWAYS DID TAKE HIM ABOUT FOUR YEARS TO TURN AROUND, BUT MURAT HALSTEAD, WHISPERING TO KEY, WAS GENERALLY ABOUT FOUR YEARS AHEAD OF TIME. BOYS, WE'VE GOT 'EM! LET US CLASP HANDS ACROSS THE BLOODY CHASM! THAT MY EYES SHOULD SEE THIS DAY! AIN'T THE OLD PARTY HACKS UNDER THE HARROW! HAW, HAW! LET US CAST BEHIND US THE WRECK AND RUBBISH OF WORN-OUT CONTENTIONS AND BY-GONE FEUDS. HURRAW FOR UNIVERSAL AMNESTY AND IMPARTIAL SUFFRAGE! IN VAIN DO THE DRILL-SERGEANTS OF A DECAYING ORGANIZATION FLOURISH MENACINGLY THEIR TRUNCHEONS; IN VAIN DO THE WHIPPERS-IN OF PARTIES ONCE VITAL———MY MAGNETISM IS GETTING WEAK; JOIN HANDS AND TURN OUT THE GAS. HALLELULAH! GOOD NIGHT!

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ing to the use of troops at the polls, on the retention of which the Senate (then Republican) had insisted. Upon this point the debate was concentrated.

Troops at the Polls

House of Representatives, March 28–April 30, 1879

On March 28 General J. Warren Keifer [O.] opposed the repeal of the statute in question.

This is not a work of repeal which we are engaged in. It is a work of making that which was hitherto a duty, made so by law, a crime; a crime entirely new, wholly new, in connection with officers of the army and officers of the navy and the civil officers of this Government. Never before, I believe, in the history of this country has it been attempted to make it a crime for an officer of the army or an officer of the navy, or a marshal of the United States, or a deputy marshal of the United States to keep the peace. This proposed legislation is intended to do that. Then this is not legislation that pertains to the army alone. It undertakes to make it a high crime, punishable by fine and imprisonment, for any civil officer of the United States to appear on election day at the polls with an armed body of men, not troops, not United States soldiers, but to go with an armed body of men to the polls to quell a riot. They may go with feathers in their hands without violating the law; but when armed force is to be resisted, when it becomes necessary to quell rioters with arms in their hands, persons gathered together for the purpose of murder, intimidation, or whatever else it may be, the marshals and their deputies, whose duty it is now by law to quell such disturbances and restore and preserve peace, must go without any armed men with them; otherwise under this proposed legislation they will be guilty of a high crime.

Now, when the marshal or deputy marshal comes, as it is his duty to come, to quell a riot, he has the right to summon the law-abiding citizens of the community to obey his orders, to go, if you please, armed—to become his *posse comitatus* in quelling such disturbances. But this proposed legislation takes away from the marshals and other civil officers of the United States who are charged with similar duties the power of putting down a riot on election day at the polls, and makes it a high crime punishable by fine and imprisonment if such an officer undertakes to do it. This does not relate to the army and navy alone, but to the civil side of the Government.

CHAPTER IV

Congressional Coercion of the President

[RIDERS ON APPROPRIATION BILLS]

The Forty-fifth Congress Fails to Pass Army Appropriation Bill—President Hayes Summons the Forty-sixth Congress [Democratic] in Special Session—William A. J. Sparks [Ill.] Introduces New Army Appropriation Bill with "Rider" Forbidding Use of Troops at the Polls—Debate: In Favor of the "Rider," John G. Carlisle [Ky.], Alexander H. Stephens [Ga.], Samuel J. Randall [Pa.], Fernando Wood [N. Y.], John A. McMahon [O.], Joseph C. F. Blackburn [Ky.]; Opposed, Gen. J. Warren Keifer [O.], Omar D. Conger [Mich.], Harry White [Pa.], William P. Frye [Me.], George M. Robeson [N. J.], Thomas B. Reed [Me.], James A. Garfield [O.]; Bill Is Passed by House and Senate; It Is Vetoed by the President, with Reasons—"Riders" on Civil Appropriation Bill (Payment in Pensions of Resumption Funds and Repeal of Federal Supervision of Elections)—Debate: In Favor, Mr. McMahon; Opposed, Gen. Garfield; Bill Is Passed by House and Senate; It Is Vetoed by the President, with Reasons.

THE elections of 1878 resulted in a reduction of the Democratic majority in the House, and in a change in the Senate from a Republican majority to a Democratic majority of six. Thirteen of the new Representatives were members of the Greenback party. On most questions these voted with the Democrats in the new (Forty-sixth) Congress, giving them a majority of about thirty.

The former Congress having failed to pass necessary appropriation bills, owing to a disagreement over the use of troops at the polls, President Hayes summoned the new one in special session. It sat from March 18 until July 1 1879.

On March 27, 1879, William A. J. Sparks [Ill.] introduced in the House a bill making appropriations for the army. It was substantially the bill disagreed to in the previous session with the repeal of the statute relat-

Hence, I insist that this proposed legislation is not germane to the army appropriation bill. It is not germane because it affects officers of the navy; and this is not a naval bill. It is not germane because it affects civil officers of the Government. If the legislation proposed as a whole includes anything not within the rule it must all fall together.

The gentleman from Illinois [Mr. Sparks] asked whether prior to the act of February 25, 1865, there was any law on the subject of the use of troops at the polls. Now let me say to him that was the first time in the history of the country that there was any restraining statute upon our statute-books at all in relation to the use of troops at the polls or anywhere else in the United States, and that legislation prohibited the use of troops and armed men at the polls by military, naval, or civil officers in the service of the Government, except for the purpose of repelling armed enemies of the United States or *to keep the peace at the polls.* Those two cases were excepted in this legislation passed by a republican Congress, and we propose that this legislation shall remain as it now is, so that it shall not be said as a reproach and a stigma upon this country that we have officers, military, naval, and civil, whose duty it is by law, under penalties, to keep the peace everywhere, save and except on one day at least in each year these officers shall be required to fold their arms and look on and witness riot, murder, intimidation, or anything else of an unlawful character, going on before their eyes, or be subject to severe penalties. By the second section of the second article of the Constitution the President is made commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States; and together with other powers given him he has the right to move the army whenever and wherever it is necessary. Such power cannot be taken away by law.

John G. Carlisle [Ky.] supported the provision.

I undertake to affirm, and I do it deliberately, that under the Constitution of the United States the President has no right to use the army or navy, or any part of the army or navy, to protect the States against domestic violence or to enforce State laws unless he is authorized so to do by act of Congress. I will read to the House that provision of the Constitution which is in point:

The United States shall guarantee to every State in this Union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature or of the Executive (when the legislature cannot be convened), against domestic violence.

I appeal to my friends on the other side to tell me and the country whether they mean to say that this provision which simply makes it the duty of the United States to guarantee to each State a republican form of government and to protect it, upon the application of the governor or the legislature, against domestic violence, confers upon the President, a single officer of the United States, any such power. Are the gentlemen prepared to go before the country on the proposition that the President is the United States?

SEVERAL MEMBERS.—Oh, no!

OMAR D. CONGER [Mich.].—To whom does the application come which is referred to?

MR. CARLISLE.—It comes to the President. That is the constitutional provision making it the duty, not of the President, but of the United States as a government to protect the States against domestic violence on the application of the governor or the legislature. And I repeat the proposition that, under that provision of the Constitution, the President, without legislation on the part of Congress, did not possess one particle of power to use the army or the navy for this purpose. And the same authority which conferred the power on him by legislation can take it away from him. [Applause on the Democratic side.]

HARRY WHITE [Pa.].—Does my friend remember that in Mr. Pierce's administration, on the 12th of June, 1856, the Secretary of the Navy, under the order of the President of the United States, at the request of the mayor, sent a body of marines to the fourth ward in this city while an election for municipal officers was going on, and they shot down unoffending American citizens? That act was sustained by the gentleman's political friends. Does he know that?

MR. CARLISLE.—I do remember at that election the soldiers of the United States or the marines were used in this city, a district under the exclusive jurisdiction of the Federal Government, and that my friend's political party complained loudly and long of it.

MR. WHITE.—Did not Henry C. Burnett, a predecessor of the gentleman from Kentucky, defend on this floor the use of the troops to keep peace at the polls?

MR. CARLISLE.—The District of Columbia was not in a State.

MR. WHITE.—Had not the District of Columbia a municipal city government, a mayor, and police? [Laughter on the Democratic side.]

MR. CARLISLE.—The authority of the President to use the army or the navy in protecting the States against domestic

violence, or in assisting the States to enforce their laws, is derived, not from the provision of the Constitution which I have read, but from an act of Congress which was passed on February 27, 1795; and it is under that act that the President proceeds in every instance to send the army or the navy into a State to protect it against domestic violence or to enforce its State laws.

There is the foundation and the only foundation upon which rests to-day all the authority the President has to use the troops, the army or the navy, for these purposes. And I submit to my friends on the other side if it is not entirely competent for the power which conferred this authority to take it away, to modify it, or to alter it. But I deny, sir, that under this authority, if left without any modification, the President can send soldiers into the States of this Union to stand around the polls on election day for the purpose of keeping the peace. I deny what has been asserted by my friend from Maine [Mr. William P. Frye], that the United States deputy marshals can call upon the army of the United States to assist them in keeping the peace. Up to the passage of the army appropriation bill in the second session of the Forty-fifth Congress that was true; but in that bill there was inserted a clause which provided that the army should not be used thereafter as a *posse comitatus*.

GEORGE M. ROBESON [N. J.].—I wish to ask the gentleman whether if the executive of a State, when the legislature cannot be convened, or the legislature itself, calls upon the President of the United States under the Constitution as it is written, and under the law as it now stands to suppress domestic violence, and that domestic violence be at a place where a general election is taking place, the President of the United States is not bound under his oath of office to comply with the request? And, if so, whether this amendment is not in derogation of his constitutional power and duty?

MR. CARLISLE.—If the application is made in the regular form under the act of Congress I admit that it is the duty of the President to send troops, but I say that when troops have gone into a State and have dispersed the mob or the insurrectionists or whoever else is acting in resistance to the State authorities, they have performed their duty and must stop; they cannot remain at the election precincts to keep the peace, or, in other words, to prevent outbreaks of violence.

MR. ROBESON.—I am not now disputing that point. The gentleman having answered that question so fairly, I now ask him whether or not this section of this bill, this proposed amend-

ment of the law, would take away the power of the President to do that thing, if properly called upon?

MR. CARLISLE.—It certainly will not, as I have stated again and again.

MR. ROBESON.—If that be so, if this section does not take away his power in that respect, and if that contingency should happen, as it possibly may, then I would ask this question: is an officer of the army of the United States, who is sworn to obey the lawful orders of the President of the United States, bound to obey should he be ordered by the President to suppress a riot and to quiet domestic violence at a place where a general election is being held? And, if he does, what is to happen to him?

MR. CARLISLE.—The gentleman from New Jersey [Mr. Robeson] is asking me a question upon one subject and I am discussing another. [Laughter.] The gentleman from New Jersey asks me what would be the result in case an officer of the United States failed to perform his duty, where the President in giving him his order was acting in strict conformity to the law. I say that the officer is, of course, bound to obey the order.

We, however, are now discussing the question as to whether or not these soldiers shall be sent to a State for the purpose of keeping the peace at the polls, not for the purpose of suppressing domestic insurrection against the authority of the State or protecting the State against domestic violence. The two propositions are altogether different in their nature; they stand upon altogether different foundations. One is essential to the preservation, not only of the peace and integrity, but of the very existence of the Federal Government itself, because that Government cannot exist for a moment if the States are destroyed.

MR. ROBESON.—The amendment in effect says these troops shall not be there for any purpose. But one further question. Does the gentleman understand that the President of the United States is included in the scope of this section? In the fourth line of this section I find these words: "Other persons engaged in the civil, military, or naval service of the United States." I would like to ask the gentleman whether he considers that that expression includes the President of the United States? And, if it does, whether the President of the United States when called upon by the executive of a State in a proper manner—I assume all that—whether he would be liable to punishment under the provisions of this section if he acted upon that call of a State executive?

MR. CARLISLE.—My first answer to the gentleman's question is this: that the President cannot be properly called upon to do

a thing which he has no power to do. In other words, he cannot be properly called upon to send troops into a State to preserve peace at an election.

MR. ROBESON.—But I understood the gentleman to say that he thought this section did not affect that power of the executive of a State to call upon the President, nor the duty of the President to respond to that call. If that be so, then he would be properly called upon and not improperly; and the troops would be there under his order.

MR. CARLISLE.—I am not prepared to say upon the instant exactly what the true construction of that portion of the section is, because my attention has not been previously called to it. But I undertake to say this much, that no provision of this law or of any other law can be so construed or so administered as to punish any officer or any private citizen for doing that which he has a lawful right to do.

Alexander H. Stephens [Ga.] supported the provision.

It is known that I was opposed to the policy of putting this provision on this appropriation bill. But the policy of doing it and the right to do it are different questions. The question now is, is the section excluded by the rule the accepted law of the House?

All laws penal in their character are to be strictly construed, but laws involving questions of public right, public liberty, public policy, are to be liberally construed. Rule 120 provides that any change in existing laws upon appropriation bills must not only be germane, but must be in the nature of retrenchment of expenditures.

There is no question this amendment is germane, none. Does it retrench expenditures? The gentleman from Maine [Mr. Frye] says it must appear on its face that it does reduce expenditures. That is strict construction. May it possibly reduce expenditures? Will it probably reduce expenditures? Will it most probably reduce expenditures? These are considerations which we should not neglect or overlook. If it does, if it probably may, if it possibly may, if it does not increase them, but possibly may reduce them and most probably will, then that liberal construction which I insist should be made of this rule would make us conclude the proposition is admissible under the one hundred and twentieth rule.

I think it will not only possibly and probably but certainly

reduce expenditures. Our past history and experience show that enormous expenditures have attended the use of troops at the polls during elections.

It was not until 1807 that the organized army, the military force and the naval force, was authorized to be called out for a like purpose, to protect the States against domestic violence and insurrection. But the provision of the law for the use of the troops in civil cases is entirely a different matter. It is where provision is made for the execution of a mandate or judgment of a court. The generals are not to command the troops in such cases, but the marshals. The civil officers, as the sheriffs in our States, were authorized to call for the use of the troops, and the President was authorized to furnish them to the legislature or to the governor when the legislature was not in session or the marshals for the execution of the mandate of a court. That is what I call the execution of process in civil administration of the law. That is a very different thing from the other—the use of troops to suppress insurrection and domestic violence in a State upon the call of a legislature or the governor as provided by the Constitution.

Wherever the marshal calls for troops, as was decided by Attorney-General Caleb Cushing, it was as a *posse,* not as the army. The United States troops were under the command, not of the United States military officers, but under the command of the marshal who asked for them.

The whole of this amendment is simply this: all the new legislation it proposes, or change of legislation, is to repeal that clause which negatively affirms that the troops might be called out and ordered by military commanders to attend at elections under pretence of keeping the peace.

I am for law and order. I have witnessed the presence of soldiers at the polls. I have seen no good from their presence. We had gotten along for three-quarters of a century without it. I think the public sentiment is as much against the use of the troops to preserve the peace North as it is South. Let the relics and vestiges of the war be buried with the things of the past. I do insist that there will be no harm done, no unsettling of our institutions, no revolution in our matchless system of government, by the repeal of this law. It seems to me, therefore, this amendment being germane, regulating the use and the control of the army, and being also within the purview of a liberal construction of the rule, it is admissible on this bill.

Now, as to the use of the army, I wish in connection with some remarks which were offered yesterday on both sides upon

this subject to state this: Congress has a right to raise armies. Congress has a right to designate the use to which the forces, naval or military, may be applied. But the President's right to control and direct the movements of those forces from one part of the country to the other, enlarging the declared function of Congress, is a clear executive right. We have no power to interfere with it, except by impeachment for the abuse of power conferred. But we can say that he shall not use the forces for any particular purposes. We have a right to say this—and I do not think the present Executive would desire it to be otherwise —we have a right to say the forces, land and naval, of the United States shall not be used for the purpose of controlling elections in the States, but that the elections shall be free and fair according to the laws of the land, State and Federal; and if any man violates the law, if there has been any violence at the polls, and a member of Congress has not been duly returned, we are to judge of it here on this floor, and we can set the return aside. Let the land and naval forces of our country be devoted to the objects for which they were raised by Congress. Let the army protect the frontier. Let the navy be afloat on the seas protecting our flag and our commerce everywhere. Let each branch of these forces be kept in that sphere they were created for, and in which in past years they have won such honor and glory to our common country.

THOMAS B. REED [Me.].—The tendency of the rules and the practice of the House has been for many years to concentrate an immense power in the hands of the Committee on Appropriations. So great has been that tendency that the gentleman who is now occupying the chair [Samuel J. Randall] seized the first opportunity to introduce a proposition to deprive them of a certain portion of their power. But an amendment like this in its principle goes further; it goes not only to increase the power of the Committee on Appropriations, but it also aggrandizes the power of the conference committee and leaves the decision of grave questions to six men, three appointed from the House and three from the Senate.

Whenever the House can propose an amendment which is germane to the bill and which repeals existing legislation simply because this amendment reduces expenditures they raise grounds of possible difference between the House and the Senate, and those questions must go to a conference committee, and every one who knows anything of the legislation of Congress knows that a large part of the most important legislation is decided by three men from the House and three men from the Senate. And

the decision takes place in secret without any of the safeguards which ought to surround legislation.

Now, this thing is wrong. It is undemocratic; it is unrepublican. It is unsuitable for this nation and this people, and consequently any rule which allows an amendment of this sort ought to be construed strictly for the good of the country.

Rule 120 demands two things: first, that the amendment shall be germane to the bill; and, second, that it shall reduce expenditures. On the proposition as to the reduction of expenditures there has already been a decision by the first Speaker under whom this rule was adopted, Speaker Kerr, and his ruling, as I understand it, was that the amendment must upon its face show a reduction of expenditures. It is not a matter of argument or inference, or a question for discussion.

Why, this very case illustrates the necessity for this thing. This amendment contains two propositions: first, that no troops shall be employed at the polls; second, that men shall be punished if they have troops there. Is that last clause going to lessen expenditures in any way, or is it going to increase expenditures to punish men for being there? Your first clause may diminish expenses, but the last will certainly increase them. Who shall strike the balance? The thing is as broad as it is long. I say that the Chair ought to rule in such a fashion that an amendment shall not be admitted unless upon its face it shows affirmatively that it does reduce expenditures.

But I do not rest my objection so much upon the question of the reduction of expenditures as upon the question of whether the amendment is germane to the bill. I ask the attention of the Chair to some propositions I have to make.

Here is an amendment which embraces three statements and is to a bill to appropriate money for the support of the army, one which relates solely to the army appropriation. The largest extent that can be given to matters germane to it will only include matters that relate to the army, I should say myself to army expenditures alone, but, taking the widest and broadest limit you can put to it, it can only include matters that relate to the army, but not those that relate to naval and civil officers.

Here are three propositions in this amendment. The first is that no military officer shall have under his authority troops at polling places. Now, even if that could be construed as being germane to an appropriation bill, here is also a proposition that no naval officer shall have any armed men at the polls. How is that germane to an army appropriation bill? Here is a further provision that no person engaged in the civil service of the

United States shall have armed men there. How is that consistent with a bill which relates solely to the appropriations for the support of the army?

I say that so far from its being germane to the bill, as stated by the gentleman from Georgia [Mr. Stephens], it is, to the mind of any disinterested person, clearly not germane. You cannot mix up the naval and civil officers of the Government and drag them into an army appropriation bill simply because the proposed section refers as well to the army officers.

THE SPEAKER [SAMUEL J. RANDALL].—The point of order raised upon the pending section is this: that it changes existing law, that it is not germane to the pending bill, and that it does not retrench expenditures. Rule 120 provides that no proposition in an appropriation bill, or an amendment thereto, which changes existing law, shall be in order, except such as, being germane to the subject-matter of the bill, shall retrench expenditures. That the pending section changes existing law appears on its face. That it is germane to the pending bill there can scarcely be a doubt. It relates to the duties of the army, or the uses to which it may be put. The object of the bill is to provide a support for the army. A kindred subject to that would be the kind of service the army is expected to perform. The duties to be performed are closely allied to the matter of army support. "Germane" does not mean synonymous, but something "near akin," "closely allied," or "relevant" to the subject-matter to which it is applied. The Chair is therefore of the opinion that the section is germane to the pending bill.

But the most serious question involved is this: Does the section retrench expenditures?

Congress creates the army. It provides its support. It makes the rules for its government. And although the President is, by the Constitution, the commander-in-chief of the army, yet Congress must make all laws necessary and proper for carrying into execution the powers vested in him as such commander. Congress may therefore fix the places where troops may or may not be stationed, and may prohibit the President and all civil and military officers from using the army for any purpose deemed improper, or from interfering with the freedom of elections, or from doing any act dangerous to the liberties of the people. By existing law the army or any part thereof may now be used to keep the peace at the polls at any voting place, at any election, to which the President or any civil or military officer might see fit to order it. The official estimates and appropriations heretofore made show how much money has been expended

for transportation and other expenses attending the use of troops at the polls. The pending section proposes to retrench such expenditures for the future.

If it were lawful to use troops as policemen in cities, as sheriffs and constables for serving civil processes, as guards for State prisons, or as messengers for carrying the mails or the transportation of merchandise for private individuals, would not such enlarged duties greatly increase the expense of supporting the army? As the enlarging of the duties of the army would necessarily increase the expenses of supporting it, so will the restricting of the uses to which it may be put reduce such expenses. In so far, then, as the services which may be required of the army, or any part thereof, are restricted by the pending amendment the expense necessarily attending such service is reduced, and to that extent the pending provision does retrench expenditures.

For these reasons, and others which might be assigned, the Chair overrules the point of order.

The decision of the Chair was sustained by a vote of 125 to 107.

James A. Garfield [O.] opened the debate proper by opposing the proviso.

Mr. Chairman, viewed from the standpoint of a foreigner, our Government may be said to be the feeblest on the earth. From our standpoint, and with our experience, it is the mightiest. But why would a foreigner call it the feeblest? He can point out a half dozen ways in which it can be destroyed without violence.

For example, if the people of the United States should say we will elect no Representatives to the House of Representatives. Does our Constitution provide any remedy whatever? In two years there would be no House of Representatives; of course, no support of the Government, and no Government. Suppose, again, the States should say, through their legislatures, we will elect no Senators. Such abstention alone would absolutely destroy this Government; and our system provides no process of compulsion to prevent it.

Again, suppose the two Houses were assembled in their usual order, and a majority of one in this body or in the Senate should firmly band themselves together and say, we will vote to adjourn the moment the hour of meeting arrives, and continue so to vote at every session during our two years of existence; the Govern-

ment would perish, and there is no provision of the Constitution to prevent it. Or, again, if a majority of one of either body should declare that they would vote down, and did vote down, every bill to support the Government by appropriations, can you find in the whole range of our judicial or our executive authority any remedy whatever? A Senator, or a member of this House, is free, and may vote "no" on every proposition. Nothing but his oath and his honor restrains him. Not so with executive and judicial officers. They have no power to destroy this Government. Let them travel an inch beyond the line of the law, and they fall within the power of impeachment. But, against the people who create Representatives; against the legislatures who create Senators; against Senators and Representatives in these halls, there is no power of impeachment; there is no remedy, if, by abstention or by adverse votes, they refuse to support the Government.

At a first view, it would seem strange that a body of men so wise as our fathers were should have left a whole side of their fabric open to these deadly assaults; but, on a closer view of the case, their wisdom will appear. What was their reliance? This: the sovereign of this nation, the God-crowned and Heaven-anointed sovereign, in whom resides "the State's collected will," and to whom we all owe allegiance, is the people themselves. Inspired by love of country and by a deep sense of obligation to perform every public duty; being themselves the creators of all the agencies and forces to execute their own will, and choosing from themselves their representatives to express that will in the forms of law, it would have been like a suggestion of suicide to assume that any of these great voluntary powers would be turned against the life of the Government. Public opinion—that great ocean of thought from whose level all heights and all depths are measured—was trusted as a power amply able, and always willing, to guard all the approaches on that side of the Constitution from any assault on the life of the nation.

Up to this hour our sovereign has never failed us. There has never been such a refusal to exercise those primary functions of sovereignty as either to endanger or cripple the Government; nor have the majority of the representatives of that sovereign in either House of Congress ever before announced their purpose to use their voluntary powers for its destruction. And now, for the first time in our history, and, I will add, for the first time for at least two centuries in the history of any English-speaking nation, it is proposed and insisted upon that these

voluntary powers shall be used for the destruction of the Government. I want it distinctly understood that the program announced to the American people to-day is this: that, if this House cannot have its own way in certain matters, not connected with appropriations, it will so use, or refrain from using, its voluntary powers as to destroy the Government.

Now, Mr. Chairman, it has been said on the other side that, when a demand for the redress of grievances is made, the authority that runs the risk of stopping and destroying the Government is the one that resists the redress. Not so.

Our theory of law is free consent. That is the granite foundation of our whole superstructure. Nothing in this Republic can be law without consent—the free consent of the House; the free consent of the Senate; the free consent of the Executive, or, if he refuse it, the free consent of two-thirds of these bodies. And yet the program announced two weeks ago was that, if the Senate refused to consent to the demand of the House, the Government should stop. And the proposition was then, and the program is now, that, although there is not a Senate to be coerced, there is still a third independent branch in the legislative power of the Government whose consent is to be coerced at the peril of the destruction of this Government; that is, if the President, in the discharge of his duty, shall exercise his plain constitutional right to refuse his consent to this proposed legislation, the Congress will so use its voluntary powers as to destroy the Government. This is the proposition which we confront; and we denounce it as revolution.

It makes no difference, Mr. Chairman, what the issue is. If it were the simplest and most inoffensive proposition in the world, yet, if you demand, as a matter of coercion, that it shall be adopted against the free consent prescribed in the Constitution, every fair-minded man in America is bound to resist you as much as though his own life depended upon his resistance.

Let it be understood that I am not arguing the merits of any one of the three amendments. I am discussing the proposed method of legislation! and I declare that it is against the Constitution of our country. It is revolutionary to the core, and is destructive of the fundamental element of American liberty, the free consent of all the powers that unite to make laws.

In opening this debate I challenge all comers to show a single instance in our history where this consent has been coerced. This is the great, the paramount issue, which dwarfs all others into insignificance.

I now turn aside for a moment from the line of my argument

to say that it is not a little surprising that our friends on the other side should have gone into this great contest on so weak a cause as the one embraced in the pending amendment to this bill.

Victor Hugo said, in his description of the battle of Waterloo, that the struggle of the two armies was like the wrestling of two giants, when a chip under the heel of one might determine the victory. It may be that this amendment is the chip under your heel, or it may be that it is the chip on our shoulder. As a chip, it is of small account to you or to us; but, when it represents the integrity of the Constitution and is assailed by revolution, we fight for it as if it were a Kohinoor of purest water. [Applause.]

The distinguished and venerable gentleman from Georgia [Mr. Stephens] spoke of this law, which is sought to be repealed, as "odious and dangerous." It has been denounced as a piece of partisan war legislation to enable the army to control elections.

Do gentlemen know its history? Do they know whereof they affirm? Who made this law which is denounced as so great an offence as to justify the destruction of the Government rather than let it remain on the statute-book? Its first draft was introduced into the Senate by a prominent Democrat from the State of Kentucky, Lazarus W. Powell, who made an able speech in its favor.[1] It was reported against by a Republican committee of that body. It encountered weeks of debate, was amended and passed, and then came into the House. Every Democrat present in the Senate voted for it on its final passage. Every Senator who voted against it was a Republican. No Democrat voted against it.

The bill then came to the House of Representatives and was put upon its passage here. How did the vote stand in this body? Every Democrat present at the time in the House of Representatives of the Thirty-eighth Congress voted for it. The distinguished speaker of this House, Mr. Samuel J. Randall, voted for it. The distinguished chairman of the Committee of Ways and Means of the last House, Mr. Fernando Wood, voted for it. Every Democrat of conspicuous name and fame in that House voted for the bill, and not one against it. There were but few Republicans who voted against it.

What was the controversy? What was the object of the bill? It was alleged by Democrats that in those days of war there were interferences with the proper freedom of elections in the

[1] See Volume VI, chapter xiii.

border States. We denied the charge; but, lest there might be some infraction of the freedom of elections, many Republicans, unwilling that there should be even the semblance of interference with that freedom, voted for it. This law is an expression of their purpose that the army should not be used at any election except for the purpose of keeping the peace.

Those Republicans who voted against it did so on the ground that there was no cause for such legislation; that it was a slander upon the Government and the army to say that they were interfering with the proper freedom of elections. I was among that number.

MR. STEPHENS.—I ask if the country is likely to be revolutionized and the Government destroyed by repealing a law that the gentleman himself voted against? [Laughter on the Democratic side.]

MR. GARFIELD.—I think not. That is not the element of revolution, as I will show the gentleman. The proposition now is that, after fourteen years have passed, and not one petition from one American citizen has come to us asking that this law be repealed; while not one memorial has found its way to our desks complaining of the law, so far as I have heard, the Democratic House of Representatives now holds that, if they are not permitted to force upon another House and upon the Executive, against their consent, the repeal of a law that Democrats made, this refusal shall be considered a sufficient ground for starving this Government to death. That is the proposition which we denounce as revolution. [Applause on the Republican side.]

FERNANDO WOOD [N. Y.].—I desire to ask the gentleman whether he wishes to make the impression upon the House that the bill introduced by Senator Powell, of Kentucky, and which resulted finally in the law of 1865, was the bill that passed the Senate, that passed the House, and for which he says the present Speaker of this House and myself voted?

MR. GARFIELD.—I have not intimated that there were no amendments. It was amended in the Senate. One amendment permitted the use of the army to repel armed enemies of the United States from the polls.

MR. WOOD.—So far as I am personally concerned, I deny that I ever voted for a bill except as a substitute for a more pernicious and objectionable measure. [Much laughter on the Republican side.]

MR. GARFIELD.—No amendments whatever were offered in the House, and there was no other bill on the subject before the House.

MR. WOOD.—I desire to submit another question to my friend.

MR. GARFIELD.—Certainly.

MR. WOOD.—It is whether, in 1865, at the time of the passage of this law, when the war had not really subsided, there was not in a portion of this country a condition of things rendering it almost impossible to exercise the elective franchise unless there was some degree of military interference. [Great laughter.] And, further, whether, after the experience of fourteen years since the war has subsided, that gentleman is yet prepared to continue a war measure in a time of profound peace in this country?

MR. GARFIELD.—No doubt the patriotic gentleman from New York [Mr. Wood] took all these things into consideration when he voted for this law; and I may have been unpatriotic in voting against it at that time; but he and I must stand by our records, as they were made.

Let it be understood that I am not discussing the merits of this law. I have merely turned aside from the line of my argument to show the inconsistency of the other side in proposing to stop the Government if they cannot force the repeal of a law which they themselves made. I am discussing a method of revolution against the Constitution now proposed by this House, and to that issue I hold gentlemen in this debate, and challenge them to reply.

And now, before I close, I ask the forbearance of gentlemen on the other side while I offer a suggestion which I make with reluctance. They will bear me witness that I have in many ways shown my desire that the wounds of the war should be healed; that the grass which has grown green over the graves of the dead of both armies might symbolize the returning spring of friendship and peace between citizens who were lately in arms against each other.

But I am compelled by the necessities of the case to refer to a chapter of our recent history. The last act of Democratic domination in this Capitol, eighteen years ago, was striking and dramatic, perhaps heroic. Then the Democratic party said to the Republicans: "If you elect the man of your choice as President of the United States we will shoot your Government to death"; and the people of this country, refusing to be coerced by threats or violence, voted as they pleased, and lawfully elected Abraham Lincoln as President of the United States.

Then your leaders, though holding a majority in the other branch of Congress, were heroic enough to withdraw from their seats and fling down the gage of mortal battle. We called it

rebellion; but we recognized it as courageous and manly to avow your purpose, take all the risks, and fight it out in the open field. Notwithstanding your utmost efforts to destroy it, the Government was saved. Year by year since the war ended those who resisted you have come to believe that you have finally renounced your purpose to destroy and are willing to maintain the Government. In that belief you have been permitted to return to power in the two Houses.

To-day, after eighteen years of defeat, the book of your domination is again opened, and your first act awakens every unhappy memory and threatens to destroy the confidence which your professions of patriotism inspired. You turned down a leaf of the history that recorded your last act of power in 1861, and you have now signalized your return to power by beginning a second chapter at the same page; not this time by a heroic act that declares war on the battlefield, but you say if all the legislative powers of the Government do not consent to let you tear certain laws out of the statute-book you will not shoot our Government to death as you tried to do in the first chapter, but you declare that, if we do not consent against our will, if you cannot coerce an independent branch of this Government, against its will, to allow you to tear from the statute-books some laws put there by the will of the people, you will starve the Government to death. [Great applause on the Republican side.]

Between death on the field and death by starvation, I do not know that the American people will see any great difference. The end, if successfully reached, would be death in either case. Gentlemen, you have it in your power to kill this Government; you have it in your power, by withholding these two bills, to smite the nerve-centers of our Constitution with the paralysis of death; and you have declared your purpose to do this, if you cannot break down that fundamental element of free consent which up to this hour has always ruled in the legislation of this Government.

Touching this question of executive action, I remind the gentlemen that, in 1856, the National Democratic Convention, in session at Cincinnati, and, still later, the National Democratic Convention of 1860, affirmed the right of the veto as one of the sacred rights guaranteed by our Government.

The doctrine is that any measure which cannot be passed over a veto by a two-thirds vote has no right to become a law, and the only mode of redress is an appeal to the people at the next election. That has been the Democratic doctrine from the

earliest days, notably so from the time of Andrew Jackson until now.

In leaving this topic, let me ask you what would you have said if, in 1861, the Democratic members of the Senate, being then a majority of that body, instead of taking the heroic course and going out to battle, had simply said; "We will put on an appropriation bill an amendment declaring the right of any State to secede from the Union at pleasure, and forbidding the President or any officer of the army or navy of the United States from interfering with any State in its work of secession"? Suppose they had said to the President: "Unless you consent to the incorporation of this provision in an appropriation bill we will refuse supplies to the Government." Perhaps they could then have killed the Government by starvation; but, even in the madness of that hour, the leaders of rebellion did not think it worthy their manhood to put their fight on that dishonorable ground. They planted themselves on the higher plane of battle and fought it out to defeat.

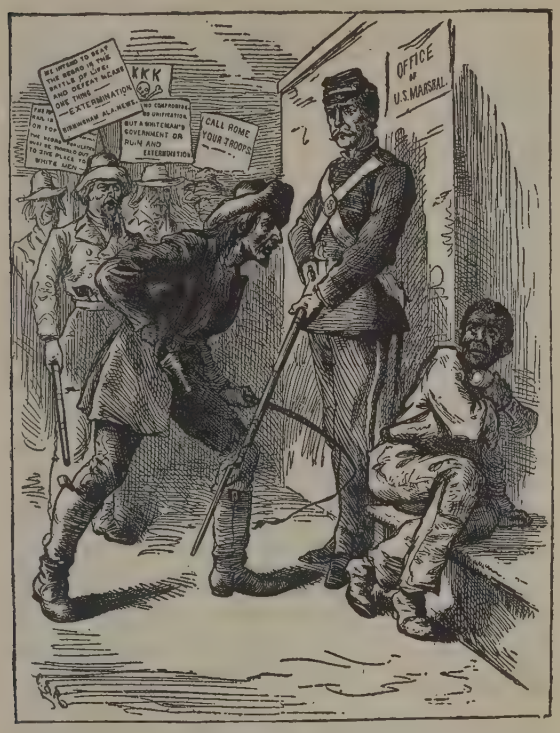
Now, by a method which the wildest secessionist scorned to adopt, it is proposed to make this new assault upon the life of the Republic.

We are ready to pass these bills for the support of the Government at any hour when you will offer them in the ordinary way, by the methods prescribed by the Constitution. If you offer those other propositions of legislation as separate measures we will meet you in the fraternal spirit of fair debate and will discuss their merits. Some of your measures many of us will vote for in separate bills. But you shall not coerce any independent branch of this Government, even by the threat of starvation, to consent to surrender its voluntary powers until the question has been appealed to the sovereign and decided in your favor. On this ground we plant ourselves, and here we will stand to the end.

Let it be remembered that the avowed object of this new revolution is to destroy all the defences which the nation has placed around its ballot-box to guard the fountain of its own life. You say that the United States shall not employ even its civil power to keep peace at the polls. You say that the marshals shall have no power either to arrest rioters or criminals who seek to destroy the freedom and purity of the ballot-box.

I remind you that you have not always shown this great zeal in keeping the civil officers of the general Government out of the States. Only six years before the war your law authorized marshals of the United States to enter all our hamlets and

households to hunt for fugitive slaves. Not only that, it empowered the marshals to summon the *posse comitatus*, to command all bystanders to join in the chase and aid in remanding to eternal bondage the fleeing slave. And your Democratic


WE INTEND TO BEAT THE NEGRO IN THE BATTLE OF LIFE, AND DEFEAT MEANS ONE THING —EXTERMINATION.
—BIRMINGHAM, ALA., NEWS
KKK
BUT A WHITEMAN'S GOVERNMENT OR RUIN AND EXTERMINATION
CALL HOME YOUR TROOPS
OFFICE OF U.S. MARSHAL

SHALL WE CALL HOME OUR TROOPS?

"We intend to beat the Negro in the battle of life, and defeat means one thing—EXTERMINATION."—*Birmingham (Alabama) News*

From the collection of the New York Public Library

Attorney-General [Caleb Cushing], in his opinion published in 1854, declared that the marshal of the United States might summon to his aid the whole able-bodied force of his precinct, not only including bystanders and other citizens generally, "but any and all organized armed forces, whether militia of the State, or officers, soldiers, sailors, and marines of the United States," to join in the chase and hunt down the fugitive. Now, gentlemen, if, for the purpose of making eternal slavery the lot of an American, you send your marshals, summon your *posse*, and use the armed force of the United States, with what face or grace can you tell us that this Government cannot lawfully employ the same marshals with their armed *posse*, if need be, to maintain the purity of our own elections and keep the peace at our own polls? You have made the issue and we have accepted it. In the name of the Constitution and on behalf of good government and public justice, we make the appeal to our common sovereign.

For the present I refrain from discussing the merits of the election laws. I have sought only to state the first fundamental ground of our opposition to this revolutionary method of legislation by coercion. [Great applause.]

JOHN A. MCMAHON [O.].—I would ask my colleague from the State of Ohio, who constituted him the guardian of the Southern men on this floor? Who gave him the right to read them lectures, as if they were his subordinates and not his equals upon this floor? Does the gentleman assume to speak for the people of the North? He ought to have remembered the fact that his party is no longer in the majority. He ought to have recollected that, between its Southern policy and its financial management, Republicanism has been shorn of many hundred thousands of its followers. And, when he insists that Southern men shall be guided by Republican ideas as the price of the good opinion of Republican leaders, I would ask him what are they to follow? Shall they adopt the gentleman's teaching at the present time, or may they not adopt his practices in the past, when so many laws were enacted upon appropriation bills by him and his party?

And I want to say to gentlemen on the other side who talk as if they held this country in a sling and carried the Government around in their breeches pocket—I want them to know and to realize that in the last presidential election they were in a minority of over one million of the white voters of this country, and in a minority of over two hundred and fifty thousand of its whole voting population. They have a President

in power, it is true; but we all know how he was put there. We all know he received neither a majority of the votes of the people, nor did he receive a legal majority of the electoral votes. We are here, sir, on this side representing the people, and in the other House we represent the people as well. If there had been fair play we would have had all the departments of the Government. Representing, as we do, the majority of the people of this country, we propose to exercise all the powers of legislation as men fully sensible of the responsibility resting upon us. The people have trusted us, and we are here to protect their rights, and he is no true Representative who will allow his judgment to be influenced by the line of argument adopted by my colleague from Ohio.

The course of my colleague [Mr. Garfield] is certainly extraordinary. He is unwilling to discuss the merits of the proposition. He will not say that our proposed amendment is not right. He admits that he voted against this section when it became a law, but he gives us no light about his present views. Surely, when so distinguished and intelligent a gentleman arraigns a large number of his colleagues as revolutionists because of their support of this measure, he ought to deign to give us an opinion as to whether, in his judgment, it is right or wrong. Does his party seek to evade this discussion and to find refuge under the worn-out "bloody shirt"?

Gentlemen upon the other side forget that, during the war, when it was popular, not only in their party, but with the people, to augment the executive power of the Government for the purpose of enabling us to put down the rebellion, almost every conceivable outrage was perpetrated upon the liberty of the people at the polls, under the so-called war power, the avowed pretext being to preserve the peace, but the real object being to secure a majority on the floor of this House and otherwise to control the elections in the various border States.

It is an old maxim, full of wisdom, that "a half loaf is better than no bread." This law did not meet the views of the Democratic members of either body; but it was better than no law. It was a step in the proper direction, and they trusted to the future, when the Union would be fully restored, to return to its proper channels the overgrown power of the executive branch of our Government.

But gentlemen on the other side plant themselves upon the position that we have no right to attach this measure to an appropriation bill. Why not? We are acting under the rules of the House and in strict accord with general parliamentary

law. We have a right to put it there if we have the majority, and I would wish to recall to the gentleman's short memory the fact that he and his party have resorted to this method of enforcing their views upon many important occasions. It came into existence at an early day as one of the means by which the people of England saved themselves from tyrannical kings; and it is a power which we should never abandon under any circumstances, no matter how free our Government may seem to be at the present time. When our fathers conferred upon Congress the right to "raise and support armies," they intended to give Congress the absolute power to determine for what purposes these armies should be used.

If this was the first time this power had been exercised by either party, I would not be so surprised to hear our action denounced as "revolutionary." But it has been freely used in the past by the Republican party. And, in the last two Houses, all the economy, and it was great, which the Democratic House was able to accomplish it achieved by constant legislation upon the various appropriation bills presented to it.

Gentlemen assume that we are coercing somebody, some coordinate branch of the Government. By what right do they say so? How can we tell, or what difference ought it to make to us, what view the Senate or the President may take of this question? They may be as eager as we for this reform. As it is correct in principle, we have the right to suppose that it will be welcomed in any shape. Does the gentleman from Ohio speak with any authority when he assumes that our action will not receive the sanction of the President. I will not believe, and do not, that the President has been guilty of so gross a violation of the proprieties of the occasion.

Now, I am not in favor of constant general legislation upon appropriation bills. But, when we are voting money to support an army for the next fiscal year, have we not the right, and is it not our duty to say emphatically that these soldiers shall not be used for the purpose of intimidating voters or influencing the election? If the President of the United States can convince the country that we have no right to pass such a law, under any circumstances, because it invades his constitutional right as commander-in-chief of the army, the country will sustain him in refusing his assent to the bill. But, if his assent is withheld because he does not approve of the measure or of the manner in which it has been passed, the people will not approve of his action. The veto power was not given to the President, in my judgment, to make him a constant actor in legislation, but

as a defensive or protective power, to prevent the invasion of the constitutional right of the other departments, or, in extreme cases, the passage of hasty and ill-advised legislation. I do not agree with my colleague in his statement that the President is a part and parcel of the legislative power of this country. He has become so, in practice, to a certain extent, but I believe the practice is wrong.

When I turn to the very first article of the Constitution, which speaks about the legislative power of the Government, I find it says:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

It does not say it shall consist of a House and Senate and President of the United States. On the contrary, it says simply "a Senate and House of Representatives." When I then turn to that article of the Constitution which provides for the executive power, I find it says:

> The executive power shall be vested in a President of the United States of America.

Therefore I say, Mr. Chairman, that, when certain vital measures concerning the purity and the freedom of elections are involved; when the question as to whether the people shall ever have the power, under the Constitution and under the laws, to rid themselves of a party in power which was not properly placed there, or whose policy makes it desirable that it should be turned out; when it comes to the vital question as to whether the people shall be permitted to have a fair opportunity to determine at the ballot-box who shall be their rulers, their representatives have a right to put upon any appropriation bill these measures, and say: "We want the jury-box pure and uncontaminated; we do not want the United States courts used as the machinery of a political party to intimidate whole sections of the country by political prosecutions with partisan juries for alleged election offences, thereby keeping one party in power; we do not want the President of the United States, under his pretended right as commander-in-chief, to move the troops to the polls to deter men from coming there to vote the opposite ticket, and we do not intend that it shall lie in the power of the marshals of the United States, the mere creatures of the President, to appoint any number of irresponsible and corrupt men to stand at the polls and to intimidate the honest voter in his exercise of the elective franchise."

These are measures upon which we stand. The gentleman has truly said that we have well weighed and considered them. We regard them all as vital. They concern the very foundation of free government, the right of the people to express an untrammeled will through the ballot-box, free from violence, corruption, and, above all, Federal interference. I believe that we have made up our minds fully to take all the consequences before the people of an adherence to our views. If the President of the United States prefers to "starve the Government," because the stalwarts of his party demand that he shall assist in raising the "bloody flag" once more, with him will rest the responsibility. If the party in power is determined to perpetuate itself in power by the retention, at all hazards, of all the political machinery by which they have hitherto suppressed the will of the people, and corrupted elections, the battle for an honest jury, the proper administration of justice, the purity and freedom of elections cannot begin too soon. The cry of the professional politician will not deceive the people. The appeal to war feelings will be laughed to scorn. A suffering nation wants peace, quiet, harmony, and relief from the burdens of taxation; and it no longer demands or desires the harassing legislation of the party in power.

Now, is the measure we are considering right and constitutional? This is the particular proposition which I propose to discuss at the present time. I could not follow, if I wished, my colleague in his eloquent and rambling discourse. I did not obtain the floor for that purpose. He has refused to discuss the merits of this question. I desire to discuss them. He indulged in a number of high-sounding phrases of a general character of which only the application was wrong. While he, as the leader upon that side, expressed his confidence in the people of the United States, I must be permitted to say that the statute-book is full of villainous laws which his party enacted, based on the idea that the people are without honest intelligence, full of depravity, ignorance, and corruption. A government of the people cannot last long if such be the fact.

Some of these laws we propose to repeal at the present time; others we propose to repeal at a future day, which, thank God! is not far distant. Then a greater "revolution" than the present will take place. Some gentlemen upon the other side seem to think that "revolution" is always going on when some Republican official is about to be put out of office. [Laughter and applause.] The Government is always in danger unless in the hands of Republican officeholders, and it is treason and dis-

loyalty to pull down any machinery designed to perpetuate their exclusive reign!

Does the measure proposed infringe upon the constitutional right of the President as commander-in-chief of the army? And what are the respective powers of Congress and the President in regard to the army and navy? These are vital questions, and their exceeding importance is my apology for claiming the attention of the House to-day.

The country is under great obligations to the gentleman from Kentucky [Mr. Carlisle] who made so able an exposition yesterday of the extent of the right of the President to interfere, with the Federal troops, in the affairs of a State. It is the duty of every Representative to put himself on record against the wild claims for executive power put forward by gentlemen upon the other side, lest acquiescence in them may be presumed, and be cited as precedent at some distant day. I desire to speak more particularly as to the power of the President over the army, in connection with the powers of Congress.

I was surprised to hear the able member from Maine [William P. Frye] say that, even if we should pass this law, we would not thereby interfere with the President's power; that, as commander-in-chief, he would still possess the power to move the troops wherever he pleased; that he could take them from the Indian frontier and place them in New York, or order them from Galveston to a fort in Maine. If, by this remark, he only meant that, in the absence of any law, the President could exercise these powers, I make no objection. But the gentleman seemed to insist that he could do these things in spite of law; for he argued that, if we passed the measure, the President could yet transport troops where he pleased, and that our law would not reduce expenditures, because it would not control the President in his movements of the troops. Such a claim has been made in this House within my recollection more than once. Gentlemen who make it do not derive their ideas from the true sources of knowledge, the patriotic sources; they do not find such teachings in the writings of the Fathers. They derive their inspiration from the improper action of their own party in the days when it was popular, as I have said, and may have been necessary temporarily to permit the exercise of power by the Executive which it did not possess under the Constitution.

By the Constitution the whole power of declaring war, raising as well as supporting armies, providing and maintaining navies, organizing, arming, and governing the militia, and, above all, of making rules and regulations for the land and naval

forces, and for calling forth the militia to execute the laws of the Union, suppressing insurrection, and repelling invasion, is confided in Congress—the representatives of the people. The President is the commander-in-chief of the land and naval forces and the militia when called into service; but, in the language of Alexander Hamilton, he is only the first general and the first admiral in the United States. Does that make him the first general in the land over the law or under the law?

Congress, having power to raise and support an army, may refuse to raise an army at all; or Congress may say that it will only have such an army as is necessary to maintain the peace on the Indian frontier. It may pass a law that ten regiments of cavalry shall constitute the entire standing army of the United States, to be stationed and used only upon the Indian frontier. Such a statute might not be a sensible one, but suppose it should be passed: does the gentleman from Maine contend that the President of the United States would have the right to withdraw these troops from the Indian frontier to the coast of Maine, or send them to harry the people of Louisiana or South Carolina on election day to perpetuate his party in power? I believe his party would act upon the theory that such a right exists.

I maintain that the whole subject of raising, providing, maintaining, and supporting an army and a navy is within the legitimate powers of Congress; that the purposes for which they are raised or provided may be lawfully stated in the statute; that their uses for certain purposes—for example, the maintenance of peace at the polls or use as a *posse comitatus*—may be denied. When such troops or naval forces have been constituted I do not deny that the President is the commander. But he is commander only under the law. Through him orders are conveyed. By him movements, not forbidden by statute, may be made at his pleasure. But, if he can violate the state, he is higher than the Constitution, and becomes at once our king, emperor, dictator, or what you will.

On April 3 George M. Robeson [N. J.] opposed the proviso.

My friend from Ohio warned us that it becomes us to look sharply and keenly to the use of military power, for by the military and through their means republics have always died. I beg to take some issue with him there upon his historic accuracy and fairness. The last final blow to the liberties of republics has usually come from the sword, but it has not been

until some branch of the government has usurped to itself rights which it did not enjoy under the constitution and laws of the country, and has thus destroyed the unity and power of civil government. It has not been until some branch of the government, usually a branch claiming most especially to represent the popular will, has usurped to itself powers which did not belong to it and, absorbing or destroying the other branches, has broken down government and unsettled society. It was only after the Long Parliament of England had disgusted the people of England by their disregard of civil and of personal rights and by their assumption to themselves of everything which belonged to the government that that stern soldier, Oliver Cromwell, dared to invade that House and dissolve it with his military power. It was only after the assemblies and the councils of the French Republic had made France with its fair cornfields and its vine-clad hills run red with the blood of its best and noblest, not until Europe was appalled at the scenes of murder and of wrong which they perpetrated, not until the world stood aghast at the crimes which were committed in the name of liberty, that the young Napoleon with his armed soldiery was able to seize upon the government of the country and erect upon its ruins his military empire.

Now, Mr. Chairman, we belong to a system of government with coördinate and limited powers, all bearing relation to each other, each having its appropriate sphere, each clothed with its actual duty, each having, under the Constitution, its proper scope, power, and restraint. It is like the solar system in the heavens, each member of it dependent upon the other, each held in its place, each governed in its motions, each restrained in its orbit by the power and the attractions of the other members of that system. Let one of those spheres invade the orbit of the others, let it break loose from the influence of the laws of gravitation which move and direct it, and from the centripetal and centrifugal forces which hold and control it, what becomes of it and of the system of which it is a member? It wanders abroad not only to the destruction of its coördinate spheres, but an object of terror to the universe and of destruction to itself.

Now, we are here coördinate members of this Government, all held in harmonious accord by rights, privileges, powers, and restrictions of the Constitution of the United States; and, when one member of that system breaks loose from that attraction which holds and restrains it in its true relations to the other members, its old landmarks all swept away, its old traditions all forgotten, its old and safe attractions all gone, it will riot

through the system, an object of terror and dismay, a mighty instrument of evil.

Mr. Chairman, it is on the ruins of disrupted systems of government that military power arises. It is in the confusion, the disorder arising from the loss of civil rights to be guaranteed and executed by the civil officers of the law; it is with the overthrow of constitutional law and amid the smoke of such a conflict which this occasions, that the "man on horseback" rises and liberty is sacrificed to order. So long as the civil process of the law may be properly executed by the civil officers in this country, so long there is no danger of military power. The strong arm, the clear head, the brave hearts of our people, North and South, would never yield to a military usurper, though backed by a standing army of a million of men, unless it became absolutely necessary under the pressure of the usurped and arbitrary power of some irresponsible assemblage to sacrifice liberty to order. That time will never come in this country unless we disregard the plain teachings of the Constitution which our Fathers gave to us and which we are sworn to preserve.

Mr. Chairman, the gentleman from Ohio took occasion to say, in allusion to the Executive of this country, that his title was in doubt and his tenure of office yet uncertain. I do not claim to speak for the Executive, but I cannot think the gentleman really meant all that. Certainly I hope he did not mean it as a threat, because, if he did, if that is the giant of revolution "whose baby fingers to-day we see" in the action of this House, let me say to the gentleman that the excitement which is apparent throughout the country to-day is but the mutterings of a storm which will increase in fury, will grow in strength and in resistless power, until the men and the party who endeavor to unsettle the title of the President of the United States will be swept forever from the political horizon. [Loud applause.]

Joseph C. S. Blackburn [Ky.] supported the proviso.

Mr. Chairman, it is generally true that the grave suffices to silence the tongue of detraction. It is not often that its darkened portals are invaded to pronounce severe criticism, even though richly deserved, if it is to be pronounced upon the dead. But the gentleman from Ohio [Gen. Garfield], forgetting himself in his speech on last Saturday, forgot also to observe this manly and magnanimous rule. By that speech he certainly must have sought, or, if not seeking, he was unfortunate in pro-

ducing the impression that a distinguished dead Senator from the State of Kentucky had introduced into the Federal Senate chamber the bill which we, by this amendment, seek to repeal, and to send his name down to posterity to be blasted by the act. I hold in my hand the very bill which was introduced upon the 5th of January, 1864, by Senator Powell, of Kentucky. There lies before me on my desk the manly, statesmanlike, and patriotic, bold utterances that he delivered in the shape of a speech upon the consideration of that bill. I challenge the gentleman to find within the limits of this measure a single, solitary provision, line, sentence, word, or syllable that this amendment seeks to repeal.

Does not the gentleman know—if he does not, it is his fault—that the amendment incorporated upon this bill which we now seek to repeal was incorporated and ingrafted upon it, not when the Senate was in Committee of the Whole, but in open Senate, upon motion of Senator Samuel C. Pomeroy [Kan.], and, when the vote was taken upon that amendment by yeas and nays, every solitary Democrat in that Chamber voted against it and put the seal of his condemnation upon it, Mr. Powell among the number? Here stands Senator Powell's utterance, in which he explains how and why it was that the Democratic members in that body and this body at last accepted this as the best that could be had; notwithstanding, against their protest, the ingrafting of the Pomeroy amendment, because it was to be taken in lieu of what they charged was true, of what the President of the United States in an official communication to Congress had declared to be true, that, in the absence of even the limitations that amended bill would give, the military authorities and officers of the Government had arrogated to themselves the power in all the lately seceding States of declaring what should be the qualification of voters and what should be the qualification to hold office. It was as the least offensive of two offensive alternatives. It was not candid, it was not fair; the record rebukes the gentleman for seeking to place a dead statesman in such a false position.

But, Mr. Chairman, it is useless to follow these things further. It is not, sir, for me to waste the time and trench upon the patience of this committee by following out the tergiversations through which the Republican party has wound itself to this high plane of protest against revolutionary legislation. Why, sir, the gentleman from Ohio, in 1872, made a speech upon this floor which he will not deny. It was, as is always the case with his efforts, an adroit as well as an able speech. In that he

declared that the minority to which we then belonged, but in which in God's providence we are no longer found—he declared that the minority were guilty of revolution. For what? Because they insisted that extraneous matter should not be put upon appropriation bills. He said that was revolution. [Laughter and applause.] We took him at his word, and now where does he stand? It was revolution then to resist the injection of extraneous matter over the protest of the majority. It is revolution now for the majority to resist that same protest of that minority; but, in the one case, it was his side protesting, in the other case, it was ours.

Ah, Mr. Chairman, let one take the darkened pages of his country's history for the last seventeen long years and read them carefully, and tell me, then, whether it lies in the mouth of that worthy leader of a once great but waning party to read lectures to anybody, either upon the score of revolutionary legislation or of extraneous introductions into appropriation bills.

Better far, in the face of the record that they have made, better to listen patiently to the confirmed inebriate as he dilates upon the virtues of temperance, better let the queen of the demimonde elaborate the beauties of female virtue, or let the devil prate of the scheme of universal redemption, than for homilies upon good morals and lectures upon revolutionary legislation to be delivered from such a source. [Applause.]

There is but one issue here, and I insist that neither this House nor the people of this country shall be allowed to wander from it. It is but this, and nothing more: whether the military power shall be allowed at your polls; whether the elections shall be guarded by the mailed hand of military power; whether the ballot-box, that last and safest shield of the freeman's liberties, shall be turned over to the tender mercies of the armies of your land. Or, to state it yet more tersely and probably more fairly, it is simply whether the spirit and the genius of this Government shall be reversed, and whether the civil shall be made subordinate to the military power.

Why, sir, among the most favored, the most cherished and precious principles ingrafted on our system of government from our old prototype, the English people, is that provision which would not tolerate not only the interference but the presence of the military at the polls. Over one hundred years ago an English statute [of George II] declared the will of Englishmen upon this vital question, ordering the troops to remain two or more miles from places of election.

From that time till now I do declare that it is not within the power of any man to find a single scion of the Saxon race that has not held in utter abhorrence the efforts of him or them who sought to control the freedom of the ballot by the employment of the military power. [Applause.]

The very army of this country protests against such a prostitution of its service.

I see before me the justly distinguished general-in-chief of our army [Philip H. Sheridan], and I do not believe that I overstate the fact when I say that from him down to the private in the ranks it is difficult to find one who has not recoiled from this service which they have been called upon to render. [Applause.]

It is this question, and it is none other, that I insist shall be kept before this House. We are declaring that the ballot shall be free. We are denying that it is either constitutional, legal, just, fair, or decent to subject the sovereign to the surveillance of the soldier.

Now, upon that issue the gentleman from Ohio and his associates tell us that they stand committed. I answer so do we. We are willing to discuss it, and, for my part, I shall oppose any limitation being put upon this debate. If we cannot stand upon an issue so broad, so constitutional, so catholic, so fair, so free as this, then tell me in Heaven's name where are there battlements strong enough for us to get behind? Let it go to the country that one party asserts that the manacles shall fall from the limbs of the citizen, and that the army shall not hold its mailed hand at the throat of the sovereign, and that the other party refuses to release the throttling grasp, and declares that it will block the wheels of the government and bring it to starvation.

I am willing, and those with whom I stand are willing, to accept this issue, and we go further, we tender it. We are the ones to make the issue and we are ready for you to accept it. Planting ourselves upon this broad ground, we welcome controversy. We seek no quarrel with you, but, for the first time in eighteen years past, the Democracy is back in power in both branches of this legislature, and she proposes to signalize her return to power; she proposes to celebrate her recovery of her long-lost heritage by tearing off these degrading badges of servitude and destroying the machinery of a corrupt and partisan legislation.

We do not intend to stop until we have stricken from the statute-book the last vestige of your war measures, which were

born of the passions incident to civil strife and looked to the abridgment of the liberty of the citizen.

We demand an untrammeled election; no supervising of the ballot by the army. Free, absolutely free, right to the citizen in the deposit of his ballot as a condition precedent to the passage of your bills.

Now, sir, if the gentleman from Ohio is to be excused, for surely he cannot be justified, if he is to be excused for parading before this House the threat, the *argumentum in terrorem* of a veto that is already cut and dried to be placed upon a bill that is not yet passed; if he is to be pardoned for warning this House that the executive branch of this Government will never yield its assent to this measure in its present form, may I not be warranted and justified in employing equal candor, and may I not assure that gentleman and his associates that the dominant party of this Congress, the ruling element of this body, is also equally determined that, until their just demands are satisfied, demands sanctioned by all laws human and divine, protected and hedged around by precedents without number, demanded by the people of this land without regard to section, who are clamoring for a free, untrammeled ballot (not for the South, I beg you to remember, for, if there be sectionality in this issue, I cannot discover it); for Philadelphia as well as for New Orleans, for San Francisco and Boston as well as for Charleston and Savannah—that this side of the chamber, which has demonstrated its power, never means to yield or surrender until this Congress shall have died by virtue of its limitation. [Applause on the Democratic side.] We will not yield. A principle cannot be compromised. It may be surrendered; but that can only be done by its advocates giving proof to the world that they are cravens and cowards, lacking the courage of their own conviction. We cannot yield, and will not surrender.

Let me assure my friend, and it is a picture that I know he does not dwell upon with pleasure, that this is the restoration to power of a party as old as our Government itself, which, for almost a hundred years, has stood the boldest, fairest, freest exponent and champion and defender of the doctrine of constitutional limitations against the doctrine of the aggrandizement of power. It is this organization that has come back to rule, that means to rule, and means to rule in obedience to law.

Now, sir, the issue is laid down, the gage of battle is delivered. Lift it when you please; we are willing to appeal to that sovereign arbiter that the gentleman so handsomely lauded, the American people, to decide between us.

Standing upon such grounds, we intend to deny to the President of this Republic the right to exercise such unconstitutional power. We do not mean to pitch this contest upon ground of objection to him who happens, if not by the grace of God yet by the run of luck, to be administering that office.

I tell you here that if from yonder canvas [pointing to the picture of Washington] the first President of this Republic should step down and resume those powers that the grateful people of an infant republic conferred upon him as their first Chief Magistrate, if he were here fired by that patriotic ardor that moved him in the earlier and better days of this Republic, to him we would never consent to yield such dangerous and unwarranted powers, to rest the liberties of the citizens upon any one man's discretion, nor would he receive it.

It was not for the earlier but for the later Executives of this Government to grasp and seek to retain such questionable prerogatives. You cannot have it. The issue is made—it is made upon principle, not upon policy. It cannot be abandoned; it will not be surrendered. Standing upon such ground, clothed in such a panoply, resting this case upon the broadest principles of eternal justice, we are content to appeal to the people of this land. There is no tribunal to which we are not willing to carry this case of contest; and we are willing to allow Him who rules the destinies of men to judge between us and give victory to the right.

I do not mean to issue a threat. Unlike the gentleman from Ohio, I disclaim any authority to threaten. But I do mean to say that it is my deliberate conviction that there is not to be found in this majority a single man who will ever consent to abandon one jot or tittle of the faith that is in him. He cannot surrender if he would. I beg you to believe he will not be coerced by threats nor intimidated by parade of power. He must stand upon his conviction and there we will all stand. He who dallies is a dastard, and he who doubts is damned. [Great applause on the Democratic side.]

General Garfield replied to Mr. Blackburn on April 4.

The gentleman from Kentucky [Mr. Blackburn] evidently thought he was making a telling point against me when he cited the fact that in 1872 I insisted upon the adoption of a conference report on an appropriation bill that had a rider on it; and he alleged that I said it was revolutionary for his party to resist it. Let me refresh his memory. I said then, and I

say now, that it was revolutionary for the minority party to refuse to let the appropriation bill be voted on. For four days they said we should not vote at all on the sundry civil appropriation bill because there was a rider on it, put there, not by the House, but by the Senate.

I was sorry the rider was put on, and moved to non-concur in the amendments when they came to the House. But, when the minority on this floor said that we should not act on the bill at all, because the rider was put upon it, I said, and now say, it was unjustifiable parliamentary obstruction. We do not filibuster. We do not struggle to prevent a vote on this bill. I will be loyal to the House that I am a member of, and maintain now as I did then the right of the majority to bring an appropriation bill to a vote.

You have a right, however unwise and indecent it may be as a matter of parliamentary practice—you have a perfect right to put this rider on this bill and pass it. When you send it to the Senate, that body has a perfect right to pass it. It is your constitutional right and theirs to pass it; for the free consent of each body is the basis of the law-making power.

When it goes to the President of the United States it is his constitutional right to approve it; and, if he does, it will then be a law which you and I must obey. But it is equally his constitutional right to disapprove of it; and, should he do so, then, gentlemen, unless two-thirds of this body and two-thirds of the Senate pass it, notwithstanding the objections of the President, it is not only not your right to make it a law, but it will be the flattest violation of the Constitution, the sheerest usurpation of power, for you to make it a law in any other way. Without these conditions you cannot make it a law.

What, then, is the proposition you have offered? You say that there are certain odious laws that you want to take off the statute-books. I say, repeal them, if you can do so constitutionally. But you declare that you will compel consent to your will by refusing the necessary support—not to the President, not to any man—but to the Government itself. This proposition I denounce as revolution, and no man has responded to the charge either by argument or denial.

You threatened the President in advance, before you allowed him an opportunity to say yes or no. You entered this hall fulminating threats against him in a high-sounding proclamation. You thundered in the index. It remains to be seen whether, in the body of your work and in its concluding paragraphs, your thunder will be as terrible as it was in the opening

chapter. By adopting the program of the last House you have made it your own; but you have put the measures in their most offensive forms by tacking them all to the two great appropriation bills.

My distinguished friend from Virginia [John R. Tucker], who has come nearer meeting this case with argument than any other man on this floor, has made a point which I respect as an evidence of the gallantry of his intellect. He says that, under our Constitution, we can vote supplies to the army but for two years, that we may impose conditions upon our supplies, and, if these be refused, the army ceases to exist after the 30th of June next. In short, that the annual army bill is the act of reconstructing the army. He is mistaken in one vital point. The army is an organization created by general laws, and, so far as the creation of offices and grades is concerned, it is independent of the appropriation bills. The supply, of course, comes through appropriation bills. I grant that, if supplies are refused to the army, it must perish of inanition. It becomes a skeleton; but its anatomy was created by general law and it would remain a skeleton, your monument of starvation. The gentleman from Virginia says: "Unless you let us append a condition, which we regard as a redress of grievances, we will let the army be annihilated on the 30th day of next June by withholding supplies." That is legitimate argument; that is a frank declaration of your policy. Let us examine the proposition. What is the "grievance" of which the gentleman complains? He uses the word "grievance" in the old English sense, as though the king were thrusting himself in the way of the nation by making a war contrary to the nation's wish. But his "grievance" is a law of the land—a law made by the representatives of the people—by all the forms of consent known to the Constitution. It is his "grievance" that he cannot get rid of this law by the ordinary and constitutional methods of repeal. [Applause.] When he can get rid of any law by the union of all consents that are required to make or unmake a law, then he can lawfully get rid of it, whether it is a grievance or a blessing. But his method is first to call a law a "grievance," and then try to get rid of it in defiance of the process which the Constitution prescribes for the law-making power of the nation. I denounce his method as unconstitutional and revolutionary, and one that will result in far greater evil than that of which he complains.

If the party which, after eighteen years' banishment from power, has come back, as the gentleman from Kentucky [Mr.

Blackburn] said yesterday, to its "birthright of power" is to signalize its return by striking down the gallant and faithful army of the United States, the people of this country will not be slow to understand that there are reminiscences of that army which these gentlemen would willingly forget, by burying both the army and the memories of its great service to the Union in one grave. [Applause.]

We do not seek to revive the unhappy memories of the war; but we are unwilling to see the army perish at the hands of Congress, even if its continued existence should occasionally awaken the memory of its former glories.

Now, let it be understood, once for all, that we do not deny, we have never denied, your right to make rules for this House just as you please. Under those rules, as you make or construe them, you may put all your legislation upon these bills as "riders." But, we say that, whatever your rules may be, you must make or repeal a law in accordance with the Constitution by the triple consent to which I referred the other day, or you must do it by violence.

My friend from Virginia, whom I know to be a master and lover of mathematics, has formulated his argument into an equation: "Right equals duty plus power." His notions of duty lead him to tear down the laws which the Republic enacted to protect the purity of national elections and to authorize the army to be used to keep the peace while the national voice is finding expression at the polls. That, I say, is his notion of duty, of which he is sole arbiter; but when he comes to superadd power, in order to complete his "right" as a legislator, I hope he will not evoke that power out of his consciousness, but will seek for it in the great charter, the Constitution of the United States. According to his own algebra, he must have both these elements before he can claim the "right" to overturn these laws which he denounces as grievances.

The gentleman from Maryland [Robert M. McLane] said the other day there was nothing in the Constitution which empowered any officer of the United States to keep the peace in the States. A single sentence, Mr. Chairman, before your hammer falls. I ask that gentleman, when he rises to respond, whether the United States has no power to keep the peace in the great post-office in Baltimore City; so that the postmaster may attend to his duties; whether we have not the power to keep the peace along the line of every railroad that carries our mails, or where any post-rider of the "star service" carries the mail on his saddle; whether we have not the right, if need be,

to line the post-road with troops and to bring the guns of the navy to bear to protect any customhouse or lighthouse of the United States? And yet, if the gentleman's theory be correct, we cannot enforce a single civil process of this Government by the aid of an armed *posse* without making it a penitentiary offence to be visited upon the officer who does it. [Applause on the Republican side.]

The bill was passed on April 4 by a vote of 148 to 122. After still more extended debate in the Senate it was passed on April 25 by a vote of 41 to 30. It was vetoed by President Hayes on April 30. He submitted the following reasons for his action:

Under existing laws there can be no military interference with the elections. No case of such interference has, in fact, occurred since the passage of the act last referred to. No soldier of the United States has appeared under orders at any place of election in any State. No complaint even of the presence of United States troops has been made in any quarter. It may therefore be confidently stated that there is no necessity for the enactment of section 6 of the bill before me to prevent military interference with the elections. The laws already in force are all that are required for that end.

But that part of section 6 of this bill which is significant and vitally important is the clause which, if adopted, will deprive the civil authorities of the United States of all power to keep the peace at the congressional elections. The congressional elections in every district, in a very important sense, are justly a matter of political interest and concern throughout the whole country. Each State, every political party, is entitled to the share of power which is conferred by the legal and constitutional suffrage. It is the right of every citizen possessing the qualifications prescribed by law to cast one unintimidated ballot and to have his ballot honestly counted. So long as the exercise of this power and the enjoyment of this right are common and equal, practically as well as formally, submission to the results of the suffrage will be accorded loyally and cheerfully, and all the departments of Government will feel the true vigor of the popular will thus expressed.

The Supreme Court has held that the Fifteenth Amendment invests the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right the court declares to be exemption from discrimina-

tion in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The power of Congress to protect this right by appropriate legislation is expressly affirmed by the court.

National legislation to provide safeguards for free and honest elections is necessary, as experience has shown, not only to secure the right to vote to the enfranchised race at the South, but also to prevent fraudulent voting in the large cities of the North. Congress has, therefore, exercised the power conferred by the Constitution, and has enacted certain laws to prevent discriminations on account of race, color, or previous condition of servitude, and to punish fraud, violence, and intimidation at Federal elections.

If the proposed legislation should become the law there will be no power vested in any officer of the Government to protect from violence the officers of the United States engaged in the discharge of their duties. Their rights and duties under the law will remain, but the National Government will be powerless to enforce its own statutes. The States may employ both military and civil power to keep the peace, and to enforce the laws at State elections. It is now proposed to deny to the United States even the necessary civil authority to protect the national elections. No sufficient reason has been given for this discrimination in favor of the State and against the national authority. If well-founded objections exist against the present national election laws all good citizens should unite in their amendment. The laws providing the safeguards of the elections should be impartial, just, and efficient. They should, if possible, be so nonpartisan and fair in their operation that the minority—the party out of power—will have no just grounds to complain. The present laws have, in practice, unquestionably conduced to the prevention of fraud and violence at the elections. In several of the States members of different political parties have applied for the safeguards which they furnish. It is the right and duty of the National Government to enact and enforce laws which will secure free and fair congressional elections. The laws now in force should not be repealed, except in connection with the enactment of measures which will better accomplish that important end. Believing that section 6 of the bill before me will weaken, if it does not altogether take away, the power of the National Government to protect the Federal elections by the civil authorities, I am forced to the conclusion that it ought not to receive my approval.

This section is, however, not presented to me as a separate

and independent measure, but is, as has been stated, attached to the bill making the usual annual appropriations for the support of the army. It makes a vital change in the election laws of the country, which is in no way connected with the use of the army. It prohibits, under heavy penalties, any person engaged in the civil service of the United States from having any force at the place of any election prepared to preserve order, to make arrests, to keep the peace, or in any manner to enforce the laws. This is altogether foreign to the purpose of an army appropriation bill. The practice of tacking to appropriation bills measures not pertinent to such bills did not prevail until more than forty years after the adoption of the Constitution. It has become a common practice. All parties when in power have adopted it. Many abuses and great waste of public money have in this way crept into appropriation bills. The public opinion of the country is against it. The States which have recently adopted constitutions have generally provided a remedy for the evil by enacting that no law shall contain more than one subject, which shall be plainly expressed in its title. The constitutions of more than half of the States contain substantially this provision. The public welfare will be promoted in many ways by a return to the early practice of the Government, and to the true principle of legislation, which requires that every measure shall stand or fall according to its own merits. If it were understood that to attach to an appropriation bill a measure irrelevant to the general object of the bill would imperil and probably prevent its final passage and approval, a valuable reform in the parliamentary practice of Congress would be accomplished. The best justification that has been offered for attaching irrelevant riders to appropriation bills is that it is done for convenience' sake, to facilitate the passage of measures which are deemed expedient by all the branches of government which participate in legislation. It cannot be claimed that there is any such reason for attaching this amendment of the election laws to the army appropriation bill. The history of the measure contradicts this assumption. A majority of the House of Representatives in the last Congress was in favor of section 6 of this bill. It was known that a majority of the Senate was opposed to it, and that as a separate measure it could not be adopted. It was attached to the army appropriation bill to compel the Senate to assent to it. It was plainly announced to the Senate that the army appropriation bill would not be allowed to pass unless the proposed amendments of the election laws were adopted with it. The Senate refused to assent to the bill on account of this irrelevant section.

Congress thereupon adjourned without passing an appropriation bill for the army, and the present extra session of the Forty-sixth Congress became necessary to furnish the means to carry on the Government.

Upon the assembling of this Congress, in pursuance of a call for an extra session, which was made necessary by the failure of the Forty-fifth Congress to make the needful appropriations for the support of the Government, the question was presented whether the attempt made in the last Congress to ingraft, by construction, a new principle upon the Constitution should be persisted in or not. This Congress has ample opportunity and time to pass the appropriation bills, and also to enact any political measures which may be determined upon in separate bills by the usual and orderly methods of proceeding. But the majority of both Houses have deemed it wise to adhere to the principles asserted and maintained in the last Congress by the majority of the House of Representatives. That principle is that the House of Representatives has the sole right to originate bills for raising revenue, and therefore has the right to withhold appropriations upon which the existence of the Government may depend, unless the Senate and the President shall give their assent to any legislation which the House may see fit to attach to appropriation bills. To establish this principle is to make a radical, dangerous, and unconstitutional change in the character of our institutions. The various departments of the Government, and the army and the navy, are established by the Constitution, or by laws passed in pursuance thereof. Their duties are clearly defined, and their support is carefully provided for by law. The money required for this purpose has been collected from the people, and is now in the treasury ready to be paid out as soon as the appropriation bills are passed. Whether appropriations are made or not the collection of the taxes will go on. The public money will accumulate in the treasury. It was not the intention of the framers of the Constitution that any single branch of the Government should have the power to dictate conditions upon which this treasure should be applied to the purposes for which it was collected. Any such intention, if it had been entertained, would have been plainly expressed in the Constitution.

That a majority of the Senate now concurs in the claim of the House adds to the gravity of the situation, but does not alter the question at issue. The new doctrine, if maintained, will result in a consolidation of unchecked and despotic power in the House of Representatives. A bare majority of the House will become the Government. The Executive will no longer be what

the framers of the Constitution intended, an equal and independent branch of the Government. It is clearly the constitutional duty of the President to exercise his discretion and judgment upon all bills presented to him without constraint or duress from any other branch of the Government. To say that a majority of either or both of the Houses of Congress may insist upon the approval of a bill under the penalty of stopping all of the operations of the Government for want of the necessary supplies is to deny to the Executive that share of the legislative power which is plainly conferred by the second section of the seventh article of the Constitution. It strikes from the Constitution the qualified negative of the President. It is said that this should be done because it is the peculiar function of the House of Representatives to represent the will of the people. But no single branch or department of the Government has exclusive authority to speak for the American people. The most authentic and solemn expression of their will is contained in the Constitution of the United States. By that Constitution they have ordained and established a government whose powers are distributed among coördinate branches, which, as far as possible, consistently with a harmonious coöperation, are absolutely independent of each other. The people of this country are unwilling to see the supremacy of the Constitution replaced by the omnipotence of any one department of the Government.

The enactment of this bill into a law will establish a precedent which will tend to destroy the equal independence of the several branches of the Government. Its principle places not merely the Senate and the Executive, but the judiciary also, under the coercive dictation of the House. The House alone will be the judge of what constitutes a grievance, and also of the means and measure of redress. An act of Congress to protect elections is now the grievance complained of. But the House may, on the same principle, determine that any other act of Congress, a treaty made by the President with the advice and consent of the Senate, a nomination or appointment to office, or that a decision or opinion of the Supreme Court is a grievance, and that the measure of redress is to withhold the appropriations required for the support of the offending branch of the Government.

Believing that this bill is a dangerous violation of the spirit and meaning of the Constitution, I am compelled to return it to the House in which it originated without my approval. The qualified negative with which the Constitution invests the President is a trust that involves a duty which he cannot decline to

perform. With a firm and conscientious purpose to do what I can to preserve, unimpaired, the constitutional powers and equal independence, not merely of the Executive, but of every branch of the Government, which will be imperiled by the adoption of the principle of this bill, I desire earnestly to urge upon the House of Representatives a return to the wise and wholesome usage of the earlier days of the Republic, which excluded from appropriation bills all irrelevant legislation. By this course you will inaugurate an important reform in the method of congressional legislation; your action will be in harmony with the fundamental principles of the Constitution and the patriotic sentiment of nationality which is their firm support; and you will restore to the country that feeling of confidence and security and the repose which are so essential to the prosperity of all of our fellow-citizens.

The House, on May 1, by a vote of 120 yeas to 110 nays (less than the requisite two-thirds affirmative vote), failed to pass the bill over the President's veto.

Rider on Civil Appropriations Bill

The same attempt to coerce the President was made in the case of the legislative, executive, and judicial appropriations bill. Mr. McMahon introduced in the House an amendment to the bill to the effect that, in order to provide for the speedy payment of arrearages of pensions, the Secretary of the Treasury be instructed to issue $10,000,000 in legal-tender notes held as a special fund for the redemption of fractional currency.

General Garfield raised the point of order that the amendment proposed a mode of raising revenue and an issue of obligations of the United States which were not germane to anything in the bill, and, in this respect, changed the existing law which limited the issue of legal tenders. If permitted to stand, it and other similar amendments would destroy the whole plan of resumption of specie payments.

Mr. McMahon replied:

When we have ten millions of idle money in the United States treasury which ought to be issued and paid out, money which is

doing the Government no good and the people no good—I say when the soldiers of this country have been notified there is, or will be, a deficiency in the United States treasury, so that they cannot get their arrearages of pension unless there be additional taxation or an additional issue of bonds, I am surprised to see the gentleman from Ohio get up and make the point of order against the soldiers of the country to prevent them from speedily receiving these $10,000,000, which is only a part of what is due to them. I supposed the gentleman owed an allegiance to them far superior to the allegiance he might owe to Wall Street or the capitalists of the country. I make use of this language advisedly, for there is no portion of the people of this country interested in keeping this money locked up in the treasury except those who are interested in mercilessly contracting the currency of the United States so as to make money dear and harder to get, and enhance thereby the extent of their wealth.

Why should this money continue to lie idle in the treasury? Why shall the poor soldier be compelled to wait for new bonds or new taxes? The Secretary of the Treasury tells us in this letter to the chairman of Ways and Means that for the coming fiscal year there will probably be a deficiency of $27,000,000. To meet that deficiency he says that new taxes must be imposed or more bonds be put out. Now at the present time we do not propose to impose any new taxes unless necessary. As Mr. Sherman says in this letter, no new taxes can be immediately productive. He therefore recommends that authority be given to him to raise the amount necessary by the sale of 4 per cent. bonds. Now I say instead of putting out these 4 per cent. bonds, which would be a crime while we have this money, we should put into circulation this money which is kept idle in the treasury, the purpose for which it was to be held in reserve having passed away. It should now be put into circulation as a part of the $346,000,000 which is authorized by law. I repeat that it is a crime against the people to keep it hoarded.

It never was in contemplation of the gentlemen who passed that law in 1876 that when that $10,000,000 was taken in it should be kept. That was a little private scheme of contraction of Mr. Sherman himself. Our order to him was to pay out in redemption of fractional currency. Instead of that he is redeeming constantly in silver coin and keeping the $10,000,000 in.

Mr. Garfield.—I am not responsible for the secretary's execution of his duty under that law. But I should say if I were the secretary I was bound by the law and by the reason

of the case to hold a sufficient amount of that fund to be an ample protection for all the outstanding scrip which would be likely to come in. Perhaps the secretary has kept more than he needed to; and, if he has, it is perfectly competent for this Congress to ascertain, after a fair examination, how much of that he can spare, and then let it out. I will agree to that at any time. But my colleague took no such method as that; he says simply let it all go, and he proposes to make this sweeping change of law and give up the whole reserve for that purpose, and therefore to that extent, or at least to some extent, breaks over the line of our reserve.

My colleague pained me by a single expression in his speech. When he said that I owed more allegiance to the soldier than perhaps to any other class, and when he said further that I appeared to act as though I owed my chief allegiance to Wall Street, he said what he had no more right to say on this floor, either as a matter of fact or a matter of fair inference, than I would have a right to say he owes his chief allegiance to the whisky-shops of Dayton.

Mr. McMahon.—If in all the discussions which have ever taken place in this House or this country on financial questions the gentleman can show one vote or one speech that was not based upon the idea of speedy resumption, no matter at what cost to the great mass of the people, even when his own party separated from him upon that question in the Forty-third Congress, when he was in a minority in his own party upon this question—if he can show one vote which he ever cast in favor of what was regarded then by the majority of his own party in the West as the interest of the people on this question, I will take my statement back.

Mr. Garfield.—I will relieve my colleague upon that point. He could not certainly praise me any more according to my notions of legislative praise than to say what he has said. If I ever did cast a vote that was not in favor of the resumption of specie payments, that was not against all schemes to delay it unreasonably and prevent it, then I cast a vote that my conscience and my judgment disapproved of. [Applause.] And I do not know but I have cast as many votes as any man on this floor against Wall Street and the business of gold-gambling there which has been destroyed by resumption; that gold-gambling in Wall Street which locked up one hundred millions of the business capital of this country for fifteen years, away from all profitable investment, and converted Wall Street into a faro hell gambling with the business of this country up and down. And if every vote

of mine in favor of honest money has not been a blow at gambling in Wall Street, then it has not had the effect I intended. [Applause.]

The Chair ruled against General Garfield's point of order. Mr. McMahon's amendment was agreed to. Other amendments were made modifying statutes authorizing the appointment of supervisors, etc., of elections, repealing their canvass of votes, etc. The bill was passed by the House on April 26 by a vote of 141 to 120. The Senate passed it on May 20 by a vote of 37 to 27.

President Hayes vetoed the bill on May 29. After referring to his former objections to "riders" on appropriation bills which were not germane thereto, he spoke in particular of the effect of the repeal of the election statutes.

If this bill is approved only the shadow of the authority of the United States at the national elections will remain—the substance will be gone. The supervision of the elections will be reduced to a mere inspection, without authority on the part of the supervisors to do any act whatever to make the election a fair one. All that will be left to the supervisors is the permission to have such oversight of the elections as political parties are in the habit of exercising without any authority of law, in order to prevent their opponents from obtaining unfair advantages. The object of the bill is to destroy any control whatever by the United States over the congressional elections.

The passage of this bill has been urged upon the ground that the election of members of Congress is a matter which concerns the States alone; that these elections should be controlled exclusively by the States; that there are and can be no such elections as national elections; and that the existing law of the United States regulating the congressional elections is without warrant in the Constitution. It is evident, however, that the framers of the Constitution regarded the election of members of Congress in every State and in every district as, in a very important sense, justly a matter of political interest and concern to the whole country. The original provision of the Constitution on this subject is as follows (section 4, article 1):

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature therof;

but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

A further provision has been since added, which is embraced in the Fifteenth Amendment.

The bill before me itself recognizes the principle that the congressional elections are not State elections, but national elections. It leaves in full force the existing statute under which supervisors are still to be appointed by national authority, to "observe and witness" the congressional elections whenever due application is made by citizens who desire said elections to be "guarded and scrutinized." If the power to supervise, in any respect whatever, the congressional elections exists under section 4, article 1, of the Constitution, it is a power which, like every other power belonging to the Government of the United States, is paramount and supreme, and includes the right to employ the necessary means to carry it into effect.

The framers of these laws have not been disappointed in their results. In the large cities, under their provisions, the elections have been comparatively peaceable, orderly, and honest. Even the opponents of these laws have borne testimony to their value and efficiency, and to the necessity for their enactment. The committee of the Forty-fourth Congress, composed of members a majority of whom were opposed to these laws, in their report on the New York election of 1876, said:

Whatever may have been the previous habit or conduct of elections in those cities, or howsoever they may conduct themselves in the future, this election of 1876 will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the electoral franchise.

The great body of all parties want free and fair elections. They do not think that a free election means freedom from the wholesome restraints of law, or that the place of an election should be a sanctuary for lawlessness and crime. So far from public opinion in any part of the country favoring any relaxation of the authority of the Government in the protection of elections from violence and corruption, I believe it demands greater vigor, both in the enactment and in the execution of laws framed for that purpose. Any oppression, any partisan partiality, which experience may have shown in the working of existing laws, may well engage the careful attention both of Congress and of the Executive in their respective spheres of duty for the correction of these mischiefs. But with my views, both of the constitutionality and of the value of the existing laws, I cannot approve any measure for their repeal except in

connection with the enactment of other legislation which may reasonably be expected to afford wiser and more efficient safeguards for free and honest congressional elections.

The reading of the sentence, closing with the words "this election of 1876 will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the electoral franchise," was greeted with derisive laughter on the Democratic side, followed by applause on the Republican side.

CHAPTER V

A Standing Army

Debate in the House on a Bill to Raise Provisional Troops in View of the Hostile Attitude of France [1798]: In Favor, Harrison Gray Otis [Mass.], Robert G. Harper [S. C.], John Rutledge, Jr. [S. C.]; Opposed, John Nicholas [Va.], Albert Gallatin [Pa.], Abraham Baldwin [Ga.], Joseph McDowell [N. C.], Gen. Thomas Sumter [S. C.]—In 1800 Mr. Nicholas Moves to Reduce the Army—Debate on His Motion: In Favor, Mr. Nicholas, Mr. Gallatin, Robert Williams [N. C.], John Randolph [Va.]; Opposed, John Marshall [Va.], James A. Bayard, Sr. [Del.], Gen. Henry Lee [Va.], Mr. Otis, Mr. Harper—Motion is Lost—Mr. Randolph Is Insulted by Army Officers—He Writes Derogatory Letter to the President—Debate on It as a "Breach of Privilege" Ends in a Deadlock.

DURING the strained relations between France and the United States in the closing years of the eighteenth century (Administration of John Adams) the party in power (Federalist) advocated a vigorous military and naval policy for the defence of the country.

In April, 1798, a bill was passed by the Senate to raise a provisional army of 20,000 men. Coming before the House on the 24th of the month it was vigorously opposed by the opposition (Republican).

On the Provisional Army

House of Representatives, April 24–May 10, 1798

John Nicholas [Va.] opposed the first reading of the bill because of its principle; it transferred to the Executive the highest act of legislative power, the raising of an army which the President was to use at his pleasure.

If an army was necessary the legislature ought to raise it; but he did not think it was necessary at present. Indeed, when

discussing the bill for providing a naval armament, gentlemen had said that members had been willing to make preparations for defence on the land, where there was no danger, but were unwilling to do it at sea, where the greatest might be expected. He did not believe there could be any necessity for going into a measure of this kind at the present session. In case of predatory attack the militia would be equal to repelling them. Mr. N. said he lived in a part of the country perhaps more defenceless than any other; but, so far as he or his constituents were concerned, he did not wish for a force of this kind. He was willing to confide for defence on the militia of the country.

Harrison Gray Otis [Mass.] was of opinion that the gentleman anticipated objections to the bill which did not lie against it; he seemed to suppose that it proposed raising a standing army.

It does no such thing; it only declares that, if existing circumstances shall make it necessary, then the President shall raise an army not exceeding a certain number of men. It may happen that the necessity may not exist; but the gentleman from Virginia must be able to fathom the intentions of France further than he could pretend to do, if he could say that no such necessity would exist. If what was said by the agents of that government to our envoys could be relied on, there was a direct threat to ravage our coasts. What is to prevent Victor Hugues [a San Domingo adventurer] sending over two or three frigates? It had been said that Hugues expected open war, and that he was ready for it. In short, it would be the most disgraceful conduct that ever was attempted in that House if the bill should be rejected without a second reading. It would be in vain to talk of unanimity if a bill from the Senate was to be treated in this way.

Albert Gallatin [Pa.] wondered that the gentleman from Massachusetts should be so greatly surprised at a motion of this kind, because, if he had attended to the rules of the House, he would have found that it was a course expressly prescribed by them. It had been acted upon before during this session. The principle, he said, was well understood. When a member disapproves of the principle of a bill altogether, and does not wish to go at all into a discussion of the detail, he moves to reject it before it goes to a second reading.

This bill goes to authorize the President to raise an army. He did not know what was meant by a provisional army. He did not find anything said in the Constitution of the United

States relative to provisional armies, or of giving the President power to raise armies. He found mentioned there no other kind of defence than an army and militia. It says Congress shall raise and support an army, not provide for the raising of an army; but this bill is to enable the President of the United States to raise an army. The Constitution has declared that the raising of an army is placed in Congress, but this bill goes to declare that this power shall be vested by law in the President. That is the principle of the bill; and if Congress were once to admit the principle that they have a right to vest in the President powers placed in their hands by the Constitution that instrument would become a piece of blank paper. If it were to be admitted in one case, it would be admitted in another; and, if admitted in one department, it might be admitted in another. The power to raise taxes, he said, is contained in the same article of the Constitution which says Congress shall raise armies. And if they could delegate the power of raising an army to the President, why not do the same with respect to the power of raising taxes? He supposed the House would next hear of provisional taxes, to be raised if the President shall think fit. Mr. G., therefore, thought the principle inadmissible. If the circumstances of the Union required an army, let it be raised; if not, he wished to give no power to raise it—especially, as the President, if he saw necessity, could call Congress together, if he should find that the circumstances of the country required it.

Robert G. Harper [S. C.] believed, notwithstanding what had been advanced by the gentleman from Pennsylvania [Mr. Gallatin], that this was a very unprecedented measure; because, however prepared the House may be on some occasions, at the first blush of business, to decide upon the abstract principle, yet it was perfectly novel in their proceedings to reject a bill on its first reading, which contains such a variety of propositions, and which is capable of such a variety of modifications as the present.

Gentlemen say this bill ought to be rejected, because it is unconstitutional. Could gentlemen be serious in making this objection? Were troops ever raised in a different manner? And if they had the power to authorize the President to raise troops immediately they could certainly do it under such contingencies as they thought proper. Did not Congress intrust the President with the discretionary power of borrowing money, of, in some cases, fixing salaries, etc., which powers were equally vested in them with the power of raising armies; and this must be the case, except gentlemen insist that Congress should itself

do all the acts committed to it; and, if so, they must always be in session.

But the gentleman from Pennsylvania says that if this power be delegated to the President Congress may as well intrust the President with the power of raising provisional taxes. He had no hesitation in saying that he believed this might be done; that the House might determine upon a tax, and authorize the collecting of it only in case the President should find it necessary, or in case a certain event should take place.

With respect, then, to the expediency of the measure—what is the internal and external state of this country? Do we not know that the enemy have in view a plan upon which they place great reliance—of gaining over to their cause a certain class of men, who abound in the Southern part of this country, and by whose means they intend to subjugate or destroy the country? We do know this—gentlemen from the Southern States know it; yet they say it is impossible to raise any regular force to repel the enemy. He could not believe that, when we had to meet an enemy who has always fought by means of domestic insurrection, who is now subverting the most ancient government in the world by these means, it would be consistent with any maxim of common sense to be unprepared for the worst.

What, said he, is our external situation? Do we not see the nation with whom we are at variance find quarrels with every country who is not strong enough to resist her? Does she not injure us on every side? Do we not hear of depredatory threats, and the mischiefs she has the power of doing us, urged as reasons why we should submit to her? And yet, after being told of these designs, shall we sit with our arms folded and make no defence? For the measures already taken will be nothing without this. Fortifications would be nothing except supported by a sufficient number of infantry and cavalry.

What, he asked, is the situation of the West Indies? Were they not told that Victor Hugues, with 5,000 of his best troops, is ready to make a blow upon the Southern country whenever the word of command shall be given? They knew that these troops existed; they had been seen, and the desperate character of their leader was also known. Yet, with this enemy upon our threshold, within four or five days' sail of us, we still fold our arms and say we will make no defence.

When he reflected upon these things he could not help deploring that fatal blindness, that stubborn spirit of opposition, in certain gentlemen, which could hide from their view the danger of our present situation; that, at a period when the veil

is rending from before the eyes of the community; when those who have been the most blind out-of-doors begin to see, that those gentlemen in this House who, from their ancient birth and fortunes, might be supposed to possess the true American spirit should still persist in their blind, their destructive, course was greatly to be lamented. And though he could not doubt the fate of this bill, yet that there should be a few men found supporting measures which tend directly to the destruction of the country he could not help lamenting.

Abraham Baldwin [Ga.] did not agree with the gentleman who had just sat down that the present motion was either unprecedented or improper. When it is proposed to make a law on any subject it presents itself to discussion on two grounds, the principles of the law and the details. The proper stages to debate the general principle on which the law is to be founded, by the rules of this House, are when it is proposed to introduce the law, and at the third reading, when it is considered as finished, and on its passage; the intermediate stages of the discussion are all supposed to be employed to settle and adjust the detail.

As to the principle of the bill, he must say it did not meet his approbation. If the House is convinced it is necessary to raise an army of twenty thousand men, as the bill now proposes, they ought to say so at once and let it be done; if they are not convinced that it is necessary the law ought not to pass, the army ought not to be raised till they are convinced it is necessary. The Constitution made the legislature the sole judge on this subject. The present bill says it is not necessary to raise this army now, but perhaps it may be before Congress meets again; it therefore proposes to transfer the right of judging on this subject to the Executive; he thought it a very improper transfer of legislative power. It has been said that all our troops are raised thus provisionally. If attention is paid to those laws it will be seen that they did not pass till the legislature was convinced that circumstances then required the troops to be raised; a clause is added that, if circumstances should alter so as to make the troops unnecessary, the President might forbear to raise, or discharge them; it gives him power to disband the army, but not to raise one.

John Rutledge, Jr. [S. C.] adduced, as in point, the law enabling the President to call out troops in consequence of the Western rising [the Whisky Insurrection], and that making provision for the effectual protection of the frontiers of the United States.

Joseph McDowell was in favor of the motion for rejecting the bill, as it contained two principles which he thought inadmissible; the first, because it delegated legislative power to the President; the other, as it respects volunteer corps. The first, he believed, would be unconstitutional, and the last would go to the destruction of the militia of the United States.

It was well known that it had been the wish of the late President, that it was also the wish of the present President, of the heads of departments, and many members of Congress, to increase our military establishment, and to fix a standing army in this country. It has heretofore, however, been opposed with success, except in time of war. If we were to be involved in war an army must be resorted to in aid of the militia; but, in the first instance, the militia might be depended upon as a sure and safe defence of this country.

Mr. Gallatin said: If our danger be, as it is represented, likely to come from Victor Hugues and his troops, from an insurrection of the negroes, from disaffected persons, from our enemy being at the door, it is the duty of Congress to raise an army themselves, and not to give the President the power of doing it; but if it is not believed that this representation of danger rests upon any specific ground, but that it is merely imaginary, then there is no necessity for giving the President the power, as he can call Congress together whenever he thinks proper.

If any danger was to be apprehended from the negroes they would be best suppressed by the people in the States where they are. A militia is everywhere; whereas a standing army may be very distant from any attack which may take place. A standing army in Virginia, for instance, would do little good against insurgents in South Carolina; and if an insurrection of that kind was not immediately suppressed by the people the mischief would be incalculable.

General Thomas Sumter [S. C.] closed the debate.

This favorite scheme of raising a standing army must be pushed forward by every aid of fact and fiction, and that its success may be insured the Southern members are to be terrified into its adoption.

Here General Sumter eulogized at length the bravery of the Southern militia during the revolution.

Knowing the ardor and firmness of the Southern militia, and not doubting but the militia of the several States in the Union possess equal motives for their exertions, equal spirit and activity, I cannot but rely on them as the natural and main support of our national independence—a support fully effectual without a recurrence to a standing army. The instances which

THE NATION'S BULWARK—A WELL-DISCIPLINED MILITIA

Cartoon dated 1829

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I have brought forward tend to show that the charges brought against the militia generally are as unfounded as they are cruel to their feelings; while, at the same time, they demonstrate that, if an invasion (which is a contingency by no means likely to happen) should actually take place, we may rely with confidence on the manly exertions of the militia to meet the attack, and to resist every effort, at least for such a period as until more effective aid shall be drawn down to their support, and more permanent measures adopted.

The bill passed on May 18 by a vote of 51 to 40.

Two years later, when negotiations for peace and amity were proceeding with France with high prospect of success, Mr. Nicholas brought forward a motion to reduce the army.

The chief supporters of the motion were: Mr. Gallatin, Robert Williams [N. C.], and John Randolph [Va.]; conspicuous among its opponents were: John Marshall

[Va.], James A. Bayard, Sr. [Del.], General Henry Lee [Va.], Mr. Otis and Mr. Harper.

Reduction of the Army

House of Representatives, January 1-11, 1800

Mr. Nicholas.—Sir, the finances of this country would be in an alarming state if all the present expenses were necessary, but my opinion is that they are not necessary, for that this additional army is in no wise useful. I cannot conceive for what they are wanted. The idea of invasion, the only ground upon which their necessity could be founded, is quite out of the question—an event of that sort in the present state of Europe is absolutely impossible.

I suppose very little will be said about the usefulness of the present army, but we shall hear more of the effects which a measure of this kind would have on the state of our negotiation in Europe. I suppose, therefore, that the question will turn on the propriety of dismissing this army while our commissioners are treating, and therefore this view of the subject may merit a few remarks.

It is desirable, I should imagine, that at entering on a negotiation our country should be so situated as to be able to make a firm and obstinate stand against unjust demands. If this is a desirable situation, I ask gentlemen to say whether this army does not lessen, instead of increasing, our importance with that country to which we go to negotiate, when it is apparent to the world that for its support we borrow money of more than one half the amount of the revenue, and pay interest on that loan at an enormous rate. This being known, will it not operate as a strong ground for suspicion that you are forced to the negotiation from pecuniary considerations; that your present state of exertion is greater than you can bear for any length of time, and thus lessen your respectability with that nation? While it may hurry you to submit to terms less advantageous than could be wished, it may make the terms proposed for your acceptance harder than they would otherwise have been.

I do not hesitate to say if preference is due to one arm of the Government it is to our naval preparations for defence. Sir, if you part with one [the army], which has never proved useful, will you not be better enabled to keep up the other [the navy], which is certainly more favorable to your interest and local situation?

Mr. Marshall.—It has been urged, not only that the army is useless, but that there is in the United States a positive inability to maintain it. To prove this our revenue and expenditure have been stated. Suppose this had been the language of '75? Suppose, at the commencement of our Revolution, a gentleman had risen on the floor of Congress, to compare our revenues with our expenses—what would have been the result of the calculation? Would not the same system of reasoning which the gentleman from Virginia has adopted have proved that our resources were totally inadequate to the prosecution of the war? Yet it was prosecuted, and with success. If vast exertions were then made to acquire independence, will not the same exertions be now made to maintain it? The question now is whether self-government and national liberty be worth the money which must be expended to preserve them.

The reduction of the army would certainly diminish the expense of the present year; but if it should have any operation on the existing negotiation with France the present saving it would produce would bear no proportion to the immense waste of blood, as well as treasure, which it might occasion us. To determine in what manner this measure might, and probably would, bear on the existing negotiation, it became indispensable to take into our view what had preceded the actual state of things between the United States and France.

While prayers for peace were returned for indignities of every sort, while America was humbly supplicating for peace, and that her complaints might be heard, France spurned her contemptuously and refused to enter on a discussion of differences unless that discussion was preceded by a substantial surrender of the essential attributes of independence. America was at length goaded into resistance, and resolved on the system of defence of which the army now sought to be disbanded forms a part. Immediately the tone of France was changed, and she consented to treat us as an independent nation. What could have produced this change? Can any other motive be assigned than the defensive system which America had adopted? If no other did exist is it wise immediately to change the system which has alone been effectual? Is it not to be apprehended that this change may revive those sentiments which existed before that system was adopted?

In a few months the fate of the present negotiations will be decided. Should they terminate favorably the army expires by the law which gave it being, and the additional expense to be incurred will be very inconsiderable. Should they fail, and the

state of affairs then require even an augmentation of the existing force, the injury occasioned by our precipitation (in having reduced the army) might be very considerable.

Mr. Nicholas.—As usual, I fear that this wrong step (the establishment of a provisional army) will never be got over. Where is the end of it? In vain do we seek for it. The gentleman says that, on the moment of failure in the negotiation, an army may be crossing the ocean, and then we shall want these troops. Sir, this may occur at any period, and if we are never to disband our army, under apprehensions of that event, it will never be done, and our expense will be perpetual.

The gentleman considers this armament to be the measure which extorted the overtures from France. But this is not so. It is a little extraordinary that he should have ascribed an effort to a measure that existed previous to the knowledge of that measure; for the propositions, and the avowed willingness on the part of the Directory to meet our complaints by an honorable adjustment, were made known to our ministers in August, which was before the law of July, 1798, which created the army we wish should be disbanded, could have reached that nation.

Mr. Bayard said he could perceive in the resolution a connection with a system which had long been pursued by a party in the United States—a system which had for its object the debilitation and degradation of the general Government. A knowledge of the party and a knowledge of their views prevented any astonishment at the present measure they proposed. This measure he did not regard as a single operation. It was part of a general plan, which, if it were successful, would soon be unfolded.

The conduct of France in relation to this country had compelled the United States to adopt a system of defence. The nation had found that no reliance could be placed on the moderation or justice of the French Government. Their own energies were the only ground on which their independence could be maintained. They did not hesitate as to the alternative of defence or submission. Having resolved to resist the aggressions and pretensions of the French Government, they found themselves forced into a state of hostility. The commercial intercourse with France was suspended, the treaty of alliance was abolished, a navy was created for the protection of trade, and an army ordered to be raised. Our ships of war were instructed to seize and destroy the armed ships of the French Republic, and a war, though deprecated, was expected without dread. The national sentiment coincided with the temper of the Government,

and its measures were approved and applauded. The system which was adopted was connected in its parts, and the objection which went to one part applied with equal force to the whole. The naval hostilities authorized against France rendered an army necessary against invasion from Europe or the islands, which might reasonably be expected.

If gentlemen now said an army was not necessary it must be because they thought the French Government was not hostile, but friendly. If they thought that government friendly, surely there could be no occasion for the navy. The same reason would induce us to revive the treaty with France and open the commercial intercourse.

We are told that in case of invasion an army is not necessary, because we can rely on the patriotism of the nation. Sir, said Mr. B., I am not insensible to the melody of the word, but I must doubt of the efficacy of one thing. There was a time when everybody understood what was meant by patriotism; it indicated an attachment to our country. But a modern patriot was a character not so well understood. Patriotism has become a furious spirit of revolution; the ties of blood, the inspirations of nature, the principles of truth and honor are consumed by the devouring flame. The *natale solum* had lost its charm. To be a patriot you must forget your country, abjure your religion, suppress the impulses of nature, and maintain the equality of vice and virtue. He knew there were a sect of patriots who attributed to themselves exclusive merit. Was it on these patriots the country was to rely in case of invasion?

Sir, said he, let the French come with their cap of liberty mounted on their standards, singing *ça ira*, planting liberty poles, and denouncing the Government as an aristocratical and British faction, and I fear you would see some patriots forgetting their country, and, under the ardent impression of their political fanaticism, ready to imbrue their hands in their brothers' blood. Revolution was not confined to politics—religion and morals were revolutionized. The sacred love of country, once ranked among the best principles of man's nature, was now shamefully sacrificed to the very sound of equality.

It is not from any view of a possible operation of the army against France that the disbanding could influence the negotiation, but from the impression such a measure would necessarily make on the French Government, as to the state of affairs in this country. If, after having raised an army against them, without any change of conduct on their part, they were to see us disband it, what would they infer? Either that extreme imbecility per-

vaded our councils, or that there was a want of means on the part of the Government to maintain a small military force. Or, perhaps they would make an inference still more, that those whom they called and supposed their party in this country had become more powerful than the Government. In either case they would perceive less difficulty in the accomplishment of any views which they had on the country than our plans of defence may have caused them to apprehend; and, of consequence, the inducements to an accommodation of differences would be diminished. It was a wise axiom in politics that a nation which would negotiate to advantage should be prepared to fight. The resolution was predicted on an opposite principle, and was repugnant to the plain evidences of experience and common sense.

Mr. Gallatin.—We are told by the gentleman from Delaware that the people of this country would pay fifty per cent. for money rather than submit to a foreign invasion. I admit that if the danger was imminent and real they would agree to pay anything. We do not conceive there would be any reluctance to pay taxes were such our situation, but, when it is not, it will be difficult to convince them of the propriety of additional taxation. Yet the confidence expressed by that gentleman in the willingness of the people to pay does not very well comport with another part of his argument, wherein he insinuated a want of confidence in a considerable part of the people, whom he supposes so far as even to wish that our Government should be overturned. In support of his opinion he alluded to several legislative declarations and official addresses and answers [the Kentucky and Virginia Resolutions]. I am astonished at the palpable inconsistency of the gentleman—that the people would willingly pay fifty per cent. of their property for defence against an enemy, and yet no reliance is to be placed on those very people when the enemy comes!

We are, however, told that any increase of debt that may be created in consequence of our present situation is trifling in itself, and holds no proportion to the supposed increase of resources resulting from our growing population. But is this not a most extraordinary and novel mode of calculating, not on the present resources of the country, but on those which posterity may have? Are we then so sure that our posterity will have no dangers of their own to encounter, and no additional expenditures which will require every additional resource they may possess? Let us provide, out of our own resources, for our own wants, instead of mortgaging, not only our actual revenue, but even that which may hereafter be raised by posterity.

DISTINGUISHED MILITIA GENERAL DURING AN ACTION
From the collection of the New York Historical Society

Gen. Lee.—Gentlemen say regular troops are not necessary: militia, of themselves, are an adequate defence. This I deny; and much as I wish to see our militia placed on a respectable footing, much as I count on their aid whenever danger approaches, yet I never can be brought to trust the defence of the country solely to them. The experience of the last war justifies the opinion. Look at the battle of Long Island—braver men on the part of America were never brought into action, but vain was their courage. The best blood of America was prodigally and ineffectually expended during the war for want of the aid to be derived from discipline and skill. See what the same sort of men did at the close of the war when properly trained. The battle of the Eutaws is a distinguished example of the effect of discipline on the American soldiery. But really it is trifling with the committee to press farther this truth; the history of man, from the beginning of the world to this day, throughout maintains the folly of placing the defence of a nation on what we call militia only: economy, too, forbids it. But, because we firmly maintain this truth, insinuations go forth inculcating a belief that we are inimical to the militia and friendly to a standing army. This is untrue and unwarranted by our declarations. We hold no such sentiments. We wish for the best and cheapest defence, and that we believe to consist of an adequate regular force, calculated for the occasion, and dismissed as soon as the object is answered; to be seconded by seasonable reinforcements from the militia.

But, says the honorable member, let us reduce the army and use the saving in augmentation of the navy. I very much respect this last establishment; I prefer it, and will always be ready to cherish and invigorate it, but not now, in the way suggested, nor at the expense of the army. Until we are assured of peace we must hold both, and I doubt not we shall hold both.

Mr. Nicholas.—The gentleman from Delaware [Mr. Bayard] supposes the French Government will think that we are either too poor to bear the expense, that we are foolishly versatile, or that there is a party in our country to support their views. I wish the gentleman would prove that the rejection of the resolution would not have the effect to prove our foolishness in continuing a great needless expense. Sir, is a nation never to alter its course? Is it never to determine whether it has done right or wrong, and change its system? Is it to persevere in doing the very work of its enemy, and never to retrench an expense, though ever so extravagant?

Mr. R. Williams.—It is said that this army must be kept up for what may happen. I ask whether the same argument may not always hold good, with respect to any nation, between whom and us there may be but little friendship. When is the moment in which we might not be exposed to this danger? This argument will always apply to keep up a standing force in this country, greater than we ought to bear. When gentlemen use these arguments I take it for granted this is the force they mean to keep upon a permanent establishment, whatever name they may give it; for I can see no bounds to an argument of the kind, or line at which we are to stop; it goes, sir, too far to answer the purpose intended.

Mr. Randolph.—I oppose the establishment of a standing army in this country, not only as a useless and enormous expense, but upon the ground of the Constitution. The spirit of that instrument and the genius of a free people are equally hostile to this dangerous institution, which ought to be resorted to (if at all) only in extreme cases of difficulty and danger. Yet let it be remembered that usage, that immemorial custom, is paramount in every written obligation, and let us beware of ingrafting this abuse upon our Constitution. A people who mean to continue free must be prepared to meet danger in person; not to rely upon the fallacious protection of mercenary armies.

I am friendly to the resolution on your table, sir, on another ground. I believe that it will remove a considerable cause of irritation. The raising of these troops has had a deleterious effect upon the public temper. The military parade which meets the eye in almost every direction excites the gall of our citizens; they feel a just indignation at the sight of loungers, who live upon the public, who consume the fruits of their honest industry, under the pretext of protecting them from a foreign yoke. They put no confidence, sir, in the protection of a handful of ragamuffins; they know that when danger comes they must meet it, and they only ask arms at your hands. Gentlemen have talked of organizing the militia; I call upon them to make good what they have said. Instead of reducing this force I could wish to see the *whole* of it, reprobated as it is by our citizens, abandoned, and the defence of the country placed in proper hands, those of the people.

Our citizens are confident in their strength; they know themselves to be capable of protecting their own property and liberties; they do not want their noses held to the grindstone to pay protectors; the surplusage of their labor they wish to em-

ploy in increasing their property, in providing for their offspring—that numerous and increasing population of which gentlemen have said so much; they do not wish to have money forced out of their pockets to pay hirelings, under the stale pretext of keeping off French invasion.

Mr. Otis.—Sir, I would ask gentlemen what right the people of this country have to expect to escape the conflagration in which the other three-quarters of the globe are involved without some pains and expense to erect barriers against its destructive progress? Are we chosen by heaven to live in a sequestered corner of the world, exempt from the troubles and distresses of other nations, to grow rich by their spoils, and to fatten on their misfortunes, without any additional burdens? While the Old World is wasted by fire and sword, while cities are sacked and unpeopled, their fields made desolate, and their commerce destroyed, are we privileged to count in quiet the gains of the counting-house and the produce of our acres without deduction or alloy? Do we presume that the Atlantic will open and swallow up an invading army, as the host of Pharaoh was swallowed up in the Red Sea? Confident as I am in the justice of our cause, I do not expect the assistance of miracles for our protection. We must rely, under Heaven, upon the arm of flesh. If we do not, if we neglect to make necessary preparation against natural accidents, we may be overwhelmed in the common fate of those nations which, lulled into a delusive security, have lost their liberties and perished in the general wreck of the social union.

This very year, for aught we know, our liberties may be required at our hands. Sir, we are told that the present establishment shows an annual deficit of five millions of dollars. But suppose, for the sake of the argument, the calculation to be just and the establishment certainly necessary; what are five millions of dollars? Or suppose that the price of our safety and independence should be twenty, forty, or, if you please, eighty millions of dollars, in addition to the present debt. This, indeed, sir, is money—as M. Talleyrand observed—is a great deal of money; but money is cheaper than blood, it is less precious than honor. Who would hesitate between the evils of doubling the national debt or relinquishing the rights of an independent nation?

This alarm relative to standing armies has been at least rung a thousand times a year since the first British army was landed in this country; and, if the objection is well founded, it goes to the destruction of the old regiments as well as of the new, and

we must have immediate recourse to militia for every ordinary object. That gentleman further contends that this country cannot be defended by a standing army, but requires a force raised by requisition. Wherein lies the difference betwen a standing army and a force raised for a limited time by requisition? The gentleman may distinguish the first by the hard names of ragamuffins and mercenaries, if he thinks proper, I shall not dispute with him about terms. Yet, why troops raised according to his ideas of requisition, who are to be organized, disciplined, and compelled into service, to receive pay and march wherever they are ordered, are less ragamuffins and mercenaries than troops raised in any other mode is for that gentleman to explain. Sir, far be it from me to question the importance of the great national resource, the militia. I well know they are the palladium of the country, the fund on which we must rely for soldiers and defence.

But I contend that militia in itself is calculated only for sudden emergencies. They will fight bravely while they continue in the field. They will resist an invading army, but they will not endure a series of campaigns. I call on gentlemen to produce an instance wherein militia have been alone equal to cope with an army that had once got a footing in a country.

Mr. Harper.—On what do gentlemen rely when they say that France cannot invade this country? Do they rely on her want of troops? If so, let them remember that she found forty thousand men to send to Egypt. Do they rely on her having full employment for all her troops against the Austrians and Russians? Let them remember she may suddenly make peace with the Austrians and Russians, as she did with the Austrians in 1797; that such an event grows every day more probable; and should it take place she will have troops very fit for such an enterprise, and very ready to be employed in it. Do they rely on a want of ships? Let them remember that she found ships enough to transport forty thousand men to Egypt, and a fleet of thirteen sail-of-the-line to escort them, and that, having gained possession of the Spanish fleet, she has now a much greater naval force at her disposal than heretofore. Do they rely on the superior power of the British at sea, and on the vigilance of their fleets? Let them remember that when Bonaparte sailed from the ports of France on his Egyptian expedition he was watched by a superior British fleet, under the command of one of the ablest, most active, and most enterprising naval commanders that ever England could boast; that he eluded this fleet, arrived safe at Malta, and had time to conquer that im-

portant place before the British admiral could find out where he was, and come up with him; that he sailed from Malta, and, notwithstanding this fleet was in full pursuit of him, arrived in Egypt and made good his landing, without the least molestation; that his fleet might, after landing him, have returned safe to France, had not some unaccountable fatality induced the admiral who commanded it to remain for many days in a situation where it was exposed to the attack of the British. Do they rely, sir, on the distance? Let them remember that during our revolutionary war the French did find means, notwithstanding the distance and the naval superiority of England, to send fleets and armies to this country.

Sir, we must have a trained army to oppose this invasion. Where will be the reliance of this Government on the militia for the defence of the country if the militia, or considerable portions of them, should at length be induced, by the unceasing efforts which are employed, to regard the Government itself as their greatest enemy? Is there no danger that their efforts may be successful? Sir, I trust there is not. I have always relied on the good sense and prudence of the American people, and I have never yet been disappointed. But when we consider the greatness of the efforts, the increasing zeal with which they are renewed, the systematic form which they have assumed, and the hand whereby they are guided, can we say there is no danger of their success?

Shall I not speak of a most virulent manifesto [the Kentucky Resolutions][1] lately issued by a legislature of this country against the Government of the United States, under the name of instructions, where the highest sanction is given to the vilest calumny, and the Administration is plainly charged with laboring for the introduction of monarchy? If these persons should at length succeed by dint of repeated calumnies in persuading the people of America, or even certain portions of them, that the Executive of the United States, the whole Administration, and a majority of both Houses of Congress are embarked in a scheme for the gradual introduction of monarchy, and are pushing it with might and main, at every favorable opportunity, and under every plausible pretext; I ask what reliance could be had on the aid of the people, in resisting invaders who should declare, as the French never fail to do, that they come to rescue the people from oppression, to subvert aristocracy, and establish true liberty? When we see these artifices practiced, with increasing industry, and more extensive combination, ought we not to re-

[1] See Volume VII, chapter iv.

tain, in case our quarrel with France should continue, some force that may be more perfectly relied on?

Mr. Randolph.—The gentleman from South Carolina [Mr. Harper] has talked of modern patriotism, which he evidently thinks to consist in declamation against public burdens and a devotion to France. When it is recollected that those against whom these insinuations were thrown were supposed to have been peculiarly friendly to the mission to France, and to be highly anxious for its success, while the opponents to the resolution exhibited a great coolness with regard to a compromise of differences with that republic, he trusted that the alarm with respect to the effect of the measure under discussion upon that negotiation would wear off.

Mr. R. said that, although this army had been ordered into existence so long, yet scarcely 4,000 men were raised; and, if the recruiting went on, it would take a year perhaps to fill the regiments. Would not this be a stronger proof to France of our debility than the disbanding of them, which would indicate only a prudent application of resources to proper objects. But, in fact, sir, this circumstance is a proof the most decisive of the inutility of this force. In spite of the system of alarm, and the cry of danger from French invasion, the good sense of the country still prevailed. Our people knew that there was no immediate danger, nor can they hear it in every breeze; they therefore refused to enter a service into which the indolent and worthless had been allured by the potent consideration of being clothed and fed at public expense. Would this tardiness to defend their country, sir, be exhibited were the danger imminent, as gentlemen had alleged? He cautioned the members of the House, particularly from the South, against lavishing, by the smallest estimate which had any pretension to correctness, at least two and a half millions, perhaps four, upon so worthless an object.

The committee now rose and reported their disagreement to the resolution.

The question was taken that the House do agree with the Committee of the Whole in their said disagreement, and resolved in the affirmative—yeas 60, nays 39.

Randolph's Breach of Privilege

The speech of Mr. Randolph rendered him obnoxious to the officers of the army, who objected to his epithets

John Randolph.

of "ragamuffins" and "mercenaries" applied to soldiers. Accordingly, a night or so afterwards certain of them insulted him publicly in a theater. Randolph seized the opportunity thus afforded, and wrote to the President an account of the incident, with incidental observations not at all complimentary to the policies of the Administration. He addressed the letter to "John Adams, President of the United States," without the customary title of "Your Excellency," and signed it, "Your fellow-citizen, John Randolph."

Mr. Adams sent the letter to the House, where the question of dealing with it as a "breach of privilege" was debated at great length, finally ending in a deadlock.

CHAPTER VI

The Naval Establishment [1812]

Anti-naval Policy of Presidents Jefferson and Madison—Debate in the House on a Naval Establishment [1812]: In favor, Langdon Cheves [S. C.], William Lowndes [S. C.], Lyman Law [Conn.], Henry Clay [Ky.], Josiah Quincy, 3rd [Mass.]; Opposed, Adam Seybert [Pa.], Jonathan Roberts [Pa.], Samuel McKee [Ky.], Richard M. Johnson [Ky.].

ONE of the chief issues between the Federalists and Republicans during John Adams's administration was the navy, the Federalists desiring to increase it greatly, in view of the offensive attitude taken toward the United States by France and Great Britain, and the Republicans wishing to maintain it at a minimum strength, for fear that an increase would too greatly augment the power of the Executive, and so menace State rights and the liberties of the people.

Indeed, it was a part of the bargain made by James A. Bayard, Sr. [Del.], the leader of the Federalists, with the supporters of Thomas Jefferson, whereby the deciding Federalist votes were cast for Jefferson against Aaron Burr [N. Y.] in the House contest for the Presidency, that Jefferson would at least not reduce the existing strength of the navy.[1]

While Jefferson fulfilled the letter of the bargain, he did not go beyond it, but showed antagonism to every measure which tended to the aggrandizement of the naval power of the Government. Thus he made it a pet policy to build little shallow "gunboats" to run in and out of our shallow rivers, and so be available for defence, though not for attack, instead of large and powerful men-of-war which could strike the enemy on the high seas and even in his home ports. Historians are generally agreed that this was the chief, if not

[1] See page 400 ss.

indeed the only, blot upon an Administration that stands as a record of great achievement in increasing the territory of the country, in wiping out public debt and reducing public expenditure, and in generally promoting the prosperity and liberty of the people.

James Madison continued his predecessor's policies, including that in regard to the navy. However, as war with Great Britain became imminent, the Democratic leaders of the Administration responded to the popular demand for a great increase of the navy.

On December 17, 1811, Langdon Cheves [S. C.], as chairman of a special committee on naval affairs, reported that the committee advised the refitting of all vessels in the navy, the building of ten additional frigates, averaging 38 guns, the purchase of a stock of ship timber, and the establishment of a dock for repairing vessels. A bill was framed accordingly, and brought before the House on January 17, 1812. It was discussed from that day until January 29, when it was passed by a vote of 65 to 30. It had, however, been amended by the omission of the provisions for building frigates (vote, 62 to 59) and the dockyard (vote, 56 to 52).

The debate focused upon the question of building frigates, as this involved the establishment of a permanent navy and fixed the policy of the impending war as a contest by sea as well as by land. The chief speakers in support of the bill were the chairman of the committee, Mr. Cheves, William Lowndes [S. C.], Lyman Law [Conn.], Henry Clay [Ky.], and Josiah Quincy, 3rd [Mass.]. Those who opposed the measure were Adam Seybert [Pa.], Jonathan Roberts [Pa.], Samuel McKee [Ky.], and Richard M. Johnson [Ky.].

The Naval Establishment

House of Representatives, January 17-29, 1812

Mr. Cheves.—It has been said,[1] by a strong and lively figure of rhetoric, that this country is a great land animal, which

[1] By John Randolph.

should not venture into the water. But if you look at its broad high back, the Alleghanies, and its great sides swelling to the east and to the west, where do you find its immense limbs terminate? Not on some great plain which has been formed for their reception, but in two great oceans, the Pacific on the one side and the Atlantic on the other. The figure explains the true interests of the country, in the inseparable union and necessary dependence of agriculture and commerce. The God of nature did not give to the United States a coast of two thousand miles in extent not to be used. No; it was intended by this bounty to make us a great commercial people; and shall we ungratefully reject the enjoyment of His unexampled beneficence? No, it has not, and will not, be neglected. A great portion of our people exist but upon the ocean and its fruits. It has been eloquently, and not less truly than eloquently, said that "the ocean is their farm," and it must and will be protected.

But how is this protection to be afforded? No proposition appears to me more true or more obvious than that it is only by a naval force that our commerce and our neutral rights on the ocean can be protected.

But the adoption of a naval establishment is deemed improper on the grounds of the enormous expense which it will necessitate, and the inability of the nation, by any force which it can provide, to resist, with effect, the immense naval power of Great Britain. Is it not surprising that so much prejudice should exist against this establishment on account of its expensiveness, when it is ascertained that, during the whole eighteen years of its existence, from 1794 to 1811, inclusive, it has cost the Government only $27,175,695? The expense of the military establishment, from 1791 to 1811, inclusive, has been $37,541,669, giving an annual average of $1,700,000, or $200,000 per annum more than that of the navy. Compare, too, the services of the army with those of the navy, and it will be found that those of the latter have been most useful and most honorable to the nation. I know of no service of this character which the army has performed, except the defeat of the Indians by General Wayne, and the late gallant affair on the Wabash. The navy, in the contest with France in 1798, was victorious wherever it encountered an enemy, and probably laid the foundation of the subsequent accommodation with that nation. In the Mediterranean its exploits gave a name to the country throughout Europe, humbled, in an unexampled manner, the piratical and barbarous foe, and crowned itself with a reputation for intrepidity and heroism which had not been exceeded by the

exploits of any nation, and which must go down to a distant posterity. Admitting that, from a variety of causes, the expense may have been unnecessarily great, an argument cannot thence be fairly drawn against its future use—the contrary is the fair conclusion. Past errors lay the foundation of future improvement. It was thus the greatest orator, and one of the greatest statesmen of antiquity, reasoned. The great Athenian orator, when rousing his countrymen, by his impetuous eloquence, to resist the ambition of Philip, declared that it was on their past misconduct that he built his highest hopes; for, said he, "were we thus distressed, in spite of every vigorous effort which the honor of our State demanded, there were then no hope of recovery." So may we reason in this case; for, had these extraordinary expenses been the result of good economy, then, indeed, would their diminution be hopeless; but, as they have proceeded from a wasteful or unskilful expenditure, the remedy will be found in a reform of the abuse; to effect this reform is the duty of Congress. But it has not only been less expensive than the army, but it may be proved, as the committee have declared in their report, that "a naval force within due limits and under proper regulations, will constitute the cheapest defence of the nation." This will be partly proved by a comparison between the expense of the permanent fortifications of our maritime frontier and that of an adequate naval defence. The experience of modern naval warfare has proved that no fortifications can prevent the passage of ships of war. The present fortifications of our maritime frontier, though they are more numerous and better than they have been at any other period in our history, cannot prevent an inconsiderable naval force from laying many of our towns in ashes. Indeed, it is believed that no fortifications which can be erected will afford a complete protection against such attacks, while their expense would be oppressive to the nation. The city of New York alone, if completely fortified, would require a further expenditure of three millions of dollars, and a garrison of ten thousand men, and then might be laid in ashes by four or five seventy-fours. But we have a coast of two thousand miles to protect, the expense of which could not be borne by the nation. A better defence would be furnished by such a naval force as would give you a mastery in the American seas, and at home much less expense.

But, while it is contended by some that it will not be in the power of the nation to establish an effective naval force, there are others who are opposed to it, lest we become too great a naval power. They fear that our fleets will cover the ocean,

and, seeking victory on all the opposite shores of the Atlantic, involve the nation in oppressive expenses, and in wanton and habitual wars. Such objects are certainly not contemplated by the report of the committee; nor can such events possibly happen as long as we remain a free people. The committee have recommended such a navy as will give to the United States an ascendency in the American seas, and protect their ports and harbors. The people will never bear the establishment of a greater force than these objects require. The reasons which forbid Great Britain, or any other European power, to station large fleets on our seas will equally forbid us to cross the Atlantic, or go into distant seas, for the purpose of frequent or habitual wars.

We are told, also, that navies have ruined every nation that has employed them; and England, and Holland, and Venice, and other nations have been mentioned as examples. The vast debt of Great Britain is declared to be among the pernicious fruits of her naval establishment. This I deny. Her debt has grown out of her profuse subsidies, and her absurd wars on the land. Though the ruin which is supposed to threaten England is attributed to her navy, it is obvious that her navy alone has saved, and still saves, her from ruin. Without it she must, long since, have yielded to the power of France her independence and her liberties. We are told that the same wealth which she has expended in supporting her navies would have been employed more profitably for the nation in the improvement of its agriculture and manufactures, and in the establishment of canals and roads, and other internal improvements. But experience is better than theory. Let us compare England with nations which have no navies, or comparatively inconsiderable navies. The nations of the continent of Europe are without such overgrown and ruinous naval establishments, but do you there find the highest improvements in agriculture, the most flourishing manufactures, or the best roads and canals? No, it is in this nation, that has been ruined by her navy, that you find all these improvements most perfect and most extended. I mean not either to be the panegyrist of England; but these truths may be declared for our instruction, without suppressing the feelings excited by the wrongs she has done us. England has not, then, I conclude, been destroyed or impoverished, but preserved and enriched, by her navy. Was Holland ruined by her navy? No; surrounded by the great powers of the Continent, with a population not exceeding 2,000,000 of souls, she protected and secured her independence for more than a century against her powerful

neighbors by means of her commercial riches, which were cherished and defended by her naval power. Did Venice owe her decline, or fall, to her navy? While the neighboring Italian states were subdued, year after year changing their masters and their tyrants, she long continued to ride triumphantly amid the storm, independent, and, in a great degree, free. It was her naval and commercial power which made her rich and great, and secured her existence as a state so long. Look even at the little republic of Genoa, whose inhabitants, but for its commerce and its navy, would scarcely ever have possessed "a local habitation," or "a name!"

Mr. Seybert.—The gentleman from South Carolina has told us that when the war which we are about to wage shall be over our army will leave us. Sir, I am happy to hear that on such an event the military will be readily disbanded—a dread of the contrary gave much uneasiness to many a few days since—this is just what we wish should take place. On the other hand, said he, "your proud navy" will remain. It is for this, with many other reasons, that I am opposed to a navy. I wish he could have proved to us that with the end of the war the navy would also leave us; perhaps I should then agree with him in favor of its establishment: though the "proud navy" will remain with us, he has neglected to tell us at what rate of expense.

I will ask him, if it is to remain with us in times of peace with its numerous train of officers, may it not become a powerful engine in the hands of an ambitious Executive?

Sir, I deem it inexpedient to commence a permanent naval establishment at this time. We are quite unprepared for it—we are in want of all the necessary materials; though we have been told that our forests abound in all the necessary timber, it was said little of this material was to be found in our dockyards. The gentleman from South Carolina has told us that a sufficiency of seasoned timber to build four seventy-fours was now on hand, and that the proper authority deemed it advisable to be used for frigates. Sir, this timber is a portion of that which was purchased some years since for the purpose of building six seventy-fours. It now appears that of this timber as much as was sufficient for two of these vessels has been employed to build smaller vessels, or gunboats, I presume. This is all of a piece with our pretended economy. This mode of proceeding will not answer, sir. We are in the wrong from the commencement of our navy. I do not wish it to be understood that I have decided a navy will never be a proper mode of defence for this nation—but whenever it shall be determined on we should begin

right; this can only be done by following those nations who have had most experience on the subject. Our first step should be to store away the proper timber. This should be done in times when we can best afford it—in times when our market is glutted—in times when labor can be commanded at fair prices—at a period when we enjoy peace, and surely not when we are about to engage in a war. We have heretofore paid the highest price for every article; we have given double wages for labor; and instances might be mentioned when the workmen were transported in stage coaches, at an enormous expense, from our large seaport towns to the navy yard of this city. Contracts for timber were made in haste and at a very advanced price. As soon as it was obtained it was put together, and in a few months we saw it floating in the form of a ship of war—*rotten* ships, I may say, sir, for I believe, without exception, in the frigates which were built by the United States the more important parts decayed and were rotten in two, three, or four years. In many instances the expense for repairs was equal to the original cost. A single frigate, the *Constitution*, has cost for repairs, from October, 1802, to March, 1809, the enormous sum of $302,582.21, or upward of $43,000 per annum for seven years in succession.

Let us view this subject in a more extended sense—I mean as regards our commerce generally—we shall still have cause to entertain the opinion which we first adopted. We cannot protect our commerce on the ocean. Our ships have vexed every sea—we trade to all parts of the world; of course, to protect our commerce our ships of war must abandon our coasts and encounter all the force of the enemy or those of Europe. The ports we have in view are European. If your frigates, for convenience and safety, are to cruise only on your coasts, what will be the fate of the millions which are embarked beyond the Cape of Good Hope? By this management surely you cannot afford it protection. France, Spain, and Holland, when combined and backed by an armed neutrality in the north of Europe, could not secure their commerce. The fleets of Great Britain now sail triumphant over every wave of the deep. The Russians have a navy far superior to that which it is proposed we shall establish, and they cannot protect their trade in the confined limits of the Baltic. They count fifty or sixty sail-of-the-line, besides many frigates and smaller vessels.

Sir, the expenses which are incurred by a naval establishment far exceed the profits which arise from the commerce which it is intended to protect. This proposition is warranted by the

experience of Great Britain, the most commercial nation of modern times. In the year 1798 the expenditure for her navy amounted to £13,654,013. In the year 1799 Mr. Pitt computed the profits on the commerce of Great Britain at £12,000,000, or one and a half millions less than the expenses for her navy the preceding year!

Sir, I further object to a navy because it will be the means of exciting many wars, which, without the establishment, may be honorably avoided. It is said nations are involved in war in proportion to the extent of their navies; and some assert (Lord Brougham) that a perpetual war is one of the two modes which are necessary to support a powerful naval establishment. Sir, a naval establishment will create a new and a dangerous interest in our country. Nothing is more common than to be told that such are the wishes of the naval interest of Great Britain, and that this or that war must be entered into to gratify them. For my part, sir, I shall be very sorry indeed if ever the period arrives in the United States when any particular interest or community shall direct the Government, whether it be naval, agricultural, manufacturing, or commercial. The general welfare should be the sole great ruling principle in the national councils.

Sir, I am deterred when I consider the fate of all those nations who at different periods have been famous for their navies. The naval strength of the Hanseatic League was such, two centuries past, as to excite terror on the part of England. These, sir, distant free cities, are now the appendages of mighty France, and have no political existence. Who has not heard of the once formidable fleets of Venice and Genoa? At one time England was indebted to the latter for officers to command her ships of war—alas; these republics are now consigned to oblivion. Denmark was at one time the mistress of the ocean; by means of her fleets she often invaded England, and held her in a state of subjection. The Danes heretofore burned London, Paris, and other great cities—they are now controlled by France, and they have had their Copenhagen defeat. Holland, with her Van Tromps and De Ruyters, occupied the British Channel at pleasure; this power defeated the navies of England and France. Where is Holland now? Incorporated as a part of the French empire. Spain boasted her invincible armadas; Elizabeth of England, by nature haughty, proud, and ambitious, trembled at the very mention of them, until they were dispersed and destroyed by storms at sea; Spain is now the vassal of France. Not very long since the navy of France sailed triumphant along the British

coast, looked into Portsmouth harbor, and taunted British spirit. I ask you, sir, where is the strength of which these nations formerly boasted? All are inoperative, and dread the gigantic power of the British navy—they are in part sick in dry docks, or are blockaded in their ports.

Mr. Chairman, Great Britain, though at this time triumphant in every sea, if she persists in her expensive naval establishment, with her present debt of £800,000,000, which was chiefly created for her navy—Great Britain, sir, I say, with all this, must sink under the heavy pressure. She will hereafter derive very little satisfaction from her brilliant victories on the 1st of June off Cape St. Vincent, Camperdown, Aboukir, and Trafalgar.

Shall I be pardoned, sir, when I fear our vessels will only tend to swell the present catalog of the British navy? Of the 1,042 vessels which she possessed in July, 1811, one hundred and nine were captured from the French, forty-six from the Danes, twenty-five from the Spaniards, twenty-four from the Dutch, and three from the Italians; making a total of two hundred and seven captured ships, or one-fifth of her whole navy.

Small ships are proper for the service of the United States—by their agency we shall be able to annoy the convoys of an enemy. The privateers which were fitted out in every port during our revolutionary war destroyed much of the British commerce, even in the British and Irish Channels, while the frigates which were built by the Government did little or nothing—but two of them remained at the conclusion of the contest. The enemy will not watch your small vessels; they may enter all your small inlets, where heavy vessels cannot venture to approach them; and, at the conclusion of the war, they may be sold for the merchant service.

I shall vote against the bill, though it is my present intention to appropriate the sums requisite for the repairing and equipping our present ships of war. I will go no further. I tell you, sir, naval victories in the end would prove fatal to the United States; the consequences which have uniformly followed in other countries must take place here. If the United States shall determine to augment their navy, so as to rival those of Europe, the public debt will become permanent; direct taxes will be perpetual; the paupers of the country will be increased; the nation will be bankrupt; and, I fear, the tragedy will end in a revolution.

Mr. McKee.—Establish a navy and this country may bid farewell to peace; because you thereby organize a class of society who are interested in creating and keeping up wars and contention. Officers in the navy and army are mere cyphers in society in times of peace, and are only respectable in time of war, when wealth and fame may await their exertions. They are, therefore, interested in keeping up a state of war; and being invested with the management of an instrument of war, it is to be expected that it will be used in some degree to answer their own purposes? No man who will reflect for a moment but must be satisfied that the disgraceful and lawless conduct of the British naval officers on our coast originated in a desire on their part to bring on a war with this country, in which they looked forward to large dividends of prize money; and these acts were contrary to the wish and expectation of Great Britain; in one instance the act was disavowed; and it may be asked why were the officers not punished who acted contrary to the wishes of the government? The answer is obvious; because the influence of the navy in England is so predominant that the government are afraid to touch the subject, and the consequence is that the government are compelled to bear the odium of acts which they disapprove; and the same cause which has produced this effect in England, if permitted to operate, will produce a similar effect in this country.

Our little navy has already contributed much toward the irritation which exists between this country and England · and under any other President than Mr. Jefferson it would have brought on a war in 1807. And what real benefit has resulted from it to the Government? Has a picaroon or a buccaneer ever been chastised by them? If they have I have no recollection of the case; I have seen, indeed, paragraphs in the newspapers mentioning that the frigate *President*, or some one of the vessels, had sailed from the navy-yard to Norfolk, from thence to New York, and finally arrived safe at Boston; but for what purpose we are totally ignorant, unless, indeed, it was to sail back again, and furnish the materials for a new article for the newspapers; and for these eminent services the American people have already paid about $30,000,000.

Mr. Johnson.—I will not vote one cent for a system of naval force which is destined to keep foreign nations in check in distant seas, and destined to entail upon this happy Government perpetual taxes and a perpetually increasing national debt. The people will not support such a naval establishment—they have the corrective in their hands; and build this fleet of twenty seventy-fours and forty frigates, and the people will in their turn put them down. But, sir, we are told that we are a commercial people, and that you cannot restrain a spirit of enter-

prise in our citizens which is limited only by the polar snows to the north and the icy mountains to the south. No person has attempted to damp that gallant spirit, that mercantile enterprise—such adventurous voyages have been fostered and cherished by every means in the power of the Government. But, sir, has this unparalleled enterprise, this gallant spirit, been carried on by a navy? Such a thing has never been thought of, which proves that this question of a navy has no connection with this commercial enterprise; and the existence of one without the other is positive proof of the fact. I am not prepared to give up our rights, whether upon the ocean or upon land, whether commercial or personal; but I may differ in the means of avenging these wrongs, and vindicating those rights, and I shall ever differ from those who wish a navy to ride triumphant in distant seas, and, under a pretext of protection to commerce, doom the nation to galling burdens too intolerable to be borne. But we are told, sir, that this question partakes of the character of a self-evident proposition. Indeed, sir, and in what respect is it entitled to this definition of self-evident? Unless, indeed, from every consideration of history, experience, and reason, it is evident that a navy is an engine of power and ambition, calculated to embroil a nation in quarrels and wars, and to fix permanent wretchedness upon the industrious class of the people. When we look to the delegation from each State we find a difference in sentiment upon this subject, whether lying on the seaboard or distant from it.

I defy history for an example of a single great naval power which confined its naval strength to the legitimate object of protecting commerce in distant seas. I will refer to Tyre and Sidon, Crete and Rhodes, to Athens and to Carthage. No sooner had these nations ceased to confine their naval strength to their maritime defence at home, to the protection of their seacoast, than they were engaged in plunder, piracy, depredations upon other nations, or involved in wars which certainly accelerated, if it did not produce, the downfall and destruction of those governments. Peace and tranquillity are not the natural state of a great naval power. A disregard of public law, sacred treaties, and bloodshed, would suit it better; it has been and ever will be the consequence of such force. These nations furnish another example and instructive lesson to the present generation—that, while their commerce and navy furnished a small part of the people with the luxuries of every country at that time known, the great mass of citizens at home were miserable and oppressed, their rights neglected, their burdens

increased, and their happiness destroyed, while their fleets and external grandeur carried astonishment and terror to distant nations. When a nation puts forth her strength upon the ocean, the interior of the country will be neglected and oppressed with contributions. Ancient history does not furnish a solitary instance of any permanent good or long continuance of peace arising from a great naval supremacy; such overgrown power, such unnatural strength, must feed upon plunder at home and abroad.

Admit that Great Britain, with her thousand vessels, could protect her lawful commerce, let me ask if her navy has ever been confined to that object; whether it is confined to that object at this time; whether her navy has not fattened upon the spoils of Europe, Asia, Africa, and America, and the commerce of neutral nations, making war equally upon friends and enemies. Her navy, triumphant in every sea, is employed in a system of plunder against the world, and, notwithstanding this supremacy, we see her citizens groaning under a national debt of eight hundred millions of pounds sterling, more than all the nations of the universe could pay. We see her upon the precipice of bankruptcy—we see her people, her numerous subjects, loaded with taxes that would astonish any man who did not know the fact—notwithstanding this, the public debt is daily increasing, and it is now acknowledged by all the world that she is fighting for her existence—victorious at sea and safe at home from invasion, and still her very existence is at stake. Sir, I never wish to see the liberties of my country afloat upon the ocean and staked upon the strength of a navy. Look at France, separated from her enemy by a narrow channel, without vessels to meet the fleets of England on the water, and still she is unable to burn the seaport towns of France or invade the French territories, or in any way to make an impression upon her. Populous and powerful upon land, nothing but the imperial despotism that exists throughout that vast empire prevents the country from being the most enviable residence upon the globe, except our own favored land. Let not the Congress of the United States therefore stake their existence upon navies, let us not withdraw the protecting hand of government from the soil; let us not increase the burdens of the people, and weigh them down with a public debt to support external grandeur. Do not by this system destroy the affections and attachments of the solid and honest part of the community who support the government of the country.

But, I am asked, how will you contend with a maritime na-

tion without a navy? Sir, that question is as easily answered as the first. I will ask how we succeeded in the Revolutionary War? We were without any security upon our seacoast and still we succeeded. But, to be more specific, I would grant letters of marque and reprisal, and authorize privateering. Give scope to individual enterprise to destroy the commerce of the enemy—which can be done effectually. I would fortify our seaport towns; station our gunboats and frigates along our coast to protect us at home. And, in this way, I would in war avenge the infractions of our neutral rights.

Mr. Lowndes.—Although the honorable gentleman from Kentucky [Mr. Johnson] is determined to defend commerce by some method which he will not fully disclose, his arguments, like those of my honorable friend from Pennsylvania [Mr. Seybert], appeared designed to show that commerce was not worth defending. I hope to be excused for remarking that both these gentlemen have considered the profits of commerce as confined to the merchant. They have forgotten that commerce implies a change of commodities, in which the merchant is only an intermediate agent. He derives, indeed, a profit from the transaction—but so must the seller and the buyer, the grower and the consumer, or they would not engage in it. So must all those who are supported by their own industry in commercial cities—the clerk, the artisan, the common laborer. But my honorable friend from Pennsylvania says that Mr. Pitt estimated the profits of commerce in England at only twelve millions for a year, in which the naval expense was fourteen or sixteen millions. I suppose this estimate to have been made in relation to the income tax, and it obviously must have referred only to the profits of merchants. The profits of merchants may be computed, but no sober financier would attempt to compute the entire profits of commerce. If it be desirable to form, not, indeed, an estimate, but some conception of its importance, let my honorable friend compute the value of New York, where a few square feet of land are an estate, and then compare it with the value of the same extent of ground for the purpose of the plow. But, is it in this nation, and at this time, that it can be supposed that the profits of commerce are confined to the merchant? Your trade was, a few years ago, unrestrained and flourishing—did it not enrich the most distant parts of your country? It has since been plundered and confined. Does not the industry of the country languish? Is not the income of every man impaired? But, whatever may be the value of commerce, you have already determined

to defend it. Considerations of expense are not, indeed, to be neglected. We must employ, in the prosecution of the war, the cheapest and most efficacious instruments of hostility which we can obtain. The arguments of the honorable gentlemen on the other side are really directed against the war, rather than the navy. It would be absurd, say they, to protect commerce by a navy which should cost more than that commerce is worth. It must yet be more absurd, then, to protect it by an army which costs much more than the navy. In the comparison of the expenses and of the efficiency of an army and navy, instituted by my colleague, there is nothing invidious. The army is acknowledged to be necessary. It has had our votes. But, from the acknowledged propriety of raising the army, was fairly inferred the propriety of employing a navy, if it should be proved to be less expensive in proportion to its probable efficacy.

The honorable gentleman from Kentucky [Mr. McKee] offered objections to a navy which, if they were well founded, would supersede all further reasoning and calculation. He opposes a navy now—he will oppose it forever. It would produce no possible good and all possible evil. It would infallibly destroy the Constitution. Will the honorable gentleman tell us why? how? An ambitious general might corrupt his army and seize the Capitol—but will an admiral reduce us to subjection by bringing his ships up the Potomac? The strongest recommendation of a navy in free governments has hitherto been supposed to be that it was capable of defending but not of enslaving its country. The honorable gentleman has discovered that this is a vulgar error. A navy is really much more dangerous than an army to public liberty. He voted for the army and expressed no fears for the Constitution. But a navy would infallibly terminate in aristocracy and monarchy. All this may be very true. But are we unreasonable in expecting, before we give up the old opinion, to hear some argument in favor of the new one?

What is the nature of the defence which one of our large States may be supposed interested to obtain from the general Government? Is it a land force? We can scarcely expect an attack on land, to repel which the militia of New York or Massachusetts would be unequal. Were either of these States attacked the general Government would protect her by ordering out her own militia. To render the Union permanent you must render it the interest of all the States—the large as well as the small—to maintain it; you must show them that it will provide,

not an army, which they can have without it, but what, without it, they cannot have—an adequate navy.

The honorable gentleman who anticipates the destruction of the Constitution, unless we shall neglect one of the great interests which it was intended to protect, considers the English Orders in Council as leaving our institutions firm and untouched. Regulations the effect of which is to give to a foreign power the complete disposition of the property of a large class of our people are, it seems, in their political result innocent. But let a navy be raised—let the Government which expects obedience provide protection, and the Constitution perishes!

But we have been referred particularly by my honorable friend from Pennsylvania to the experience of the world as having already decided the question which we are now discussing. It seems that Venice and Genoa, and every other naval power which can be named, have all furnished abundant proof of the ruinous effects which such a force is calculated to produce. Sir, the assertion is new. I do not pretend to an intimate acquaintance with the histories of those nations, but I have hitherto believed that the first great shock which the power of Venice received was given by the League of Cambray—a league formed to repress her ambition, not of maritime, but of territorial aggrandizement. But, while Venice has lost her independence after maintaining it for five or six centuries, may I ask my honorable friend whether the states of Italy, which were never oppressed by fleets, enjoyed a longer term of prosperity and freedom? As to Genoa—her naval power, her independence and glory, rose and sunk with the same man—Doria. But Holland, says the gentleman from Kentucky, affords an example of a nation whose commerce flourished greatly before it had a navy, and decayed while her navy continued powerful. If there ever were a people whose naval power has been employed to protect and almost to create their commerce, it is the Dutch. They fought their way at the same time to trade in the East Indies and America, and to national independence in Europe. The decay of their trade is to be attributed to the development of the resources of other nations; to the navigation act of England; and the similar measures adopted by other powers. As to France—the period of her greatest financial prosperity probably coincided with that of her greatest naval power; both were due to the administration of Colbert. But the evils of a navy (gentlemen tell us) have been concentrated in the case of England. With all her fleets she is destined soon to lose her independence. The expense of those fleets has crushed the industry of her

subjects, and must soon reduce her to national bankruptcy. Let us suppose that these gentlemen, who have been so much mistaken in regard to the past, may be more accurate in their narrative of the future. Still England will have owed to her fleets her redemption from invasion for ages past. While every other considerable nation of Europe has been bankrupt over and over again, she is not yet bankrupt. While nearly every other government of Europe has been overset, hers yet rides out the storm. Should England fall to-morrow, it should seem impossible to deny that her navy will have prolonged her independence for at least two centuries.

Mr. Law.—Sir, in a country so blessed by nature; where the inhabitants have the greatest stimulus to industry, the fruits of their labor secured by just and equal laws; where the property cannot be taken from the owner without his consent, there will be a vast surplus beyond what the consumption of the country requires. Hence, commerce springs up as the daughter and handmaid of agriculture. Without commerce agriculture would languish. With it, wealth is consolidated and industry promoted. It diffuses its benign influence, discoverable in the splendid and delightful improvements which rejoice the eye of the traveler throughout the country. And it is as unnatural for the farming interest to oppress the commercial as it is for the parent to abandon its offspring. They mutually cherish and support each other; and, by natural sympathy, must be affected by the checks and disorders which each may receive. But commerce, being carried on abroad on the ocean, is subject to annoyance, interruption, and hazard. We must pass the common highway of nations to get to a market; and in this route the weak and defenceless must, and always will, be the sport and prey of the strong and violent whom they meet in the way. From the wretched state of those nations with whom we have intercourse we, from weakness, must fall victims to their violence. This is an evil which we shall always experience as a neutral coming in collision with belligerents. Shall we, then, abandon commerce, or shall we strive to support it? If we abandon it the evil will recoil on the agricultural part of the country, who, no longer than foreign commerce is supported, can find a vent for their surplus; and, without a vent for the surplus, a bare competency might be endangered. Internal commerce, being but a stream from foreign commerce, must dry when the fountain from whence it issues fails. Enterprise ceases and languor and poverty ensue. It is, then, for the interest of the nation to cherish commerce. But how can this be

done? Will a navy have this effect? I think it will. We are now the defenceless prey of both France and England; deprived of the common rights of nations and citizens of the world. I verily believe, if this nation had fostered our infant navy from the time it was commenced and had not, by a strange infatuation, abandoned and neglected it, it would now have been too important to be despised by either France or England. Our prosperity would have continued. Our strength would have been dreaded, and our friendship courted by both nations. While they have been contending for the mastery we, with such naval force as we ought to have had, and a strict course of neutrality, might have pursued a lawful and gainful trade. We might have had a perpetual revenue of sixteen millions, instead of the pittance now received at the treasury. I believe that, with the navy we might have had, and a correct strict neutral court, there would have been neither Berlin and Milan decrees, nor Orders in Council, to annoy our lawful commerce.

Mr. Roberts.—Soon after the Government came into operation it became a favorite object with one set of politicians to form a navy. On the occasion of our commerce being depredated upon by the Barbary corsairs the question first came up. It became a matter of deliberation whether a peace should be purchased of them with money and presents; whether some European power should be subsidized to keep a few frigates on that station, or whether a naval force should be equipped for the purpose (as alleged) of enabling the President to negotiate to better effect. The party with whom I have always found it my duty to act opposed, on that occasion, the commencement of a navy system when it was invited under circumstances so specious. They were, however, in the minority. The ships of war were voted—with what effect on the Algerines he did not stop to inquire. The question of increasing the navy was again discussed in the celebrated times of '98-9. The collisions with France had raised the war fever very high. A navy was vociferously contended for as the most efficient means of defence. It was when things were in this state that the President, in his reply to the Marine Society of Boston, who had, with much fervor, tendered him their approbation of his measures, hoped to see the wooden walls of America considered as her best defence. Because Athens, when she was invaded by the hosts of Xerxes, had chosen to interpret the oracle that promised her safety in wooden walls, rationally, America must take the same course, however dissimilarly situated. The people of Attica, inhabiting a circumscribed territory, found safety in their fleet,

and they could have found it nowhere else. But such cannot be the case with America. Even the hosts of Xerxes could not make it necessary for the American people to quit their territory—the figure would not hold. On this occasion, too, the Republican party consistently opposed a navy.

History proves to us that maritime power has always excited national ambition to a spirit of conquest and plunder. A naval power will seek colonies and ports in distant places. The chance, nay, the certainty, of collisions with other nations is multiplied, and a corruption of morals is produced that cannot fail to make the first government on earth a tyranny by a course of events that the patriot can neither prevent nor divert to other consequences. A short time after Athens had found safety in her wooden walls one of her statesmen proposed she should burn the fleets of her neighbors, that she might thereby be rendered mistress of Greece. This project the virtue of the people resisted; but that virtue soon gave way in the expedition to the Cyclades, where her navy commited acts of violence that must indelibly fix the stain of the blackest perfidy and cruelty on the Athenian character. What could be a more unprovoked act of aggression than her crusade against Syracuse, a crime that visited her with a declension of power from which she never recovered? For a nation to believe her destinies fixed is in a great measure to fix them. Nothing, perhaps, contributed more to make Rome the mistress of the world than the oracles that promised it. Her heroes and statesmen were stimulated thereby to fulfil her destiny. The maritime supremacy of Britain is, perhaps, owing as much to the belief that she is the destined queen of the waters as to any other cause. Though such operations be calculated to bring about astonishing effects, how unfortunate is it when a nation's eyes are thus directed to improper attainments—it becomes a source of incalculable evil.

Athens and Rome were the victims of such a policy as Britain is at this time. Her marine puts the trident into her hands, but she can no longer shake the earth. Her monopolizing spirit has sealed the continent of Europe against her and interdicted her commerce with America. She has reduced the ocean almost to a desert; and she seems hastening to that destiny which has generally attended her predecessors in naval power through her ambition to rule the waves.

Yet the plunder of half the world has not sustained the British navy. A debt has been accumulated that almost baffles the power of figures to estimate. But debt and a prospect of

government insolvency at home are of much less account than the wrongs this navy has wrought on the society of nations. And yet it is this government that is held up to Republican America as a model for imitation.

Need I remind you of the millions of victims sacrificed to commercial cupidity on the plains of Hindustan by means of this navy? A population thrice as great as that of the British Isles has been exterminated in this devoted region within comparatively but a few years by mercantile rapacity. Colonel Dowe informs us that the wealth of one of the cities of this wretched country had whetted the avarice of Clive and his associates, and that an offer was made to the government to pay the public debt for permission to sack it. It was too gross an act of infamy to assent to and the adventurers obtained their end by other means. A famine and pestilence was substituted for the bayonet and the spoils of the devoted city glutted the hands of rapine. In this exploit a shoeblack divided his £200,000. Need I remind you that the population of Africa has been drained to groan out a wretched existence in the West India colonies to prop up this naval and commercial power, or that the remotest corners of every sea have been visited with the scourge of blood and desolation for the same purpose? On general principles, does not past experience afford sufficient warning to these States to avoid those shoals on which so many nations have been wrecked?

Mr. Clay.—Gentlemen fear that if we provide a marine it will produce collisions with foreign nations, plunge us into war, and ultimately overturn the Constitution of the country. Sir, if you wish to avoid foreign collision you had better abandon the ocean; surrender all your commerce; give up all your prosperity. It is the thing protected, not the instrument of protection, that involves you in war. Commerce engenders collision, collision war, and war, the argument supposes, leads to despotism. Would the counsels be deemed wise of that statesman who should recommend that the nation should be unarmed —that the art of war, the martial spirit and martial exercises, should be prohibited—and that the great body of the people should be taught that national happiness was to be found in perpetual peace alone? No, sir. And yet every argument in favor of a power of protection on land applies, in some degree, to a power of protection on the sea. Undoubtedly a commerce void of naval protection is more exposed to rapacity than a guarded commerce; and, if we wish to invite the continuance of the old, or enaction of new, unjust edicts let us refrain from all

exertion upon that element where they operate and where, in the end, they must be resisted.

For my part, I do not allow myself to be alarmed by those apprehensions of maritime power which appeared to agitate other gentlemen. In the nature of our Government I behold abundant security against abuse. I would be unwilling to tax the land to support the rights of the sea, but would draw from the sea itself the resources with which its violated freedom should at all times be vindicated. While this principle is adhered to there will be no danger of running into the folly and extravagance which so much alarm gentlemen; and, whenever it is abandoned, whenever Congress shall lay burdensome taxes to augment the navy beyond what may be authorized by the increased wealth, and demanded by the exigencies of the country, the people will interpose, and, removing their unworthy Representatives, apply the appropriate corrective. I cannot, then, see any just ground of dread in the nature of naval power. It is, on the contrary, free from the evils attendant upon standing armies. And the genius of our institutions—the great representative principle, in the practical enjoyment of which we are so eminently distinguished—affords the best guaranty against the ambition and wasteful extravagance of government.

I am far from surveying the vast maritime power of Great Britain with the desponding eye with which other gentlemen behold it. I cannot allow myself to be discouraged at the prospect even of her thousand ships. This country only requires resolution, and a proper exertion of its immense resources, to command respect and to vindicate every essential right. If we are not able to meet the wolves of the forest, shall we put up with the barking of every petty fox that trips across our way? Because we cannot guard against every possible danger shall we provide against none? I hope not. I have hardly expected that the instructing but humiliating lesson was so soon to be forgotten which was taught us in the murder of Pierce; the attack on the *Chesapeake;* and the insult offered in the harbor of Charleston, which the brave old fellow that commanded the fort in vain endeavored to chastise.

Gentlemen refer to the period of 1798, and we are reminded of the principles maintained by the opposition at that time. I have no doubt of the correctness of that opposition. The naval schemes of that day were premature, not warranted by the resources of the country, and were contemplated for an unnecessary war into which the nation was about to be plunged. I have always admired and approved the zeal and ability with

which that opposition was conducted by the distinguished gentleman now at the head of the treasury. But the state of things is totally altered. What was folly in 1798 may be wisdom now. At that time, we had a revenue only of about six millions. Our revenue now, upon a supposition that commerce is restored, is about sixteen millions. The population of the country, too, is greatly increased—nearly doubled—and the wealth of the nation is, perhaps, tripled. While our ability to construct a navy is thus enhanced, the necessity for maritime protection is proportionately augmented. Independent of the extension of our commerce, since the year 1798, we have had an addition of more than five hundred miles to our coast, from the bay of Perdido to the mouth of the Sabine—a weak and defenceless accession, requiring, more than any other part of our maritime frontier, the protecting arm of government.

Mr. Quincy.—Commerce is the leading interest of more than one-half, and is the predominent interest of more than one-third, of the people of the United States. The States north of the Potomac contain nearly four millions of souls; and surely it needs no proof to convince the most casual observer that the proportion which the commercial interest bears to the other interests of that great section of the Union is such as entitles it to the denomination of *leading interest.* The States north of the Hudson contain nearly two and a half millions of souls; and surely there is as little need of proof to show that the proportion the commercial interest bears to the other interests of that Northern section of the Union is such as entitles it there to the denomination of *predominating interest.*

If this commerce were the mushroom growth of a night—if it had its vigor from the temporary excitement and the accumulated nutriment which warring elements in Europe had swept from the places of their natural deposit—then, indeed, there might be some excuse for a temporizing policy touching so transitory an interest. But commerce in the Eastern States is of no foreign growth, and of no adventitious seed; its root is of a fiber which almost two centuries have nourished; and the perpetuity of its destiny is written in legible characters, as well in the nature of the country as in the disposition of its inhabitants. Indeed, sir, look along your whole coast, from Passamaquoddy to Capes Henry and Charles, and behold the deep and far-winding creeks and inlets, the noble basins, the projecting headlands, the majestic rivers, and those sounds and bays which are more like inland seas than anything called by those names in other quarters of the globe! Can any man do this and not realize

that the destiny of the people inhabiting such a country is essentially maritime?

How is this commerce, this great national interest, to be protected? Is it by an army? Suppose that in every land project you are successful—suppose both the Canadas, Quebec, Halifax, everything to the north pole, yours by fair conquest—are your rights on the ocean, therefore, secure? Does your flag float afterward in honor? Are your seamen safe from impressment? Is your course along the highway of nations unobstructed? No one pretends it. No one has or can show, by any logical deduction or any detail of facts, that the loss of those countries would so compress Great Britain as to induce her to abandon for one hour any of her maritime pretensions. What then results? Why, sir, what is palpable as the day—that maritime rights are to be maintained only by maritime means.

With respect to the nature and extent of this naval force some difference of opinion may arise, according to the view taken of the primary objects of protection. For myself, I consider that those objects are first to be protected in the safety of which the national character and happiness are most deeply interested. And these are chiefly concerned, beyond all question, in the preservation of our maritime settlements from pillage and our coast from violence. For this purpose it is requisite that there should be a ship of war for the harbor of every great city of the United States equal in point of force to the usual grade of ships-of-the-line of the maritime belligerents.

But it is said that "we have not capacity to maintain such a naval force." Is it want of pecuniary or want of physical capacity? In relation to our pecuniary capacity I will not condescend to add any proof to that plain statement already exhibited, showing that we have an annual commercial exposure equal to six hundred millions of dollars, and that two-thirds of one per cent. upon this amount of value, or four millions of dollars, is more than is necessary, if annually and systematically appropriated, for this great object; so anxiously and rightfully desired by your seaboard, and so essential to the honor and obligations of the nation.

This objection of pecuniary inability may be believed in the interior country, where the greatness of the commercial property and all the tender obligations connected with its preservation are not realized. But in the cities and in the commercial States the extent of the national resources is more truly estimated. They know the magnitude of the interests at stake and their essential claim to protection. Why, sir, were we seriously to

urge this objection of pecuniary incapacity to the commercial men of Massachusetts they would laugh us to scorn. Let me state a single fact. In the year 1745 the State, then the colony of Massachusetts Bay, included a population of 220,000 souls, and yet in that infant state of the country it owned a fleet consisting of three ships, one of which carried twenty guns, three snows, one brig, and three sloops; being an aggregate of ten vessels of war. These partook of the dangers and shared in the glory of that expedition which terminated with the surrender of Louisburg. Comparing the population, the extent of territory, the capital, and all the other resources of this great nation with the narrow means of the colony of Massachusetts at that period of its history, it is not extravagant to assert that the fleet it then possessed, in proportion to its pecuniary resources, was greater than would be, in proportion to the resources of the United States, a fleet of fifty sail-of-the-line and one hundred frigates.

As to respect abroad, what course can be more certain to insure it? What object more honorable, what more dignified than to behold a great nation pursuing wise ends by appropriate means; rising to adopt a series of systematic exertions suited to her power and adequate to her purposes? What object more consolatory to the friends—what more paralyzing to the enemies of our Union—than to behold the natural jealousies and rivalries, which are the acknowledged dangers of our political condition, subsiding or sacrificing? What sight more exhilarating than to see this great nation once more walking forth among the nations of the earth under the protection of no foreign shield? Peaceful because powerful—powerful because united in interests and amalgamated by concentration of those interests in the national affections.

CHAPTER VII

Flogging in the Navy

Flogging Is Abolished in the American Navy—Petition to Congress to Restore It—Debate in the Senate: In Favor of the Petition, George E. Badger [N. C.]; Opposed, Commodore Robert F. Stockton [N. J.].

DURING President Fillmore's Administration the ancient practice of flogging was abolished in the American navy. On January 7, 1852, a memorial was presented to the Senate by citizens of Philadelphia asking that the practice be restored.

Your memorialists most respectfully represent that on the high seas, where ready access to legal civil tribunals cannot be obtained for the prompt punishment of offenders against the laws of the naval and marine service, and where it is neither possible to discharge such offenders from the service nor to obtain others to occupy their places and perform their duties, it is of the highest importance that a power should be conferred upon commanders to compel the service of their crews by means and punishments which, under other circumstances, would not be required.

Good men, who do their duty, fear no punishment, and it is not inflicted upon them. The good men of the service, it is believed, desire the repeal of the late law. It imposes upon them the duty of bad men, who shelter themselves under it from the performance of their duty. It is not, in the opinion of your memorialists, punishment, whether it be of the lash, the dungeon, or the sword, that disgraces a man. It is the *offence* which merits such punishment that disgraces him. Lafayette was not disgraced by incarceration in the dungeons of Olmutz, Algernon Sydney by the axe of the second Charles, nor the great Apostle to the Gentiles by the repeated infliction on his person of the Mosaic law of "forty stripes to save one."

If a sailor be so lost to a sense of duty, feeling, and honor as to desert his post, or to commit crime, there is little danger

to be apprehended of his feeling disgraced by the infliction of punishment by the lash, the chain ball, or the treadmill.

And your memorialists would further add that the necessary power of moderate and prompt punishment for petty offences committed on board ship has been, and still is, conferred on commanders of British vessels, and was so upon commanders of American vessels until the last session of the Congress of the United States; and will only refer, in addition to the foregoing statements, to the high state of discipline and efficiency attained by these great maritime powers as a vindication of that practice, and an argument in favor of its reënactment.

A debate ensued on the subject between Commodore Robert F. Stockton [N. J.] who opposed the memorial, and George E. Badger [N. C.] who supported it.

Flogging in the Navy

Senate, January 7, 1852

Senator Stockton.—I am of opinion that the nation whose service is supplied with the best common sailors will excel in naval warfare as well as in all maritime pursuits. I am further of opinion that, in versatility, education, courage, and industry, our sailors in the whaling and coasting service excel those of all other nations. I am, furthermore, of opinion that the superiority of the American sailor has decided the battle in our favor in many a bloody conflict, when, without that superiority, it might have been otherwise. I desire to secure and preserve that superiority. To that end, and for humanity's sake, I am utterly and irreconcilably opposed to the use of the lash in the navy or anywhere else.

The longest, the most arduous voyages are made in the merchant service without the use of the lash. In the Polar seas among the icebergs of the Arctic and Antarctic Oceans, the intrepid New Englander pursues his gigantic game and hurls his harpoon; and, after a three years' voyage, returns with the oily spoils of his adventurous navigation. But he owes none of his success, his patient endurance, his exemplary discipline, and his indefatigable industry to the guarded ministrations of the lash. To say that men who can make such voyages and endure such hardships cheerfully and contentedly cannot navigate their own national ships without the infliction of the infamous lash is a libel. Is their nature changed the moment they step on

the deck of a national vessel? Are they less men—less Americans—as soon as the custody of the American flag or the national honor is intrusted to their keeping? No, sir; it is one of those inconsiderate, thoughtless opinions which mankind seems to think they have a perfect right to express in regard to sailors. It was not long since, sir, that I had a conversation on this subject with a gentleman who had for several years commanded a fine ship in the merchant service, but who is now an honorable, active, and efficient man of business in one of our large cities, and to whose integrity, generosity, and humanity I would intrust anybody *but a sailor*. After he had heard my views on this subject he instantly replied: "Why, you mean to treat them like human beings." The theory that the navy cannot be governed and that our national ships cannot be navigated without the use of the lash seems to me to be founded in that false idea that sailors *are not men*—not American citizens—have not the common feelings, sympathies, and honorable impulses of our Anglo-American race.

I do not wonder, when I look back on the past history of the sailor, at the prevalence of this idea. His life has been a life of habitual, I will not say of systematic, degradation. The officers who command him—the oldest, the bravest, and the best—have been accustomed from their boyhood to see the sailor lashed about the ship's deck like a brute. He who, by the laws of the service in which he is engaged is treated, or liable to be treated, like a brute soon comes to be thought of as at least but little better than a brute. Who in social life respects a man whose back has been scarred at the whipping-post? Into what depth of contempt does such a punishment sink its victim? And here is one of the worst evils of the system: It destroys those feelings of respect and kindness which officers ought to entertain for the sailors under their command.

But this is only one of the worst evils of the system. It destroys those feelings of regard and respect which the sailors should entertain for their officers. The truth is, there are no relations of affection and regard between them. The one is the oppressor, the other the oppressed. Sir, a man may fear or hate; but he neither loves nor respects his tyrant. The worst government upon earth is that of fear; the best, that of love and affection. These sentiments, by a law of our nature, must be mutual sentiments. Bonaparte was the idol of the soldiers because the soldier was his idol. They loved him because they supposed he loved them. There is nothing that gallant and brave men will not do and suffer for a commander whom they

love. Difficulties and dangers and death have no terrors for such men. In great battles, where the contest has been doubtful, those soldiers have always fought most desperately whose devotion to their commander was the greatest. It has always been considered as an essential element in the character of a successful commander that he should be able to excite and encourage the confidence and affection of the men under his command. But what confidence or regard can be expected under the government of the lash?

But more than this: the punishment destroys the sailor's own self-respect. What has honor—what has pride—what has patriotism to do with a man who may be, at the caprice of another, subjected to an infamous punishment, worse—aye, sir, in some cases worse a thousand times—than death? Can nobleness of sentiment or an honorable pride of character dwell with one whose every muscle has been made to quiver under the *lash*? Can he long continue to love his country whose laws degrade him to the level of a brute? The infamous "question" of torture now only remains as a blot on the page of Anglo-Saxon history. The whipping-post, where the worst vagrants used to expiate their offences, has been discarded from society. The worst offences in our State prisons are no longer punished by the lash. Why is all this? Why are those punishments now condemned as the shameful relics of a barbarous age? It is because the light of a better day has dawned. It is because the precepts of the Gospel of Christianity have ameliorated our laws. It is because society has made the discovery that, if a man is fit to live at all, he ought not to be divested of all the qualities which make a man by the infamous mutilation of his body. What is the answer which is given to all this by those who seek to restore this relic of barbarism to the navy? Why, they tell us we intend only to apply this system of punishment to seamen—we intend only to flog sailors. That is quite true. It is only sailors who are to be treated like brutes—aye, sir, worse than brutes. There is no man who hears me who would permit his dog to be thus treated. There is no spot on the habitable globe known to me where a man would be permitted to seize upon a dog and lash him until he cut the flesh from off his ribs, and the blood should be made to run down from his backbone to his heels. But, sir, it is only the sailor for whom this punishment is to be reserved.

Who, O Senators! is the American sailor that he is to be treated worse than a dog? He has been my companion for more than a quarter of a century—through calm and storm, privations, sufferings, and danger. In peace and in war I have lived with him and fought with him side by side, by sea and land. I have seen him in the northern ocean where there was no night to veil his deeds. I have seen him on the coast of Africa surrounded by pestilential disease. I have seen him among the West Indian Islands in chase of pirates with his parched tongue hanging almost out of his mouth. I have encamped with him on the Californian mountains and on the plains of the Mesa. I have seen the rays of the morning sun play on his carbine and his boarding-pike. I have seen him march one hundred and fifty miles through an enemy's country, over mountains and through rivers. I have seen his feet scarified by the projecting rocks as he hauled his cannon over the hills. I have seen him with no shoes on but those of canvas, made by his own hands, and with no provision but what he took from the enemy. I have seen him plunge into the Rio San Gabriel and drag his guns after him in the face of a galling fire from a desperate foe. And, finally, I have lain beside him on the cold ground when the ice has formed on his beard. Sir, his heart has beat close to my own. I ought to know him. I do know him. And this day—now, before the assembled Senate of the Republic, I stand up to speak in his behalf.

Mr. President, our sailors, as a class, have loved their country as well and have done more for her in peace and war than any other equal number of citizens. Passing by for a moment his antecedent glorious achievements, let me remind you that the American sailor has recently gained for his country an empire. Through perils by land and perils by water he has gained a golden empire which has added to his country's renown and greatness, and, perhaps, saved his fellow-citizens from almost universal bankruptcy and ruin.[1] And what has his country done for him? When the fighting was over you refused to give him "bounty lands," which you gave to the soldier—his comrade fighting by his side—and you have neglected to give him even your thanks. And now, to cap the climax of his country's ingratitude, these memoralists would have him scourged. They would scourge him for drunkenness when they put the bottle to his mouth. They would scourge him for inattention to his duty when injustice and wrong have made him for an instant discontented and sullen. Shame! Shame! You would scourge him while living and when dead consign him to a felon's grave.

Mr. President, to whom in time of peace are intrusted the

[1] California is referred to, in the conquest of which Commodore Stockton played an important part.

lives of the thousands who traverse the ocean? Whose energy and skill and hardy self-denying toil carry the products of your soil through the world, and bring back the rich return? It is the American sailor. By his superior qualities as a man he has enabled you to rival in commerce the boasted mistress of the ocean. Where is the coast or harbor in the wide world accessible to human enterprise to which he has not carried your flag? His berth is no sinecure. His service is no easy service. He is necessarily an isolated being; he knows no comforts of home and wife and children. He reaps no golden rewards for the increase of treasure which he brings to you. When on shore he is among strangers and friendless. When worn out he is scarcely provided for. Making many rich, he lives and dies poor; carrying the arts of civilization and the blessings of the Gospel through the world, he is treated as an outcast from the mercies of both. But look to your history—that part of it which the world knows by heart—and you will find on its brightest page the glorious achievements of the American sailor. Whatever his country has done to disgrace him and break his spirit, he has never disgraced her; he has always been ready to serve her; he always has served her faithfully and effectually. He has often been weighed in the balance and never found wanting. The only fault ever found with him is that he sometimes fights ahead of his orders. The world has no match for him, man for man; and he asks no odds, and he cares for no odds, when the cause of humanity or the glory of his country calls him to fight. Who, in the darkest days of our Revolution, carried your flag into the very chops of the British Channel, bearded the lion in his den, and woke the echoes of old Albion's hills by the thunders of his cannon and the shouts of triumph? It was the American sailor. And the names of John Paul Jones and the *Bon Homme Richard* will go down the annals of time forever. Who struck the first blow that humbled the Barbary flag, which for a hundred years had been the terror of Christendom, drove it from the Mediterranean, and put an end to the infamous tribute it had been accustomed to extort? It was the American sailor. And the name of Decatur and his gallant companions will be as lasting as monumental brass. In your war of 1812, when your arms on shore were covered by disaster—when Winchester had been defeated—when the Army of the Northwest had surrendered, and when the gloom of despondency hung like a cloud over the land—who first relit the fires of national glory and made the welkin ring with the shouts of victory? It was the American sailor. And the names of Hull and the *Constitu-*

tion will be remembered as long as we have left anything worth remembering. That was no small event. The wand of Mexican prowess was broken on the Rio Grande. The wand of British invincibility was broken when the flag of the *Guerrière* came down. That one event was worth more to the Republic than all the money which has ever been expended for the navy. Since that day the navy has had no stain upon its escutcheon, but has been cherished as your pride and glory. And the American sailor has established a reputation throughout the world—in peace and in war, in storm and in battle—for unsurpassed heroism and prowess.

Mr. President, I am no painter. I cannot draw with artistic skill the scene I would have you look upon. But it requires no artist. Picture it to yourself, sir. See the gallant, bold sailor who has served his apprenticeship with Hull in the *Constitution*, or one who helped to drag the guns across the San Gabriel, stripped and lashed worse than a dog. Can you stand it, sir? Yet your laws have authorized it to be done—it probably has been done. And now it is proposed to give authority to do it again. Will the American people stand it? Will this more than Roman Senate long debate whether, American citizen as he is, the sailor shall be entitled to all his rights as an American citizen or not; whether, freeman as he is, he shall be scourged like a slave? Cicero's climacteric, in his speech against Verres, is that, though a Roman citizen, his client had been scourged. And shall an American citizen be scourged? Forbid it, God of Humanity, forbid it. For my own part, I would rather see the navy abolished and the stars and stripes buried with their glory in the depths of the ocean than that those who won its glories should be subjected to a punishment so ignominious and brutalizing. Sir, if I had the power vouchsafed to others to impress my own feelings upon the hearts of those who hear me, I would rouse in the minds of Senators such a sense of national pride and human sympathy that they would with one voice demand that the memorial which seeks to rob the American sailor of his rights as an American freeman should be thrown under your table and trampled beneath your feet.

But it is said that the navy cannot be governed without the lash. As a general proposition I express my utter dissent to it. I admit that, among sailors, as among other classes, there will always be found some who are vicious and troublesome. That is the case in the army as well as in the navy; and they have abolished the lash in the army. It is as easy to get other and less offensive punishments for the navy as for the army;

and, if those punishments will not answer, the refractory person had better be driven in disgrace from the navy. He is not fit to be trusted in the hour of peril—he is unworthy to have the honor of the flag confided to him. Sufficient inducements should be offered to the better classes to enter the navy; and a part of those inducements should always be good treatment. A free use of the lash—nay, its probable use, its permission by law—has always been an objection urged by better classes to entering the navy. They prefer the merchant service, where they can at least select their own commander, while in the navy they know not into whose hands they may fall. Thus you see that the very necessity which is pleaded creates, in a great degree, the circumstances out of which it is supposed to spring. You flog because there are bad men in the navy, and the fact that you do flog excludes the better class of sailors from entering the service; so that the mischief is self-perpetuating. But, again, it is said that a large majority of the officers of the navy are of opinion that the lash is necessary and indispensable. Well, there are differences of opinion about it. We all know, however, that old notions and opinions are hard to be rooted out, and that men are very apt to love arbitrary power when they are to exercise it, and not be subject to it. It would seem, sir, that it is a part of man's nature to yield with great reluctance the smallest atom of power with which he may be invested. He is unwilling to admit that he can abuse it. Its safest depository he considers is his own hands. For these and similar reasons I think that the opinion of the officers of the navy on this subject should be taken with many grains of allowance.

The offence for which there seems to have been more lashes inflicted than for all other offences is that of drunkenness. Now, sir, the Government furnishes the liquor for the sailor and, if he gets drunk upon his allowance, the Government itself is responsible, and the sailor ought not to be flogged. If he procures it on board of a ship by theft or bargain, it is evidence of a laxity of discipline for which others are responsible, and for which the sailor ought not to be flogged. The lash, therefore, is not necessary to prevent drunkenness, not only for the reasons just stated but because it must be universally admitted that it never has and never can prevent the offence of drunkenness, if he who is habituated to it is permitted to have liquor.

The offence of disobedience of orders has also been punished by flogging. I will hazard the opinion that stopping the offender's allowance of tobacco, or rum, tea, sugar, and coffee would have been, in every case, a much more reasonable and a more

efficient punishment. And now, sir, what has become of this plea of necessity?—I will not call it in this connection the tyrant's plea; the officers of the navy do not deserve such a reproach from any one, and especially from myself, because I did, when in the service, execute, and permit to be executed, the law of the lash as I hope I did all other laws of the service, which I had sworn to obey and to enforce. And this should be a sufficient answer to those who expect to escape from the grasp of argument and facts by indulging individual recrimination, and will be sufficient to remind them that there is some difference in the position of those who are called upon to make the laws and those whose duty it is to execute them.

The officers of the navy, in my judgment, are entitled to high commendation. They are, as a class, brave, noble, generous, and patriotic men; and, in all the elements of character which constitute valuable public servants, they have no superiors. But, however much respect I may entertain for them as a class, it is my duty, which I shall endeavor to perform, to deal without reserve or false delicacy with their arguments, and the errors which disgrace and paralyze the service to which they belong. It does appear to me, Mr. President, that the argument, from necessity, has resolved itself simply into this: that the lash is an easy and short way to settle a trifling difficulty with a sailor. And so were the thumb-screw and the rack an easy and short way to get a confession, and the Inquisition settled matters of faith easily and readily. But, sir, there has been a great change in the opinions of mankind on this subject, and I hope the change will go on until the last relic of barbarism shall be banished from the world.

Senator Badger.—The views that have been submitted to the Senate by the Senator from New Jersey have in some respects struck me with surprise; and I think that, as I am a member of the Naval Committee, and as I entertain a very different opinion upon the subject of this petition from that which has been so forcibly and eloquently expressed by the honorable Senator from New Jersey, I could not think it right that remarks of this kind should go forth to the country without an instantaneous notice from some gentleman who belongs to that committee. In the absence of the chairman I have assumed that duty myself.

Now, what is the petition? It is simply a petition that the Congress of the United States will restore a discipline to the navy which had existed in it from its institution, and was discontinued only during the last session of Congress. It is an

application to restore a discipline to the navy which went into operation under the sanction of the immortal Washington, and was continued under all succeeding administrations of the Government; and surely I need not say, sir, that asking us to restore such a discipline is not asking us either to restore or introduce into the navy a system of horrible, barbarous, and detestable exaggeration of punishment such as cannot be stated without making the heart turn sick with horror and detestation.

The Senator's objections to the punishment which it is proposed to restore to the discipline of the navy divide themselves into two heads. So far as I see my task will be a very easy one, for the honorable Senator himself has distinctly refuted both of them in the course of his remarks. The first is: that this punishment is positively mischievous; that to subject the sailor to the lash is to teach him to be a coward; that, if you expect him to maintain the glory of the country, to maintain possession of the public ships, to resist the enemy who assails him, if you do not wish to build ships, not for yourselves, but for your enemies, you must abolish the lash, for, by accustoming the sailor to that punishment, you deprive him of the principles of honor and make him a coward. Yet, in the very same breath, the honorable Senator reminds us of those gallant and noble achievements which distinguished the progress of the late war with England —of those victories upon the ocean and lakes which have made the names of the naval commanders immortal, and shed luster upon this country; and of which I would only say that I should be entirely satisfied if the successes of our naval commanders under this or any modification of the law would equal them. How were those sailors bred? Under what discipline were they trained? Was it not with this very discipline of the lash, which the honorable Senator says must be abolished in order to make them brave? Every victory which they have gained, every monument of naval renown which, at the day, was received with shouts of joy and gratulation from one portion of the Union to the other, and the memory of which is cherished by us all, was gained by sailors, noble, daring, courageous sailors, but sailors who were formed under the discipline of the lash.

The next objection of the honorable Senator was that this punishment is inexpedient and unnecessary. Let us see how that is. As I should have said, it is a punishment that obtains in every naval service on the globe. It obtained in ours from the establishment of our naval marine until the last Congress. It is said by the honorable Senator that nothing is urged, in the form of an argument, in support of the necessity and propriety

of that punishment. He says the common course is to say that the punishment is necessary, that it cannot be dispensed with, and there leave the subject. What more does the honorable Senator say in reply but simply to make a strong and confident assertion; and what is that? That it is unnecessary. He says that no officer who is fit to command a ship needs the lash. Is that an argument, or is it not rather one assertion opposed to another? Certainly the opinion of the Senator is entitled to as much weight and consideration as that of any man in this country. But it is no more an argument than the opinion of any other man. And then, as I have said, the honorable Senator has refuted his own proposition by his own statements. What does he say? "He that is fit to command a ship does not need the lash." The honorable Senator has certainly told us, in the eulogy he passed on the celebrated victory of Hull in the *Constitution*, that Hull was fit to command a ship. I suppose that Decatur, I suppose that Perry, the conqueror of the lakes, that Morris, that Warrington were all fit to command ships. Yet they all needed, they all used, the lash. They formed their men with the lash; and, in using that term, I do not mean to say that they were engaged in excessive flagellation. No one asks or contends for that; but that they used it as a means of discipline, as a means of coercing their authority and forming the sailor to habits of obedience. Then, if the honorable Senator has conceded the fact that these men actually needed the lash; if, as he has shown, they were fit to command ships, I ask if he has not repudiated all his objections?

But, again: the honorable Senator has repudiated them further, for he tells us, in anticipation of what he supposes may be a reply, by an *argumentum ad hominem*, that when he was in the command of ships he used the lash. And why? He says he acted in obedience to the law. What law? There never was a law in the United States that required the commander of a ship to use the lash. The law authorized him to use it when it was needful. It made him the judge, and the sole judge, of that necessity. He has no assessors in his tribunal. He has no jury to determine when the lash shall be used. He is the one supreme judge on his own ship. The law says to him, in fact, "When you shall deem it necessary for controlling and directing your vessel and governing your men, for restraining misconduct, for giving a proper degree of order to the ship and efficiency to the service, you are at liberty to use the lash." Now, the honorable Senator says that when he was in command of a ship he used it. There is no man who knows him and who knows

the kindliness of his heart who would suppose that he ever used it except in a case of necessity in his judgment. Then he himself, being in the possession of a power, at liberty to use it at his own discretion when it was needful, and to forbear using it when it was not needful, actually used it. I suppose none of us here doubts for a single moment that he is fit to command a ship; he is eminently fit for it, at least he was while he was in the service. Thus I think I have a distinct refutation of the honorable Senator's own proposition. All the leading commanders in our service did need the lash as an instrument of authority, the honorable Senator himself included; they were fit to command ships, therefore the lash was needful.

The honorable Senator commenced his remarks by saying that that government is the best which rules by love and not by fear. I am a good deal in the habit of distrusting these abstractions. I do not know that we are exactly able to form an idea of what is the best government in the abstract. If we confine ourselves to the affairs of this globe on which we live, and on which our ancestors have lived before us, we will find that there never has been any such government in it, either human or divine, for one single instant of time. When that primeval pair from whom we have all sprung were placed in perfect and happy innocence in Paradise, with their affections all attuned in a harmonious disposition to love, to reverence, and to serve their great Creator, were they left without the influence of this principle of fear? Not at all. "In the day that ye eat thereof, ye shall surely die." However agreeable and pleasing it may be to us to imagine a state of society in which all men shall do exactly everything that is right and nothing that is wrong merely because of a spontaneous disposition to do it, it is very certain that no such government ever has existed, or ever can exist, until there is a total renovation of man's character. All governments, that is all wise and just governments, act by the double influence of hope and fear, by the application at one time of reward, at another of punishment. Is not that the rule in the domestic circle? We encourage and lead our children; but, if they will not be encouraged and led we punish them. We endeavor to induce them to do right from love to us; but, if they will not do it from love, they must do it from fear. It is the object to be accomplished that is to be looked at. If we are faithful to ourselves we do not leave them without the necessary coercive means. The end to be accomplished is obedience and submission —the doing right. If you can bring it about by encouragement and persuasion and love, so much the better. If you cannot,

you must resort to fear, because the end is too valuable to be sacrificed.

Mr. President, I believe greatly in the tribute which the honorable Senator has paid to the character of the American sailor; but permit me to say that the honorable Senator does not exactly, as I think, meet the question presented by this petition. He says the American sailor is a noble specimen of a man. As a general remark what he says is true. He says that such a man as that ought not to be degraded. I admit it; but is it proposed to degrade him? Is this a petition that Congress shall pass a law compelling the officers who have charge of the public ships of the country to whip all the men, those who behave well and those who behave ill? It does not propose that commanders shall do as our old friend Caleb Quotem, the schoolmaster in the farce, did. He had to leave his school to go to the review. He first went to the schoolhouse, and, not being able to remain long, he thought it best to whip the boys all round before he started, because, he said, he knew they would deserve it during the day. There is no proposal of that kind. These petitioners simply wish to restore that discipline in virtue of which a man who offends—a man who, by his conduct, soils this fair and excellent character which belongs to the American sailor—shall be made to suffer, and to suffer by punishment sufficient to restrain him, if possible, and, if not, at least to warn others whose virtue and whose principles may not be very strong from falling into a like error.

Suppose that a man should come forward and call upon society to abolish all punishments, and trust to the genial influence of moral suasion to prevent those who have a disposition to put their fingers into their neighbors' pockets and take their neighbors' pocketbooks, or those who desire to steal horses getting over their neighbors' hedges, or those who are bloodthirsty from cutting their neighbors' throats, it seems to me that he might offer precisely the same argument for abolishing all punishments. He would take up the criminal calendars which show how many men were punished for stealing, how many were punished for murder, and say: "These punishments are of no avail—they have done no good, and therefore no punishment should be inflicted." No man supposes for one moment that any institutions of society would ever prevent the occurrence of crime. But, before we come to the conclusion of the Senator, we must ascertain what would have been the condition of things in the navy and the condition of things in society in the case I have taken if all legal restraint were removed. Now the spirit of

evil would rise refreshed, like a giant refreshed with wine. It would go forth for destruction and ruin upon all the best interests of society and social order. The Senator's argument proves this—if it proves anything—that the system of punishment, severe as it was, was not more than adequate to preserve a tolerably sound and healthy condition in the naval branch of the service, and, in my opinion, it proves nothing more.

Sir, I should be extremely glad to see a state of things in which the marine service is carried on always, and in all circumstances, by free and willing minds; and where, under the stars and stripes, there shall never be a necessity for resorting to any punishment. We would all rejoice at it.

I should be extremely glad to believe that the particular punishment alluded to can be dispensed with; but it does not help forward the consideration whether or not it ought to be dispensed with to say that it is treating the sailor like a slave. That, I admit, conveys to the mind something shocking and terrible. Why, the honorable Senator would not at all object to confining the sailor who had been guilty of misbehavior in irons or in double irons. I think it would be extremely difficult to show how a man could exhibit more the appearance of slavery than with his hands and legs manacled with double irons, and he himself locked up in prison on board ship. It would not be thought right, if I objected to that punishment, to say that putting a man in irons was treating him like a slave. In one sense of the word, whenever we seize an offender and restrain him in the exercise of his liberty we are treating him like a slave, but we are treating him like a slave because he has shown himself to need such treatment. We take from him that liberty which he has abused—he shows that he is not worthy to exercise the freedom of heaven, and we are obliged to take away some of his privileges.

Doubtless there have been men who have been so happily constituted in the command of an armed force as to be able to lead about their troops, as it were, by a charm. There may have been men under whose command punishment was unnecessary. The poet has told us, of the gallant General Wolfe, that "his example had a magnet's force, and all were swift to follow whom all loved." Still, if the general who commands the army be not that attracting magnet which induces his men to follow him from love, the interest, not of the officers, but of the country, requires that the men should be made to follow him from fear. Why, the poets tell us that the herds voluntarily followed Orpheus when he moved through the fields; but the ordinary herds-

men of that day were under the necessity of carrying goads to drive before them their reluctant steers.

We cannot argue from these particular instances; we must adapt our law to the general condition and character of mankind; and I think it would as unwise to speculate upon the capacity of officers of the navy superseding stringent and effectual punishment by attracting the love of their sailors toward them, as it would be if any fortunate herdsman in ancient times had said he would take a flute or a fiddle, throw away his thong, go out into the fields, and endeavor by piping to induce his cows and kine to follow him home to their pasture.

The petition in favor of restoring flogging was not granted.

CHAPTER VIII

A Great Navy [1887]

Liberal Naval Policy of William C. Whitney, Secretary of the Navy under President Cleveland—Debate in the House on the Increase of the Navy: In Favor, William McAdoo [N. J.], Thomas B. Reed [Me.]; Opposed, William S. Holman [Ind.], Richard P. Bland [Me.], William C. Oates [Ala.]; Bill Is Enacted.

AFTER the Civil War interest in the navy languished. The President, as a rule, utilized the position of Secretary of the Navy in his advisory council as a place for an influential member of his party whose opinions on political policy in general might be of value, but whose conduct of his special department partook of the nature of routine.

When Grover Cleveland became President, however, he chose a vigorous man-of-affairs, William C. Whitney, as secretary of this department, who took most energetic steps to build up the navy at least to the rank of the naval establishments of the second-class European powers.

In 1887, in response to the urging of President Cleveland and Secretary Whitney, Congress in its appropriations for the Navy Department provided for the completion of ships authorized by the acts of 1885 and 1886, and for the building of seven new war vessels and their equipment.

Increase of the Navy

House of Representatives, February 26, 1887

This appropriation was opposed on February 26, 1887, in the House by William S. Holman [Ind.], the "Watch-Dog of the Treasury."

OUR EFFICIENT NAVY DEPARTMENT

Admiral Porter. The Queen has taken your Jack. You never *could* protect your Jack, Mr. Secretary

(And they go on with their little game, never heeding the signal of distress from the Oneida)

From the collection of the New York Historical Society

Mr. Chairman, there is an extraordinary demand at this time in certain sections of the country for the appropriation of large sums of money for the construction of ships of war, the building of forts, the manufacture of guns and torpedoes. Our present navy is above the standard of our navies for many

years. It is greatly beyond the strength and capacity of our navies of former years in time of peace.

Mr. Holman here presented statistics of the cost of the navy, including that which would be occasioned by the passage of the bill. The fourteen war vessels and four monitors already contracted for within three years involved an expenditure of $21,319,000. The seven new war vessels proposed by the bill would cost, exclusive of equipment, $4,950,000, making a total of $26,269,000.

And the gentleman from Maine [Charles A. Boutelle] comes forward with a further amendment to add ten steel cruisers and proposing to appropriate outright $15,000,000 for that purpose and $4,800,000 for the armament of the vessels, in all $19,800,000.

We are moving rapidly. Last year the entire appropriation for the navy, including $452,695 embraced in the sundry civil bill, only reached $15,070,837, but the enormous increase is seen in the fact that only twenty-eight years ago the entire annual cost of our navy was only $10,000,000.

And yet twenty-eight years ago we had as large a field for the employment of a navy as we have to-day, and, indeed, larger, for then the power and resources of our Government were not so well known, especially to remote nations, as they are to-day. This is rapid progression. Ingenuity itself is being exhausted for methods to reach the surplus in the treasury and maintain the present high rate of taxation. Within a few days bills have been reported to us from the Senate providing for the expenditure of $51,000,000 for war ships, fortifications, and munitions of war. If we were actually on the verge of war with a great naval power gentlemen could not display a greater solicitude for warlike preparation; this $51,000,000 equals the entire cost of the Government thirty-five years ago.

The Senate is demanding the expenditure of vast sums of money on fortifications which the experience of the late war shows would be of no value if an emergency for their employment should arise. It seems to be taken for granted that our people will tolerate these vast expenditures because they are demanded in the name of patriotism and for the public safety. Yet the experience of every war in which we have been engaged has demonstrated the fact that, when the calamity of war comes, our people are fully equal to the emergency, and that the supposed preparations made were of little or no value in actual war. Commodore Perry won his great victory with vessels which had been hewed from the forests in ninety days and after the tocsin of war sounded. In the late war it was the earthworks thrown up in the emergency, and not costly fortifications, that were of value. The vast accumulations of munitions of war were thrown aside and your army in the main fought with arms furnished on the spur of the occasion by the resistless energy of our people.

When this Republic was still feeble and all of Europe and the continent of America, except our own portion of North America, was under kingly power and every crowned head viewed with jealousy and alarm the growth of free institutions, the then maxim, "In time of peace prepare for war," was an expression of prudent statesmanship. But, with the United States now the foremost of the nations and guaranteed by Providence and the laws of geography of the earth from a great invasion, with no occasion for unfriendly relations with remote powers, that maxim is a term of unseemly timidity, not of patriotic solicitude.

But gentlemen cry out: "The work of creating a formidable war navy must not be delayed. We must have such a navy at once, forts must be erected, munitions of war must be at once provided," and the metropolitan press points with alarm to the defenceless condition of our coasts—defenceless since the days of the Revolution!

During the last sixty years on several occasions the relations between the United States and Great Britain have been in sharp antagonism. The Northeastern and the Northwestern boundary questions gave rise to fierce controversies. On the latter question the demand of our people was "54° 40′ or fight." Public indignation against Great Britain was intense; that government was then, as now, a great naval power, and yet on neither occasion did our people display the least anxiety in case hostilities should occur!

When we demanded of France and other European powers the abandonment of their scheme to give an imperial government to Mexico we were weakened by four years of intestine war, and yet actually disbanding our army. There the Government displayed its old-time confidence in its resources for any emergency; yet now, at a period of profound peace, there is a pretence of danger from abroad demanding prompt preparation!

Now, sir, what is the meaning of all this? It cannot be pretended that our commerce requires the protection of a war navy. The protection of commerce is the common interest of

all nations. Our restricted policy has ruined our carrying trade. That is a cosmopolitan employment in which those who carry the cheapest monopolize the trade, yet our commerce reaches every shore.

Our nation, having no "entangling alliances" with other nations, and being only related to them by the peaceful ties of commerce, and occupying such a commanding position not only on account of the number and intelligence of our people and the vastness of our resources, but on account of the high sense of honor and justice which has, from the beginning, characterized our Government in its intercourse with the nations, that, without an army or navy, our people and our commerce are secure in every quarter of the globe.

If we imitated the policy of monarchies and impoverished our people by supporting the costly luxury of a great navy it would not add one particle to the honor and respect which gather around our flag floating in peaceful security over our consulates from the ports of the half-civilized people of Corea to the most enlightened capital of Europe. Gentlemen who believe that a powerful navy would add to the respect and honor of the American flag abroad and our security at home underestimate the standing of their Government among the nations.

The mutterings of war between Germany and France recall an event which illustrates the moral power of a people too great and powerful to require the parade of armies or navies to command the respect of the world. In the closing hours of the death struggle between those powers over an issue which the petty ambition of kings had transmitted from age to age, when government was overthrown and the despotism of the commune overawed the capital of France, the flags of the nations supported by armies and navies went down and their representatives fled, while your flag floated over the ministerial residence of your ambassador, Elihu B. Washburne, in the midst of the storm of rebellion, as secure from insult and dishonor as it does from the dome of this Capitol. You had then three wooden ships in the European waters.

A feeble government may find it necessary to win respect by a display of power; this our fathers never did, even in the infancy of the Republic. It was not in harmony with their theory of government. The Republic they established rested and must ever rest on the moral power of a free and enlightened people.

The traditions of this Government are against a great military force. A few regiments to guard the frontier against

savage tribes, and to form the nucleus of an army when an occasion for an army should arise, a small and respectable navy to keep up the traditional courtesies between ours and other nations and furnish the Government with officers and men skilled in naval warfare for any emergency have been the extent of our war preparations in time of peace for a century—to this extent, following the practice of all the former years of our history, I think both army and navy should be maintained. Our present army and navy are now full up to the requirements of prudent statesmanship. Great Britain is the only naval power with which, by any reasonable possibility, serious complication can arise so long as we adhere to the traditional policy of this Republic of standing aloof from political relations with other governments, and this alone can result from our relations to the dependencies of Great Britain on this continent; and yet the most improbable event in the history of the times that are coming is a war between us and Great Britain.

The events of centuries have so adjusted the relations between us and Great Britain that a war could only be fatal to her. We hold as guaranties for her fair dealing, and as a bond to keep the peace with us, her vast possessions on this continent north of us. Every year increases the value of the security. Her people have hundreds of millions of dollars of wealth invested in the Canadian Pacific Railway and other public works in her North American possessions. She has Jamaica and other valuable islands on our coasts.

Does any human being doubt that, in the event of war between these governments, every vestige of British possession on this continent would be wiped out within a year? Within sixty days of the first tap of the drum announcing war between the United States and Great Britain an army which could not be resisted by all the force that the combined navies of Europe could bring to these shores would occupy the British possessions from the Gulf of St. Lawrence to Puget Sound and Jamaica and every other British island on the American coast. I do not speak extravagantly, but in moderation. Besides, such a war would be fatal to her carrying trade—her commercial navy. It would disappear from the ocean.

No, sir. We hold the highest guaranties ever held by a nation that Great Britain will not break the peace with us. Talk about a fleet entering the Northern lakes by the Welland Canal! We would occupy at once both sides of the line from the Welland Canal to the entrance of Lake Superior, and on west to Puget Sound. It is absolutely absurd to talk about a nation

sending a navy into the absolute possession of its enemy. We would not destroy the Welland Canal in such an event, but hold it by an irresistible force. Gentlemen greatly underestimate the resources of their Government.

Our torpedo system will see to it that no enemy's vessel ever enters our ports; every year renders it the more efficient. Again, let me ask, what is the meaning of this extraordinary solicitude for the creation at once of a great war navy, building forts, and laying up munitions of war? I need not say it is a proceeding in striking contrast with the policy of our fathers and of the statesmen of modern times even down to a recent period. The European governments, still overmastered by the traditions of centuries, traditions from which even France, after the fierce struggle of a hundred years, cannot escape, are armed to the teeth, not only to resist the aggression of neighboring States, but to overawe their people. So that Europe to-day, as in the past centuries, bristles with arms. Besides, the nobility and privileged class, which give strength to monarchy, could only be maintained by permanent military power. So that every state of Europe, except perhaps the free Swiss in their impregnable mountain fastnesses, leans on the sword, and armies and navies eat up the fruit of labor and fill the Continent with poverty and wretchedness.

On every frontier of the nations armies watch each other, and every coast is patroled by ships of war. War navies are the police of the colonies held by European powers. No nation of Europe has a large war navy unless it has outlying possessions as well as cities on its own coasts to overawe. Great Britain, with a monarchical establishment to maintain at home and wide-extended colonial possessions, has the greatest of the war navies of the world. Have gentlemen who are moving in this effort to arm America and place this free Republic on a war footing considered the wonderful contrast between European states accursed by military government and this blessed land of ours, resting in safety on the patriotism and manhood of its people?

The history of the world presents no other such contrast. The despotism of feudalism formed the governments of Europe; peaceful industry laid the foundation of the States of this Union. In Europe the petty ambition of kings, the mean ambition of conquest and dominion, organized armies and navies; the fruits of this in the course of centuries are kings, nobles, and serfs—in America the recognized natural equality of men and the dignity of labor, organized government, its fruit free insti-

tutions, a free, intelligent, and prosperous people, who, in the course of a few generations, have developed the foremost nation on the face of the globe.

And now, in a time of profound peace, with every guaranty of security from foreign interference increased beyond that ever known in the former years of our history, with no outlying possessions to require a war navy, it is proposed by gentlemen in the Senate and House to enter upon a system of naval and military preparation—ships, forts, and munitions of war—as if a formidable enemy was actually threatening our shores. Now, sir, I ask again what is the meaning of all this? The expenditure of the vast sums of money proposed to be expended in ships, fortifications, torpedoes, and military supplies, suggested by the surplus in our treasury—a surplus that excites the cupidity of the great multitude of men who seek to live off of the labor of our people—is an incidental and purely mercenary motive for this extraordinary movement, but this is but the impulse of the hour, the result only of sordid motives. If this was all, it would simply involve the useless expenditure of millions of money for the benefit of the great capital interest of the East with inconsiderable benefit to labor. Nothing less, nothing more.

But, sir, there is no disguise as to the real meaning of all this. The unexampled accumulation of great fortunes during the last quarter of a century—the outgrowth in a large degree of partial and vicious legislation, for, in the natural course of events and without favoritism in legislation, no such result was possible—threatens an entire change in your system of government. Through all the former years your Government has rested securely on the patriotism of your people and their devotion to your free institutions. Occasional public disorders and the natural unrest of multitudes of your people, conscious of unjust legislation which has created and centralized the wealth of our Government to an extent never before known in history, have alarmed the great capital interests, naturally timid and un-self-reliant.

The vast and dishonoring surplus in the treasury excites the cupidity of that great and ever-growing number of men who are resolute in their determination to live off of the labor of other men. Besides these influences, the press of the country, always eager to create a sensation by cries of alarm for the public safety, excites the fears of the well-meaning and timid.

Here, sir, are the underlying forces which are precipitating this Congress into an unprecedented expenditure for warlike preparation. But the most powerful of all these forces is

the silent and effective movements of the men of overgrown estates, the controllers of great monopolies and of centralized wealth, who have lost faith in the people and free institutions and seek the shelter of a strong Government, and the wealth drawn from labor is sought to be employed in vast sums to place your Government, in imitation of the governments of Europe, on a military foundation. Our Government, in the opinion of the new statesmanship, must lean for safety upon the sword—not upon the patriotism, the intelligence, and the manhood of our people.

This extraordinary movement has been for several years silently pressing its theories upon Congress, and now bills involving vast millions of the wealth of our people are demanding a hearing and forcing their way through the Houses of Congress. Warlike supplies, forts, ships of war! Can any man doubt that the ingenious methods by which the public mind has been prepared to accept these measures will soon enlarge your standing army as well as man your enlarged naval establishment? I protest against these measures. Your army as it is—although the occasion for it when established by our fathers, that of protecting our frontiers from the Indian tribes, has, in the main, gone by—I am willing to keep up, and a small and respectable navy, according to the traditional policy of our Government, to meet an emergency that might possibly arise—and such an emergency, according to our experience, may arise at remote intervals—and to keep up the occasional courtesies between our Republic and other nations—a cheap imitation of the customs of feudalism. In this way our small navy has, in our long periods of peace, been heretofore mainly employed.

But I protest even against the beginning of the revolution, silent as it may be, that aims at placing this Republic on a military footing—a revolution involving a change in our system of government, of which even many of the chief actors are, or seem to be, unconscious. If our people, in the dream of peaceful security, shall permit this vast accumulation of wealth in the national treasury to be the pretext and the occasion for entering upon this scheme of military power to bolster up the Government, instead of the old reliance on the patriotism of the people, a reliance sanctified by a century of prosperity and peace such as elsewhere the world has never witnessed, it will be the greatest misfortune that ever befell the human race. The day should be forever accursed that witnessed its beginning.

William McAdoo [N. J.] replied to Mr. Holman.

Mr. Chairman, I deeply sympathize with the efforts of the gentleman from Indiana [Mr. Holman] to be consistent in his efforts in saving the treasury. I wish to say to him that I am as jealous of the growth of military power as the gentleman himself, and if this were a question of the increase of the regular army of the United States beyond what it should be in time of profound peace I would join in protest with him against the passage of the bill.

But there is no man on this floor who knows better than the gentleman from Indiana that the statesmen of the infant Republic, including such men as President Monroe, always drew a clear line of demarcation between a standing army and a navy. The guns of our navy frown over the waters of the Atlantic and Pacific and our Northern and Southern borders, but never imperil the rights or liberties of any citizen of New Jersey or Indiana. It was the remark of one of the most profound of our earlier statesmen that the guns of a navy had never been turned against the liberties of a country and a people, and every dollar of these appropriations for the building of a navy and for the making of guns is for an armament which will be turned not against the country itself but against its invaders. Never against republican institutions, but against foreign aggression—in protecting our coast or defending our citizens abroad.

I believe, with the gentleman from Indiana, that this country never will be successfully invaded by an alien army. But the gentleman from Indiana must himself know that, while our soil may never be polluted by the foot of an invader, the cities on our coast are now at the mercy of the smallest navies in the world.

The gentleman from Indiana says why this great cry from the financial centers (meaning the sea and lake board cities), from the centers where great wealth and population have aggregated there comes up the demand for a navy. The gentleman from Indiana must know that the cause of that cry is because the financial centers and great cities are mostly located at exposed points for naval attack. It is not, for instance, because the capital in New York is threatened by the citizens of New York, but it is because all the people of New York, without regard to conditions, know that the city of New York is exposed to bombardment and destruction by naval powers, which we could neither oppose nor punish. The gentleman says he views with alarm the growth of military power in these efforts to defend our coast and to increase naval armament.

The gentlemen who occupied this House in 1859, and for many years prior to that time, who were true Republican-Democrats in the universal sense and stanch defenders of liberty, and as careful of the rights of man as the gentleman from Indiana, did not express any alarm—and we then had about the greatest naval power on earth—that the liberties of the citizens of the Republic were imperiled.

The gentleman from Indiana says we have already made vast appropriations. Well, we have made vast appropriations for numerous new post-offices and river improvements in his own and other States for instance. Does not the gentleman from Indiana know we have reached a crisis in the history of the American navy, that within a few years, and it may be months, about forty-five wooden vessels will, under the 20 per cent. dead line, be cut off the naval register?

A MEMBER.—That is the thing the Government ought to bless.

MR. MCADOO.—Yes, but we want something to be put upon our naval list to replace them. We have, to replace them now, only four completed cruisers. Is that a monstrous and improper thing to do? Does that endanger the liberties of the country? If we had thirty new vessels not one additional fighting man would be enlisted. All that is contemplated by the gentleman from Texas is two additional cruisers and four gunboats to those already authorized by law, making eleven vessels of modern design to uphold the dignity of the Republic abroad and its safety at home and provide for the moderate *personnel* of officers and men of the American navy.

It may be that the gentleman from Indiana is making up in his discussion on the floor in behalf of economical expenditure for some lapses from virtue of a very recent date. [Mr. Holman had voted for expensive public buildings and internal improvements in Indiana.]

And when he brings to the aid of an argument against this very moderate increase of the armament of the navy of the United States an attempt to prejudice the minds of the members of the House by appealing to them as representatives against military power he is doing that which, in my opinion, with all deference and the greatest respect for him, is unfair to the House and calculated to mislead the country. The people of this country have during our whole history stood by the naval establishment, and they are earnest now in demanding its rehabilitation.

No man in these United States, however humble and however

RIP VAN WINKLE AWAKES AT LAST
Cartoon by Victor Gillam

great, and no State of this Union will be in any peril or his or their rights and liberties by this increase of the navy. We are not building up the navy for the purpose of foreign aggression. Our flag, I trust, will never be floated over any foreign soil by way of conquest. God made our country to bless, not curse and oppress, mankind. It is not the policy of this Government to interfere with outside nations, save when they infringe our domestic rights.

But unhappily for us, and unhappily for all mankind, we have not yet arrived at that latitudinarian condition of universal politics wherein wars and rumors of wars have ceased; and when the gentleman from Indiana appeals to this House to arm the defences of the country with nothing more formidable than delusive rhetoric, as if we were in the millennium period, he forgets the divine edict that until the end of time (unfortunately on account of our weak and wicked human nature and the irrepressible conflict between good and evil, and because of the selfishness of nations), the hand of man will be raised betimes offensively or defensively against his fellow-man.

Within the limits of my own country I believe in the doctrine of the fullest individual and local liberty, but I have not yet arrived at that period where I can indorse the sentiment that the nations of the earth have joined together in the bonds of fraternal love and friendship, and that all envy, and hatred, and selfishness, and evil have been eliminated from the heart of man.

It is unfortunate, but it is true, that the selfishness and the cupidity of nations are like the selfishness and cupidity of individual man himself; and that as an undefended country, though the richest in the world, we are exciting the cupidity as well as the jealousy of all the nations of the earth.

As earnestly as any man who loves his kind I deprecate war even when necessary and just under existing conditions as cruel and brutal, and trust that as intelligence and modern civilization advance it may become infrequent and finally cease. On the other hand, the sword has frequently made way for liberty and afterwards defended its existence against its enemies; and as against universalism in politics I am deeply impressed that the spirit of nationality has elevated and ennobled our advanced mankind and secured the freedom and prosperity of people against the incursions of their more ignorant, debased, or vicious neighbors. The mission of nations and races has not yet ceased, much as we may desire the consummated fraternity of all mankind.

Richard P. Bland [Mo.] came to the support of Mr. Holman.

Mr. Chairman, there are always pretexts for taxing the people. Especially do we find pretexts here for the continuation of excessive taxation upon the American people. All this cry about a "new navy," "great guns," and "armaments," by which we are to be prepared for war in time of peace, comes from a spirit, sir, that desires to perpetuate in this country an onerous system of taxation, the burdens under which the people of the country yet groan, and which have ground them down into poverty. I believe, myself, that in time of peace is the time we should prepare for war. But how is that to be done? I reply that it is by reducing our national debt. That is the first step.

Why Germany to-day, in order to hold her people in bondage and subject to taxation, is making the pretext of war against France, and France is taxing her people to death to prepare for war under the pretence that it is defending against Germany. We are called upon here to further burden the American people on the plea that the whole world may dump their armaments down upon us and destroy some seaboard city. I repeat, sir, that the proper way and the only way to prepare for war in time of peace is to build up the citizens of the country in their wealth and prosperity, wipe out national and State debts, and then, when war comes, we will be in a situation to meet it; for at last all success in war depends upon the financial ability of the people to carry it on; and, in order to be prepared, financially, for any war that may come, we want in time of peace to stop this infamous policy of imposing burdens upon the people to continue taxation for the purpose of perpetuating the public debt.

We are in no danger of war, and this whole bill, for the purpose of building fast cruisers and war ships, is simply an excuse to tax the people of the country in order to squander in a few large cities the amount of the appropriation—a perfectly useless expenditure of money, as has been shown by the operations of twenty years past, during which time, as I have said, five hundred millions have been expended—squandered—in such useless protection as these ships are said to afford.

Thomas B. Reed [Me.].—This country has 4,000 miles of seacoast lined by great cities filled with wealth which is almost incalculable. No nation at any time in the history of the world has been free from danger of war; and this generation and many

more will pass away before the fear of war will pass away from the earth.

There never has been since the foundation of the world any other time to prepare for war than the time of peace, and the truth of that maxim is more impressive to-day than it ever was before. In the time of our fathers it required but rude fortifications and rude artillery to protect any nation against invaders. One single fact will show and one single sentence will demonstrate the tremendous change which the last thirty years alone have given rise to.

In 1856 the largest cannon that was built in France cost 2,600 francs. To-day it will cost twice that sum to fire once the biggest cannon in France. Twice the cost of the largest cannon of thirty years ago is the price of the single discharge of the greatest cannon of to-day.

Years ago the preparation of ordnance was a matter of but short time, and I venture to say that I shall surprise some members even of this House when I say that the utmost skill of our mechanics or of the mechanics of any nation on the earth can give us an 8-inch gun only at the expenditure of eighteen months of time; and that a manufacturer with the best equipped plant in Europe will not dare to promise you a 16-inch gun in a less period than three years, and nobody dares to promise it with certainty in this country in less than four.

Now, every man who has noticed the fortifications along our coast knows that we have not a single fort which can stand for one single day the impact of a ton of cold cast-steel flung with a velocity which can send it 11 miles through the air.

Under those circumstances, and with the additional facts staring us in the face that of all these great guns we have but two, and those only of 8-inch caliber, while it takes 18 months to build the smallest and four years to build the largest, and that we have cities along our shore the ransom of which would be worth the whole empire of Rome—under those circumstances to this terrible ordnance the gentleman from Indiana [Mr. Holman], with the simplicity of the earlier and better days, would oppose "free hearts and free foreheads!" What an amazing statement is this for a man to make to three hundred intelligent men, that to-day of all the days we need no preparation for war! Why, to-day we need it more than we ever did.

We all know that against modern guns, against modern armored ships, we are in precisely the condition of helplessness which ought to awaken the attention of every citizen, and is

awakening the attention of every citizen outside of Congress, and inside where they have no other schemes on hand.

Why do we hesitate to build these ships? Is it because we are poor, while a surplus that threatens to burst the vaults of the Treasury exists in the revenues of the United States to-day? Never was there a time when we needed more to do this work. Never in the history of the country was there a time when we could afford to do it as we can now.

The gentleman from Missouri [Mr. Bland] says that this is a scheme to spend the money of the people. Who is it that is presenting this scheme? Look in every newspaper, look at every expression of public sentiment, and you will find that it is the people of the United States who demand that this disgraceful situation shall end. And have not the people of the United States a right to expend their own money when it is overflowing the treasury? The gentleman from Missouri does not want all the other money of the country to keep company with his silver dollars as they are hoarded in the treasury vaults. We should expend it for the needs of the people. Is that economy? Is it honest economy? I stand here to say that it is.

Why do we raise money? For what purpose? For what object? What excuse have we for filling the treasury except that the money is to be used for the purposes for which the people demand expenditure? Is it the right thing to buy a dollar's worth for a dollar when you have got the dollar? That is our situation. We want fortifications; we want guns; we want a navy; and, thanks to the wise administration of the Republican party for twenty-five years, we have got the money in the treasury to pay the bills for the things which we want and which the nation demands. [Applause on the Republican side.] And I say to this House to-day that it is not going to be the fault of the Republican party if the nation does not have what it wants and what its necessities demand.

William M. Springer.—Why did not you give it to them in the Forty-seventh Congress, when you had full control?

Mr. Reed.—Look at the gentleman from Illinois. [Laughter.] He is the only man that does not appreciate the gravity of the situation. [Renewed laughter.] He is the only man in this House that interposes with the frivolous, the threadbare, the worn-out objection of "Why didn't somebody else do this in times past?" Why, the gentleman never got within a decade of the present in his life, and his party surrounds him where he stands. [Laughter.]

William C. Oates [Ala.].—From an infant republic of four

million population one hundred years ago we have grown to sixty million, and are keeping abreast with the foremost nations of the earth in all that develops and marks national greatness. The martial tread of soldiery drowns not the hum of industry, for we have no army except a skeleton, and need none except a few regiments to prevent Indian depredations in our Western Territories.

We have no navy and no coast defences, yet the flag protects our commerce, which mounts up into the millions annually in value, just as securely as though we had the finest navy afloat. And now, sir, when this country is in a state of profound peace and amity with all other powers, when there is not the slightest probability of a rupture of those relations, nor the most remote prospect of war, it is gravely proposed to expend $25,000,000 for the building of ships of war and floating batteries, and twenty-one million more for coast defence. These expenditures are proposed in addition to the increase in our naval establishment already provided for at the last session and the present, which I regard as ample. A few swift-sailing cruisers as a nucleus for a navy in case of war are all the vessels that we need.

The nations of Europe maintain great navies and immense standing armies which they are constantly increasing; they watch each other like gladiators in the prize ring, ready to strike for supremacy and conquest the moment any prospect of success is discovered; while the United States, as a nation content with her own, presents to the world in strong contrast at once a theme for the philosopher, the statesman, and the historian, which can but add to the greatness of the American name.

The people of the old monarchies of Europe, in addition to the unrest of constant apprehension, are loaded down with burdens of taxation almost unbearable to keep on a war footing the armies and navies of their royal masters, who may at any moment plunge into war to support their imperiled dignities, titles, or possessions. Hundreds of thousands of those unhappy people, over whose future hangs like a funeral-pall the eternal black cloud of war, despairing of peace and rest in their fatherland, have annually flocked to our peaceful country, which is not only the asylum for the oppressed of every land, but also by our too liberal policy for their paupers and criminals as well. Now, sir, under whatever pretext measures are seriously urged which in my judgment will inaugurate a policy of maintaining a large and expensive naval establishment I shall oppose them.

If that were accomplished a demand would soon follow for a corresponding increase of the standing army, all of which

would of course impose new and permanent burdens of taxation upon the people. They have to foot the bills, and I am not willing to impose upon them a dollar's expense for that which is unnecessary. I contend, sir, that we need no navy except that which has been provided for during the present Congress. I contend, sir, that a large naval establishment, like a large army, is inconsistent with the spirit and genius of our Government, inconsistent with economy, and dangerous to the liberty of the people. I deny that any necessity exists for the naval establishment proposed by the two Senate bills. There is nothing in the foreign policy of this country which renders it necessary.

Our isolation—the great oceans intervening between this and every other powerful nation—relieves us from complications in the quarrels of others, and of itself frees us from the necessity of being prepared for war in time of peace. When other considerations are also weighed, it is next to impossible that this country can be involved in war if her people and the Government do not turn their attention to preparations for it.

But, sir, whenever a nation, like an individual, is weaponed—armed to the teeth—and prepared for war, that nation will soon find some pretext for it. Belt a pistol around the most peaceable citizen and let him never go among men without it, and ere long that man's character will undergo a change, and he will shoot some one or be involved in personal rencontre with his fellow-man.

The character of a nation is always indicated by if not identical with the individual character of the people who compose it.

Again I ask from what source is there any danger to be apprehended? Have we anything to fear from Great Britain? The relative situation of the two countries furnishes a complete answer in the negative. English bottoms transport to and from this country nearly all our commerce, which amounts to hundreds of millions annually.

Can she afford to lose such an immense carrying trade? When, in all her history, except when insanity pervaded her counsels and caused her to lose her American colonies, did Great Britain ever go to war if it was pointedly against her commercial interests? By a war with the United States her commerce would be practically destroyed. Look at her possessions stretching entirely across the continent on our northern border. These we hold as hostages for the empire's good behavior. She will never sacrifice them.

Is there any danger of a war with Spain? The Queen of the Antilles and her sister islands with her depleted coffers and heavy debt furnish us absolute security against danger from that direction. There is no friction between this country and France, Germany, or Russia. Wherein can there arise any cause for war between this country and any other? It has been said by some whose apprehensions had obtained ascendency over their judgment that owing to the defenceless condition of

RIDING THE HIGH HORSE

Cartoon by Victor Gillam

From the collection of the New York Public Library

our seaboard we were liable to be humiliated at any time. That the little South American state of Chili might send one of her ships of war into New York Harbor and lay that city under contribution or in ashes. Let the possibility of that assertion be granted. What of it? Will it ever occur? Are the rulers of Chili idiots seeking self-destruction? May we not assume that they are men of some sense and some knowledge of the history, numbers, and resources of this country?

Have they not heard of a war among ourselves which occurred a quarter of a century ago and continued four years, in which the total enlistment of soldiers on each side exceeded thirty-three hundred thousand, and which cost more than $3,000,000,000? Do they not know that if they were to assault one—even the smallest—of our defenceless seacoast cities that

before many months elapsed Chili would have no place on the map of nations except as an outlying territory of the United States?

It is utterly reckless to assert even the possibility of such a course upon the part of Chili or any power similarly weak, and hence that illustration of the necessity for numerous ships of war or coast defences has no force. Sir, it is utterly impossible for a sufficient number of nations ever to combine or form an alliance and bring men enough to our shores to whip us. With all the States united in defence of the flag, as they now happily are, the Union is invincible and can defy the world in arms.

Mr. Chairman, upon the subject of coast defence it does seem to me that the lessons we learned in our late civil war should not be forgotten. Was it not demonstrated time and again that no masonry—brick and mortar and stone, however skillfully put together—can resist the heavy projectiles which powerful guns can hurl against it? Nothing has yet been discovered which can resist them but earthworks, and these can be constructed with comparative rapidity and upon an emergency.

A very few first-class heavy guns may, and, I think, should, be constructed for coast defence and placed in New York Harbor and a few other important points. But as there is no prospect of early need for them, and as the inventions and improvements in gunnery and engines of war which are constantly going on render at the end of every decade all those previously cast almost or entirely useless, I am unwilling to vote any large sum for this purpose.

To use the mildest term applicable to a greater appropriation, I say it would be recklessly improvident. For twenty years we have had no coast defences and no navy worthy to be called such, and yet no nation has had the temerity or insanity to molest our commerce, insult our flag, or violate our rights. Whence comes the clamor now, in the face of this long experience and profound peace, for both coast defence and a navy? Some New England fisherman has lost his bait.

I do not like, when I can avoid it, to question the motives of others, but most obviously these three Senate bills providing for the expenditure in the aggregate of $46,000,000 originated and are advocated in obedience to either a mere sentiment of national ostentatiousness, a fear of invasion which is ridiculous because baseless, or they are the result of a well-devised scheme to take advantage of that unsubstantial and transitory popular idea in favor of building a navy, to make a permanent dis-

position of the surplus revenue, and thereby dispense with the necessity of revising the tariff and reducing taxation.

One small but well-equipped gun factory, where experiments in the construction of a few first-class heavy guns may be made and subjected to the severest tests, is all that we need, and all that I will vote for in that direction.

We are often reminded of the injunction of the Father of his Country, "In time of peace prepare for war." That was full of wisdom when uttered. But the United States was a different country then from the United States of to-day. Then we were weak in numbers and resources, could scarcely stand alone, vast and powerful only in future possibilities. To-day, taking into the count all our advantages of numbers, resources, extent, and situation of territory, intelligence, courage, and patriotism of our people, this is the most powerful nation of the earth.

Money and credit are the real sinews of war, and that nation which in time of peace secures the most money and the best credit makes the best possible preparation for war. Pay our debts with the surplus revenue and stop the interest from running against the people. It is better for them that the surplus should be buried in mid-ocean than devoted to placing the country upon a war footing.

War is the greatest calamity to which a nation can be subjected. Let the people continue their peaceful pursuits. Let this great country continue to depend for its defence upon the affections of the people. Like a great giant, in the consciousness of his strength, let this nation, with no unrighteous schemes of diplomacy or conquest, unarmed but defiant in the maintenance of its rights, remain a marvelous example of peace and prosperity.

What need is there for such a naval establishment as the bills I have referred to provide for? Can we hope to compete with Great Britain, and in this respect become the rival of the mistress of the seas? That would involve this country in an annual expenditure which no administration could survive. Large appropriations and reduction of taxation are utterly antagonistic propositions. The true friend of the people, who honestly desires to reduce the amount of taxes collected from them, cannot be the friend and supporter of these propositions, involving such large expenditures.

Gentlemen should be consistent and get on the one side or the other of this question. You cannot ride both horses at once. Sir, I prefer to take the side of the people and lower

taxes. This country has no use for coast defences, a navy, and an army. Their maintenance would add many millions to the annual expenditure, and they might be used to overawe the people and diminish the individual liberty of the citizen.

Wherever a great navy and a standing army are established in time of peace they have always become permanent institutions of the nation and are never reduced. Let gentlemen consider well of the probable consequences before they vote to saddle such burdens upon those who are to succeed us.

Sir, there is too much of a disposition among some of our people to imitate European countries even in our legislation as well as in habits and manners. It is un-American and I despise it. Our Government is unlike every other in the world, and consequently the conduct of others should be of no force as precedents here. Let the burdens of this Government and its restraints of natural liberty rest so lightly upon the citizen that he scarcely feels them and contentment and comfort will be constant visitors to the poor and will knock with even hand at the doors of the palace and the cottage.

For the defence of such a Government in case of invasion a million of the best soldiers that ever enlisted in any cause would, in less than sixty days, be on the march to meet our country's foes. The seas would swarm with our privateersmen, and with our exhaustless resources and limitless credit the best ships of war would appear under our flag as though constructed by the hand of magic. Let us so legislate as to maintain a healthy sentiment within our own country; we have nothing to fear from without.

The amendment providing for the construction of the seven new vessels was passed by a vote of 151 to 72. The bill passed the House by a vote of 107 to 28. The Senate passed the bill with amendments. A joint conference was appointed, whose report was accepted by both Chambers, and President Cleveland approved the act on March 3, 1887.

CHAPTER IX

Pensions

Sen. Robert Y. Hayne [S. C.] on "Greed, Not Gratitude, the Animus of the Service Pension Bill"—President Cleveland Vetoes Many Private Pension Bills; His Message on the Subject—Cushman K. Davis [Minn.] Introduces in Senate a Dependent Pension Bill—Debate: Sen. Davis, Preston B. Plumb [Kan.], Henry W. Blair [N. H.], Gideon C. Moody [S. Dak.], George G. Vest [Mo.], John R. McPherson [N. J.], James H. Berry [Ark.], Gen. Joseph R. Hawley [Conn.], Henry M. Teller [Col.]; Bill is Passed.

ON April 29, 1830, Robert Y. Hayne [S. C.] delivered in the Senate a lucid narrative of the pension acts of the Government from the time of the Revolution to date, a forcible presentation of the principles which should govern such legislation, and a shrewd interpretation of a "general service pension bill" which was then before Congress, applying virtually to all who were in any way connected with military service during the Revolutionary War. The purpose of this bill, the distinguished Senator claimed, was to justify the continuance of the exorbitant taxes of the "American system" by opening up new means of extravagant expenditure of the revenue accruing therefrom, and he charged that the manufacturers and politicians of the North had devised the measure for their selfish interest.

Although no serious attempt was made by the advocates of the bill to refute the argument of Senator Hayne, the bill was passed by the votes of the National Republicans and a number of Democrats who had regard to the "old soldier vote" in their constituencies.

"Greed, Not Gratitude"

Senator Hayne on the Animus of the General Service Pension Bill

Mr. Hayne said this was a bill similar in its character to that which was brought forward during the last session of Congress, and which was then known by the significant appellation of the Mammoth Pension bill. Under the specious pretext of paying a debt of national gratitude to the soldiers of the revolution, it was calculated to empty the treasury, by squandering away the public treasure among a class of persons, many of whom, said Mr. Hayne, I do verily believe, never served in the Revolution at all, and others only for such short periods as hardly to entitle them to praise. I will yield, sir, to no gentleman here in a deep and abiding sense of gratitude for revolutionary services. Brought up among Revolutionary men, I imbibed in my infancy, and have cherished through life, a profound reverence and affection for the whole race—feelings which will descend with me to the grave.

But, sir, when the attempt is made to thrust into the company of the war-worn veterans of the Revolution, a "mighty host," many of whom, probably, never even saw an enemy; when a door is to be opened wide enough to admit mere sunshine and holiday soldiers, the hangers-on of the camp, men of straw, substitutes, who never enlisted until after the preliminaries of peace were signed; when, after having omitted to pay the debt of gratitude really due to the honest veterans who toiled through all the hardships and dangers of the great contest, you now propose to scatter the rewards earned by their blood with so profuse a hand as to enable all who ever approached the camp to share them; I must be permitted to say that neither my sense of justice, nor my devotion to Revolutionary men, will suffer me to lend my aid to the consummation of the injustice.

Sir, I know that deep as have been the wounds inflicted by the chilling neglect experienced by many of these gallant officers of the army who fought your battles throughout the war of the Revolution; keenly as they have felt the injustice which delayed, until a recent period, to satisfy their just demands, founded upon contract, none of these things, nor all combined, have inflicted so deep a wound upon their feelings, as the admission, to all the honors and rewards of the Revolution, of

persons who shared few of the hardships, and none of the perils, of the war. He who toiled through the heat of the day has found the evening feast spread out for those whom he knew not in the camp, or on the field of battle, and whom he never saw till he found them at the festive board provided by the gratitude of the country.

It has been my pride and pleasure, on all proper occasions, to manifest my gratitude for the heroes of the Revolution, not merely by professions, but by the most unequivocal acts. Here and elsewhere, my efforts have not been wanting to manifest the sentiments by which I am animated. But, in refusing to support such a bill as this, I am conscious I am only doing that of which the veterans of the Revolution themselves, if they were here present, would cordially approve. In doing justice to the country, I am also doing justice to them.

In the further examination of this subject, I propose, said Mr. Hayne, to take a brief review of the pension system in this country, and to point out the new, extravagant, and alarming provisions which it is proposed, by this act, to introduce into that system.

The people of the United States, even before the Revolution, had imbibed a deep-rooted and settled opposition to the system of pensions.

In the country from which they had emigrated, they found it operating as a system of favoritism, by which those in authority made provision, at the public expense, for their friends and followers. In Great Britain pensions have long been used as the ready means of providing for the "favored few," at the expense of the many. This system affords the most convenient means of appropriating the industry and capital of the laboring classes for the support of those drones in society, the "*fruges nati consumere,*" who occupy so large a space in all refined, civilized, and Christian countries. Our ancestors had seen, and severely felt, the effects of such a system, which necessarily converts the great mass of the people into the "hewers of wood and drawers of water" for the privileged orders of society. When our Revolution commenced, therefore, a deep, settled, and salutary prejudice against pensions almost universally prevailed. On the recommendation of General Washington, however, Congress had found it necessary to provide that the officers of the regular army who should continue to serve to the end of the war should be entitled "to half pay for life." So strong, however, was the prejudice against pensions that the officers entitled "to half pay for life" found it

necessary so far to yield to public opinion as to accept of a "commutation," in lieu thereof, of five years' full pay.

In 1806 provision was made by law for pensions to all persons disabled in the military service of the United States during the Revolution; and in 1808 the United States assumed the payment of all the pensions granted by the States for disabilities incurred in the Revolution. And from that time to 1818 the principle was settled that all persons disabled in the course of military service should be provided for at the public expense. Here, then, was the American pension system established on a fast and sure foundation. The principle assumed was not merely gratitude for services rendered, for that principle must have embraced civil as well as military pensions, and is broad enough to admit all the abuses that have grown up under the pension system even of Great Britain. Our principle was that pensions should be granted for disabilities incurred in military service—a measure deemed necessary to hold out those inducements to gallantry and deeds of daring which have been found necessary in all other countries, and which we have, perhaps, no right to suppose can be safely dispensed with in ours.

Here, then, we find, that, up to the year 1818, the principle of our pension system was disability, a wise and safe principle, limited in its extent, and almost incapable of abuse.

In 1818, however, the Representatives of the people, in Congress assembled, seem to have been seized with a sudden fit of gratitude for revolutionary services; an act was accordingly passed which provided for pensioning all who served in the army of the Revolution "for the term of nine months, or longer, at any period of the war," and "who, by reason of reduced circumstances, shall stand in need of assistance from their country for support." Here it will be seen that the principle which limits pensions to disabilities incurred in the service is abandoned, and length of service and poverty are made the conditions on which pensions are hereafter to depend. The history of that bill, as I have heard it from the lips of those who were actors in the political scenes of that day, is not a little curious. All agreed that the operation of the bill was to be confined to those who had, during the Revolution, given up their private pursuits, and devoted themselves exclusively to military service. No one imagined for a moment that any person who had rendered casual services merely; men who had only shared, in common with all the other citizens of the country, the dangers and sacrifices of the times, were to be the objects

of public bounty. The original proposition, therefore, was to confine the provisions of the bill to those who had served in the regular army, either during the war or for a term of three years, and who stood in need of assistance from their country for support. But, sir, in the progress of that bill it was discovered that in a certain quarter of the Union a number of soldiers had been enlisted for a term of only nine months, and, to cover their case, "three years" was stricken out, and "nine months" inserted. Sir, no one foresaw the consequences of that measure. It was supposed that even this provision would include only a few hundred men. The whole charge upon the treasury was estimated at one hundred and sixty thousand dollars. And, seduced by this expectation, and by the popular cry of "Justice to the old soldiers," Congress were persuaded to pass a bill which they were assured could not make any very considerable addition to the pension list, which would be lessened from year to year, and would soon cease to exist. And what, sir, was the result? What a lesson does it read to legislators! How forcibly does it admonish us to weigh well the provisions of this bill before we undertake to enlarge or extend the pension law of 1818.

The number of applicants for pensions, under the act of 1818, considerably exceeded thirty thousand!—a number greater than that of General Washington's army at any period of the war; exceeding the whole number of soldiers that could be supposed to be alive in 1818. Notwithstanding the "rigid rules" laid down by the Department of War, it was found impossible to exclude the applicants. Upward of eighteen thousand were admitted and placed on the pension roll, one-third of whom at least (as it afterwards appeared) had no claim to be there. The claims of upward of twelve thousand of the applicants were found, even at the first examination, to be entirely groundless, and were accordingly rejected. The money required to pay the pensions was found to be not one hundred and sixty thousand dollars as had been estimated, but three millions, one hundred and eight thousand, three hundred and three dollars! And no one can tell to what extent these appropriations would have been carried if Congress had not interposed to correct the evil. The whole country had become alarmed. No one doubted that an immense number of persons were receiving pensions who had no claim to them whatever. Men who had never served at all, or for very short periods; men who had given away their property to their children, or conveyed it in trust for their own benefit; in short, everyone who was old enough

to have served in the Revolution found little difficulty (notwithstanding the rigid rules of the War Department, of which we now hear so much complaint) in getting themselves placed upon the pension list.

To rescue the country from this enormous evil, the act of May 1, 1820, was passed, which, without changing the terms and conditions on which pensions were to be granted (still requiring service "for a term of nine months," and "indigent circumstances"), yet provided guards against frauds by requiring every applicant to submit "a schedule of his property," and to take the necessary "oaths," etc. Sir, under the provisions of this act, intended only to prevent frauds, upward of six thousand persons were stricken from the pension roll. Two thousand, three hundred and eighty-nine never even presented a schedule, or made an application under this act; and the Treasury was thus relieved from a charge of a million of dollars per annum.

Now, sir, with the experience afforded by this case one would really suppose that the very last thing that any statesman would propose would be still further to enlarge and extend the provisions of the act of 1818, again to unlock the treasury, which was wisely closed by the act of 1820, and subject it to a charge similar in character, and probably much greater in amount than was imposed by that law, and to open a wide door to all the evils, aye, and much greater evils, than were experienced by the country under the operation of that act.

What will be the effect of this bill? While the law required "a term of service of nine months or longer," although persons might be admitted who had rendered no efficient service, yet you had some security against abuse by requiring specific proof of a continuous service under one enlistment, with the power, in most cases, of referring to the original muster rolls and thereby detecting all attempts at imposition. Now, however, that the most casual service, and for the shortest periods, is to be taken into the account, who can fail to perceive how much the chances of imposition will be multiplied? Resort must be had to oral testimony. And what more uncertain than the memory of man as to the duration of another's service half a century ago? Who is there that ever served a month in the army, or who was even a follower of the camp, that will not be able to adduce certificates to show that he served for just so long a time as he may choose to lay claim to?

But, sir, there is a stronger objection to this measure even than its liability to abuse. It is that it rests on no sound

principle applicable to military pensions. If there be any principle recognized and fully established in this country it is that pensions must be confined to those who were separated by the nature of their service from the great mass of the community and who devoted themselves exclusively to military duties. It is a palpable absurdity to talk of giving pensions to all the people. Those who, in the course of the Revolution, performed only in common with the rest of their countrymen the military service required of every citizen stand upon an equal footing. He alone who, in the strictest sense, put off the citizen and became a soldier, and who, in abandoning the pursuits, relinquished also the habits of private life, can have any just claim to be provided for at the public expense. If we once depart from the rule I have laid down and declare that mere casual service for short periods and at long intervals shall entitle a man to a pension, you cannot stop short of pensioning all who rendered any service whatever in the course of the Revolution. All the State troops will be embraced within this principle, and this bill, accordingly, proposes to provide for them. The militia will come next, for what true-hearted Whig was there in all America who did not, in the course of the seven years' war, render, from time to time, services equal in the whole to the period of "nine months"? I think I may very confidently assert that there was not, in the State of South Carolina, one genuine patriot of '76 capable of bearing arms who did not, in the course of the Revolution, spend more than nine months in the camp, and I should be glad to be informed on what principle they can be excluded, if these nine months' men are to be embraced? But I shall be told that the militia will all in due season be provided for, a proposition to that effect having already been submitted in the other House. It comes, then, to this, that all are to be pensioned who rendered military service of any description during the war. But were not services equally valuable rendered by men in civil stations? All these must of course be included, and it will finally come to this, that pensions must be provided for everyone who lived at the period of the Revolution; you cannot stop short of that, if the principle embraced in the bill is to be sanctioned.

But, sir, there are higher considerations connected with this question than any I have yet urged. I consider this bill as a branch of a great system, calculated and intended to create and perpetuate a permanent charge upon the Treasury with a view to delay the payment of the public debt and to postpone indefinitely the claims of the people for a reduction of taxes

when the debt shall be finally extinguished. It is an important link in the chain by which the American system party hope to bind the people, now and forever, to the payment of the enormous duties deemed necessary for the protection of domestic manufactures. The point aimed at is to create demands upon the treasury equal at least to the whole amount now annually absorbed by the public debt. The great effort will be to accomplish this fully in the course of the ensuing four years, so that when the debt shall be paid the whole twenty-four millions of dollars now collected under our present unjust, unequal, and oppressive impost laws may still be found necessary to meet the demands upon the treasury created by law.

It is impossible, sir, it seems to me, for any man to look around him and see what is going on in both Houses of Congress without perceiving that this is a fixed and settled policy, to which the attention of the party to which I have alluded is constantly and steadily directed. We witness the astonishing spectacle in a free, popular government of constant and persevering efforts to increase the public expenditures; to spend money merely for the sake of having it expended; and we find the representatives of the people devising and contriving innumerable schemes to rivet upon them a system of taxation which both in its character and amount is almost without a parallel in history. All the popular topics of the day are eagerly seized upon and pressed into the service. Under the pretext of promoting the internal improvement of the country gigantic schemes are brought forward and the aid of the Government obtained for them to enormous amounts. The execution of all the plans of internal improvement proposed even during the present session of Congress would absorb the whole amount now annually applied to the public debt. But the advocates of this system are unwilling to rely on one class of measures only. We have schemes for colonization, education, distribution of surplus revenue, and many others, all admirably calculated to promote the great end—the absorption of the public revenue. But, sir, of all the measures devised for this purpose, this grand pension system got up last year and revived during the present session is by far the most specious, the most ingeniously contrived, and the best calculated for the accomplishment of the object. Here gentlemen are supplied with a fine topic for declamation. "Gratitude for revolutionary services!" "the claims of the poor soldiers!"—these are the popular topics which it is imagined will carry away the feelings of the people and reconcile them to a measure which must unquestionably establish a permanent

charge upon the treasury to an enormous amount, and thereby furnish a plausible excuse for keeping up the system of high duties.

How comes it that this spirit of gratitude for revolutionary services should have slumbered for fifty years? Why is it that, without a single petition praying for such an addition to the pension system as this bill proposes, we should be seized with such a sudden and inveterate fit of gratitude to the old soldiers that we seem determined to seize them by force, and, taking no denial, to insist on their receiving our bounty, whether they will or no? Sir, the reason is obvious. The period for the final extinction of the public debt is at hand. Colonization has not yet been sanctioned; internal improvement advances too slowly; the distribution of the revenue meets but small favor; the existence of a surplus must, by some means or other, be prevented, and this must be accomplished without any reduction of duties. The friends of the system have therefore gone forth upon the highways, and "all are bidden to the feast."

There is another great object collateral to this, and having, I do verily believe, an important bearing on this measure. Sir, it is not to be denied that this country is divided into two great parts, the paying and the receiving States, or, as they have been sometimes called, "the Plantation States" and "the Tariff States," the former paying by far the greater portion of the duties which supply the treasury, and the latter receiving nearly the whole amount expended by the Federal Government. The present system operates so as to lay the taxes chiefly on one portion of the country and to expend them on another, and while, therefore, it is the interest of the former to diminish the expenditures and to lessen the taxes it is manifestly the policy of the latter to increase both.

I do not know that a more striking illustration of the unequal action of this Government can be adduced than is furnished by the operation of the pension system. Sir, no one can doubt that the sacrifices and services during the Revolution of the Southern were in no respect inferior to those of the Northern States. But when the pensions came to be distributed, how did the account stand? Of the twenty millions paid to pensioners, about fifteen millions have gone North, and only five millions have been expended in the South and West, and three millions out of every four hereafter to be applied to pensions will be expended north of the Potomac. Sir, although we know that the revolutionary services of the North did not surpass those of the South, we never complained of this inequality in the expendi-

ture so long as the pension system was confined to the proper objects of national bounty. But, when it degenerates into a mere scheme for the distribution of the public money, we have a right to complain of the gross inequality of the system. It is the fact (well known and understood at least in one quarter of the country) that the Southern States pay by far the greater portion of the taxes, while they receive hardly any part of the expenditures, which leads to that lavish distribution of the public treasure which, we are told, has now become "the established policy of this country." The parents of the American system are unequal taxation and unequal appropriations; to them it owes its being, and without their sustaining influence it would be destined, after dragging out a brief and precarious existence, to "perish miserably."

The United States Government, in the time of the Civil War, and in the years following it, enacted most liberal laws for the payment of pensions, not only for disability and dependency growing out of the war, but also in recognition of service therein.

Notwithstanding these laws and their liberal construction by those in charge of their execution, many applicants for pensions were disqualified for inability to present the required evidence of disability, dependence, or service. As time passed such applicants, in increasing number, resorted, through their local Representatives, to Congress to have that body pass "private pension" bills in their favor. It became the habit of Congress to pass, and the President to approve, these bills without examining into the merits of the applications.

Upon his accession to the presidency Grover Cleveland determined to combat this abuse, as he considered it, so far as lay in his power. Of the private bills presented him during his first term he vetoed or "pocketed" 297, and during his second term 116, making a total of 413. These he considered were, on their face, mere raids on the Treasury.

Meeting with a great deal of criticism, interested from the old soldiers and Republican politicians, and disinterested from many citizens belonging to neither of these classes, President Cleveland, in his annual mes-

sage of December 6, 1886, dwelt somewhat extensively upon the subject of pensions in general and private pension bills in particular.

Private Pension Bills

President Cleveland

On the 30th day of June, 1886, there were 365,783 pensioners on the rolls of the bureau.

The total amount paid for pensions since 1861 is $808,624,811.57.

The number of new pensions allowed during the year ended June 30, 1886, is 40,857—a larger number than has been allowed in any year save one since 1861.

From January 1, 1861, to December 1, 1885, 1,967 private pension acts had been passed. Since the last-mentioned date, and during the last session of the Congress, 644 such acts became laws.

It seems to me that no one can examine our pension establishment and its operations without being convinced that through its instrumentality justice can be very nearly done to all who are entitled under present laws to the pension bounty of the Government.

But it is undeniable that cases exist, well entitled to relief, in which the Pension Bureau is powerless to aid. The really worthy cases of this class are such as only lack by misfortune the kind or quantity of proof which the law and regulations of the bureau require, or which, though their merit is apparent, for some other reason cannot be justly dealt with through general laws. These conditions fully justify application to the Congress and special enactments. But resort to the Congress for a special pension act to overrule the deliberate and careful determination of the Pension Bureau on the merits or to secure favorable action when it could not be expected under the most liberal execution of general laws, it must be admitted, opens the door to the allowance of questionable claims and presents to the legislative and executive branches of the Government applications concededly not within the law and plainly devoid of merit, but so surrounded by sentiment and patriotic feeling that they are hard to resist. I suppose it will not be denied that many claims for pension are made without merit, and that many have been allowed upon fraudulent representations. This

has been declared from the Pension Bureau, not only in this, but in prior administrations.

The usefulness and the justice of any system for the distribution of pensions depend upon the equality and uniformity of its operation.

The American people, with a patriotic and grateful regard for our ex-soldiers—too broad and too sacred to be monopolized by any special advocates—are not only willing, but anxious that equal and exact justice should be done to all honest claimants for pensions. In their sight the friendless and destitute soldier, dependent on public charity, if otherwise entitled, has precisely the same right to share in the provision made for those who fought their country's battles as those better able, through friends and influence, to push their claims. Every pension that is granted under our present plan upon any other grounds than actual service and injury or disease incurred in such service, and every instance of the many in which pensions are increased on other grounds than the merits of the claim, work an injustice to the brave and crippled, but poor and friendless, soldier who is entirely neglected, or who must be content with the smallest sum allowed under general laws.

There are far too many neighborhoods in which are found glaring cases of inequality of treatment in the matter of pensions, and they are largely due to a yielding in the Pension Bureau to importunity on the part of those, other than the pensioner, who are especially interested, or they arise from special acts passed for the benefit of individuals.

The men who fought side by side should stand side by side when they participate in a grateful nation's kind remembrance.

Every consideration of fairness and justice to our ex-soldiers, and the protection of the patriotic instinct of our citizens from perversion and violation, point to the adoption of a pension system broad and comprehensive enough to cover every contingency, and which shall make unnecessary an objectionable volume of special legislation.

As long as we adhere to the principle of granting pensions for service, and disability as the result of the service, the allowance of pensions should be restricted to cases presenting these features.

Every patriotic heart responds to a tender consideration for those who, having served their country long and well, are reduced to destitution and dependence, not as an incident of their service, but with advancing age or through sickness or misfortune. We are all tempted by the contemplation of such a

condition to supply relief, and are often impatient of the limitations of public duty. Yielding to no one in the desire to indulge this feeling of consideration, I cannot rid myself of the conviction that, if these ex-soldiers are to be relieved, they and their cause are entitled to the benefit of an enactment under which relief may be claimed as a right, and that such relief should be granted under the sanction of law, not in evasion of it; nor should such worthy objects of care, all equally entitled, be remitted to the unequal operation of sympathy, or the tender mercies of social and political influence, with their unjust discriminations.

The discharged soldiers and sailors of the country are our fellow-citizens, and interested with us in the passage and faithful execution of wholesome laws. They cannot be swerved from their duty of citizenship by artful appeals to their spirit of brotherhood born of common peril and suffering, nor will they exact as a test of devotion to their welfare a willingness to neglect public duty in their behalf.

As an indication of the attitude of other recent American statesmen on the question of pensions, the following debate has been selected from the many that have taken place in Congress since the close of the Civil War.

On December 4, 1889, Cushman K. Davis [Minn.] introduced in the Senate a bill granting pensions to ex-soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to dependent relatives of deceased soldiers and sailors.

It was referred to the Committee on Pensions, which reported it on January 10, 1890. It came up for discussion in the Committee of the Whole on February 28.

Pensions for Disabled Ex-Soldiers and Sailors

Senate, February 28–March 31, 1890

Senator Davis explained the bill. It granted pensions of $12 a month to all soldiers and sailors of the Civil War who were incapacitated for earning their living by mental or physical disabilities, not the result of their own vicious habits. The bill had been indorsed by the grand encampment of the Grand Army of the Republic,

the voluntary association of the military and naval veterans of the Civil War.

The principal reasons for this bill, outside of and apart from its natural justice, inhere in the fact that in the lapse of time since the war the mode of proof prescribed by the pension bureau, and by the law as it now is, and indeed any mode of proof by which it is required to attribute and trace the disease or the death by force of pathological connection to the casualties or hardships of the service, has become so difficult that in the majority of cases it is impossible to procure it. Among the people who favor this liberalized legislation an absolute conviction has arisen, strengthened by the undoubted fact that not a man went into the war and served through its infinite casualties and hardships and came out as well as he was before and without the seeds of disease in his constitution, that the technical bar in the way of proof to entitle a disabled soldier to the liberality and bounty of his country should be removed. This bill will call for the following items of expenditure additional to any items of pension expenditure under legislation as it now exists:

As to invalid soldiers	$14,400,000
As to the increase of pensions of those soldiers who are now drawing pensions below the sum of $12 per month	5,908,800
As to those soldiers now unpensioned, dying annually and leaving widows	1,728,000
As to those having pensions dying annually and leaving widows who would not be pensionable under present legislation, but who are pensionable, of course, under this bill, the annual expense is estimated to be	864,000
As to the widows whose claims are now pending or have been rejected, the bill calls for an expense of	10,800,000
As to the children of widows in cases heretofore allowed, or whose claims are pending and will be allowed, the increase of from $2 to $4 per month raises an item of	1,632,000
As to the children who will become pensionable under the pending bill and who are not pensionable under present legislation, the increase is	576,000
Making a total of	$35,908,000

Mr. President, I have very little to say in terms of advocacy at present of this measure. It received the very careful and considerate attention of the Committee on Pensions. All of the committee who attended (and that was all but one; one member was prevented from attending any of our conferences) were unanimous upon this measure. It comes here without dissent from the members of either party on either side.

To my mind the great merit of this bill is, first, that it will relieve the suffering soldiers of this country who are dependent upon their labor for support from that never-ending, heartless, and despairing pursuit of their claims in the pension office, in which they are brought to eventual failure by a necessary application of the present rule that there must be, by a strict method of testimony, an establishment of the pathological connection between death or disability and the military service. I think it is a generally conceded fact—it is the result of the personal experience of nearly every man who was engaged in the privations and hardships of that tremendous struggle—that no person ever came from it, after any length of service, the same man physically or as to health that he was before. I have no doubt that every man who went into the army and served for any length of time discounted health and length of years in the course of his service, and to erect between him and the bounty which the Government in its hour of need promised the barriers of an artificial proof with which he cannot comply, because in the lapse of years his companions have been scattered and many of them have died, is to work under the forms of law a most substantial injustice.

The bill stops this ever-broadening and this ever-deepening stream of pension legislation in special cases—yes, and in general cases, too—which is rolling in upon us here from year to year, and unnecessarily, for the want of general and practical and comprehensive legislation, taking up so much time of the national legislature.

Preston B. Plumb [Kan.] introduced an amendment granting pensions ranging from $4 to $24 a month, according to the disability, and eliminating inquiry into the applicant's financial ability, and the cause of his physical disability.

Mr. President, whatever the Government is to do it ought to do ungrudgingly. Let it do nothing if it will, but if it does anything at all let it do it in such a way that no man who upheld the honor of the flag shall be required to make statements requiring the assent and the concurrence of his neighbors which put him upon a footing that must necessarily be, if not degrading, at least compromising to a degree among his neighbors.

If we are going to say that we will limit the benefits of this proposed act to a class, let it be to such a class as can bring themselves within its purview without making exhibitions of this kind. If we intend that it shall be a fair reward for disability actually existing and which we think ought to be presumed to have occurred during the military service of the applicant, then let us remit this inquiry into the financial condition and give to everyone who is disabled according to the degree of his disability or withhold it entirely.

There has been no theory of the administration of the pension laws, or of the obligation of the Government under them, which ever limited the pension to the man only who was financially disabled; it was to the man who was physically disabled, and the rich, as well as the poor, have had out of the treasury that which, measurably at least, made up to them the result of their physical incapacity by reason of their service; and it is not proper that the Government at this late day, or at any day, should draw new lines and say that, in the plethora of our resources, having given pensions to the rich and the poor and having given pensions of hundreds of dollars a month to rich widows, and to rich men because they had rank, we now draw the line on the private soldier, who is left, and say, "We will give you a pension only if you prove by the affidavits of your neighbors that if you do not get this aid you will go into the poorhouse." It overturns, it destroys, it uproots the entire theory of the pension laws as heretofore enacted and administered, and there ought to be some good reason for it if this change is to be made.

But, Mr. President, this amendment of mine commends itself to me chiefly because it is definite and certain. Every Union soldier will know, when this bill passes so amended, by the mere fact of a medical examination, just exactly what he is entitled to, and he will not be subjected to the mercy of an unfriendly administration of the law at headquarters. All he need to do will be only to make his application and through the methods and under the instrumentalities known to the Pension Office exhibit the degree of his disability in order to enable him to go upon the pension roll at a rate which he will understand and know as well as the Commissioner of Pensions himself.

I have made no calculation as to the amount that this amend-

ment will cost. I do not think that enters into the case, as we are either going to provide for men who are disabled or we are not going to provide for them. If we are obligated to one, we are obligated to all. If we are not obligated to all, then we are obligated to none. Logically the situation requires the enactment of a bill which will respond to every man according to the degree of his disability.

The pensions we gave to the Mexican war veterans and the veterans of 1812 related not at all to disability, but took them by the arm, rich and poor, loyal and disloyal, North and South, East and West alike, and billeted them upon the national bounty.

Henry W. Blair [N. H.].—Mr. President, to those who have been long in this chamber it will occur that the idea of the dependent-pension bill, as it has been called, originated some four Congresses ago; that for a long time I advocated that proposition against much opposition on both sides of the chamber; and that finally, in the Forty-ninth Congress, Senate bill 1886 was passed, which went to the other House, and in the other House it was amended very much according to the provisions of the present bill, and there became liable, if this bill be liable at all, to the criticisms which have been suggested by the Senator from Kansas. As the Senate passed that bill it was sent to a Democratic House, which amended it, and even in that form it was vetoed by the President.

I certainly would not be willing that this Senate and this Congress and this Administration should go to the soldiers of the country with a tender of any such bill as that which was vetoed by the Executive in the last Administration.

We give in the committee's bill a sum of money that goes at once without possibility of controversy or of those inaccuracies and those injustices which are perpetrated by the examinations of medical boards. One board will give the total amount; another board, under precisely the same circumstances, will not give to the soldier more than one-half or one-fourth; and thus great and gross inequality and partiality are manifested in the administration of the law.

Gideon C. Moody [S. Dak.] of the committee said:

My views are not in accord with those of the Senator from Kansas [Mr. Plumb] as to the construction of either the bill reported from the committee or of the proposed amendment.

This bill being merely a dependent-pension bill, the very the-

ory and nature of it is that the recipient of the bounty of the Government must be a dependent person.

The amendment proposed by the Senator from Kansas, it seems to me, is in the nature of a service-pension bill. All that it requires different from a mere service-pension bill is that the party claiming the benefit shall show by the evidence that he is incapacitated from performing manual labor. No matter whether he is dependent upon his daily labor or not, though he may be worth millions, he is entitled under the amendment, it seems to me, to this pension, if he is physically disabled from the performance of manual labor.

It was not the theory of the original bill, and it is not the theory of the bill as amended by the committee, that one who is not dependent upon his daily labor, one who has sufficient means of support outside of that, shall receive this bounty of the Government. Two things must combine in order to entitle him to receive it: First, he must be without means of support except his daily labor, or, as the section has been amended, he must be dependent upon the charity of some one who is not legally bound for his support. Secondly, he must be incapacitated from performing such daily labor.

The difference between the proposition as submitted by the Senator from Kansas and this bill is then plainly this: His proposition is to give the soldier the benefit of this pension, if he is disabled, without requiring him to show that he is dependent upon his daily labor or that he is a needy person who needs the pension that is proffered him. This bill requires that he shall show he does need the pension.

The bill as it came to the committee did admit of the construction that it required the showing of a total incapacity for the performance of manual labor to entitle the applicant to the benefit of the proposed act, but as reported by the committee that is not necessary. All that is necessary is to show that he is incapacitated for the performance of labor. To what extent? In such a degree as to render him unable to earn a support. What would any commissioner with brains enough to occupy the position with credit to himself or the Government construe that to mean? Would it be that if a man could earn the bread he put into his mouth alone, and not the raiment that clothed him, he could earn a support; or if he could earn his clothing, and not his food, that he could earn a support; or that, if he could pay for the shelter over him and procure neither raiment nor food, he could earn his support? Certainly no. He would hold necessarily that the support of a man meant something more

than mere food alone, raiment alone, or shelter alone; that it meant what was necessary to the maintenance of the man, not only the food, but the clothing, and not only the clothing, but the shelter; and therefore, if he was not able to earn a full support, he was not (within the meaning of the provisions of this bill) able to earn a support, and would be entitled to the benefit of the act.

The theory of the bill is simply that no man who has served his country faithfully shall be permitted to go to the poorhouse and be counted as a pauper; that the Government shall, so far as it is able to do so, sustain him, and that when he has passed away his widow, dependent as she was upon him, shall be taken care of, and that his minor children shall also be cared for by the Government.

GEORGE G. VEST [Mo.].—Mr. President, I take it for granted, with the past experience we have had on the subject of pension legislation, that this bill will pass in any sort of shape that meets the most extreme views upon the opposite side of the chamber, and I am simply discharging what I conceive to be my duty to the people who have sent me here when I point out to the friends of this measure (for I am not one of them) some glaring defects in the construction of the bill.

As I understand the meaning of this dependent-pension bill, it is that any soldier who served three months in the Union army and afterward becomes dependent by accident or disease entirely disconnected with his military duty is to receive $12 per month from the bounty of the Government, but when we come to his parents that idea is utterly ignored, and instead of being dependent we find that the parent who is independent receives the bounty of the Government as the soldier would receive it who had become dependent by reason of disease or accident.

Suppose a man by his own labor is earning $10,000 or $20,000 a year; suppose he is in robust health; is he entitled to $12 a month out of the taxation imposed upon my constituents, because his son was three months in the Federal army and has died? Is that a dependent pensioner? Why, sir, it is a monstrous proposition upon the very face of it, and yet it was deliberately inserted in this bill, and the very word "manual" was stricken out of the original bill, so as to include a man who was not working with his hands for his support, but was working as a clerical laborer or with his brain.

Now we come to the section which is proposed to be amended by the Senator from Kansas [Mr. Plumb], and we encounter the

very same difficulty we had in the consideration of this bill when it was vetoed by President Cleveland. The chairman of the Pensions Committee of the other House then gave it one construction and the chairman of the Pensions Committee of the Senate gave it another. Now we are told in one direction it is total disability, that a man must be unable to earn a living, to make his own support, and we are told by the Senator from New Hampshire [Mr. Blair] that it means a man whose ability to earn as full a support as he could before he went in the army is impaired—that is, if he has only four-fifths of the ability, instead of five-fifths, his ability is impaired. I repeat, are we to leave this to the uncertain discretion of the Commissioner of Pensions? We all know what that means. We know that you might as well throw open the doors of the treasury and say "Walk in, gentlemen, and help yourselves" as to leave it in any such condition as that. President Cleveland saw this same objection and made it to this bill, and I am glad to see that my friend from Kansas has now profited by that statement.

The friends of the bill do not know what it means; they do not agree upon this floor; they do not agree before the two Houses of Congress; they do not agree in the committee, and because the President vetoed it "liberty lay bleeding in the streets" and the Grand Army of the Republic nearly took up arms about it; and yet, if the bill is passed now, the chairman of the committee does not know how much money it will take. He says it is a very indefinte subject. We all know, when we had the arrears-of-the-pension bill here, it was guessing every time; we did not know how it would turn out, and no man can tell within millions and millions of dollars how much money is to come out of the treasury by reason of this legislation; and yet we must have it without asking a question as to even the meaning of a single section.

If the Senator from Minnesota be correct, then this is simply a service-pension bill, for every man that served in the Federal army had his faculties or ability to labor more or less impaired.

JOHN R. MCPHERSON [N. J.].—The three-month soldiers, scarcely one of whom went to the front at all or was ever in the presence of an enemy, thousands and tens of thousands of them, who were subjected to no hardship, who received no wound, who suffered no illness, are placed upon an exact equality with those who fought during the entire war. The man who has lived until to-day and is about to die of old age will have the consolation of knowing under this bill that, while he rendered but

three months' service, in other words, while he was for three months only connected with the military or naval organization of the Government and in reality never saw any service at all, his children are to have $4 a month, while the children of the honest and willing soldier who did bear all these burdens have to put up with only $2 per month.

The more I look at it the more I am convinced that the bill ought to be recommitted to the Committee on Pensions and that a bill should be reported here that does in reality grant a pension to the dependent parents or the dependent children of soldiers who are justly entitled to pensions, but it should cut off all these rights and privileges which the bill seems to give them where they are not dependent at all.

SENATOR DAVIS.—It is a new idea, brought to light for the first time by the Senator from New Jersey, that the question of pensioning a widow or the children of a soldier should be made to depend at all upon the dependence of either. In all the history of this Government, in all of its pension legislation from the beginning, I venture to say that the idea or condition precedent of dependence as to the widow or child of a deceased soldier was never introduced.

When the bill passed, and passed willingly, without a call of the yeas and nays, putting the widows and children of the survivors of the Mexican war upon the pension list, the question was not raised then that it should be made to appear that those widows and children were dependent. Nobody then supposed the impossible case that some widow or child might be found who had inherited a million dollars from a deceased ancestor or a deceased husband.

SENATOR MCPHERSON.—There always comes a time in the history of this Government when it is proper to grant a service pension to soldiers of a late war, but that time has not yet arrived for the soldiers of the Civil War. It will be at that period of time when, in the general order of nature and the order of things, a man is supposed to have reached an age in which it is impossible for him, if not possessed of a sufficiency of this world's goods, to support himself. When that time comes, then give a service pension, if you please, and I will join the Senator in giving it, to the survivors of the late war.

But the pension here provided for is said to be a dependent pension. Dependent upon what? How can any man of a proud and manly spirit who served three months in the war of the late rebellion, a man of sufficient wealth to enable him to leave millions of dollars to his children—how can he go to the treasury

of the United States, if he has any shame about him at all, and ask the treasury to give his children after his death the pittance of $4 a month? No, I would make no such legislation.

There are thousands of men who served in the ranks of the Union army who were entitled, by reason of disability, of wounds, of sickness, to pensions under the law and never asked for them. The presumption is, when a man applies for a pension, that he needs it; and the presumption further follows that, as he has received a pension, his children are also entitled to it. I would not throw one single obstacle in the way of the widow or the minor child of any soldier now receiving a pension, provided they were dependent, and in like manner with the parents of the soldier.

James H. Berry [Ark.] opposed Senator Plumb's amendment.

I have been told that during the last campaign, throughout the Northern States, it was promised the Union soldiers that if the Republican party controlled this Congress they should all be placed upon the pension roll; that the surplus which is in the treasury was theirs, and they had a right to have it divided among them. If that be the purpose, then I ask the Senator from Kansas to come forward and say so in direct terms, and not seek, under the pretence of an amendment for those who are disabled and unable to take care of themselves, to put them all on the pension roll.

There is no man, I take it, who served in the Union army, or perhaps but very few, who is to-day under forty-four or forty-five years of age. Bear in mind this amendment does not require that the disability shall have been incurred during the service, but if it exists to-day they will be entitled to a pension, and there are 95 per cent. of them who can come forward and prove that they are to some extent incapacitated for manual labor and suffering under certain disabilities.

If the Senate is ready to pass a bill giving a service pension to the Union soldiers, let it be put in plain and direct words, and do not mislead the people of the country by saying that we are trying to keep the old soldiers out of the poorhouse when the object and purpose is to put them all upon the pension roll.

If this is to be done, I think we ought to hear something about the probable cost of an amendment of this character. Already we are paying between $90,000,000 and $100,000,000 annually for pensions, and still the cry is for more. It was said

by the Senator from Minnesota, I think, that some eight hundred thousand soldiers are not yet upon the pension roll. I want to know where the revenue is to come from, with the enormous expenditures that we are making, if you pass an amendment of this character, which practically puts all upon the pension roll.

Mr. President, I for one do not believe that is just or fair. I do not believe that the time has come when the soldiers have a right to be quartered upon the other people of the United States of America. While I honor as much as any man the Union soldiers, those who fought for their country and those who were wounded in time of battle, yet there are other citizens whom it is our duty to care for. As was said by the senior Senator from Kansas [Mr. Ingalls] a few days ago, distress exists throughout this country among the farming and laboring classes, and we are standing here to-day and having read statements from the Department of Agriculture giving a reason for this distress among the farmers of the country; yet the appropriation goes on under every pretence whatever to increase it from year to year, and the taxes go on, and there is no relief and no diminution.

On March 31 General Joseph R. Hawley [Conn.] opposed the Plumb amendment.

It is not agreeable to say no to what is supposed to be the request of soldiers of the Republic. But I do not believe that the American soldiers ask for this amendment. I will stake whatever little my political salvation is worth that I can meet five thousand old soldiers and get a heavy majority vote against this amendment after an hour's argument.

This headlong extravagance will bring men into power who will scrimp and squeeze and deny the soldier. A silent conservatism in the Republic that will be glad to stay with the Republican party, and will stay with it if it can be permitted to do so, will utter no loud word against the soldier nor against the old party, but it will quietly stay away from the polls.

There is a limit to this. I appeal to every old soldier to permit us to be reasonable and to be just. God knows the American nation is not stingy in this matter. Including the present fiscal year and what is proposed for the next, the appropriations for pensions since the war will by June, 1891, amount to nearly $1,300,000,000. I do not complain so far as a dollar of it was necessary to relieve real distress, nor do the American people complain. But no nation in the world ever appropriated a sum that could be compared with it. All that they have done for

their soldiers in their distress sinks into utter insignificance in comparison with what we are doing for ours.

I beg the old soldiers to remember that, if we are threatened with war again, that which will scare the people who pay taxes will be, not the cost or the blood of the war, but the consequences of it. I beg them to remember that it is pauperizing and degrading them to constantly insist in their behalf that they have claims and claims and claims. So they have in a sense, but they know—no man knows better than that gallant body of survivors—that we owe every cent we have and every drop of blood to the Republic, and they offered it all proudly. Let them remember that these enormous sums to be paid come out of the pockets very largely of people as poor as themselves. You may lay the tax upon the rich man, but it filters down and down, and a large portion of it finally comes out of his tenant in the tenement house, or out of the subfarmer, or out of the mechanic. Remember the other people in the country who pay taxes.

When General Grant last visited this building, with his characteristic modesty he kept out of this chamber, and sat in that cloak room in the spot I am pointing at. Nearly every Senator of both parties visited him before he left, manifesting in the most gratifying manner their personal respect. He sat with his accustomed cigar and talked freely upon any question that anybody proposed. I will try to relate as if I were on the witness stand what he said *à propos* of this question. "Now," said he, "I will tell you what I would do if I were President. I would sign any reasonable bill seeking to relieve the distress of an honest old soldier, or his widow, or his children, but I would not vote one dollar to the able-bodied man."

I live up to that statement. That is my platform. I would not care to see an old soldier going to the almshouse. If he goes to the almshouse, either his State or the nation must pay the cost, and I would as lief the nation should pension him.

You had a great deal better, if you are going to spend this $500,000,000, take it and divide it *pro rata* among the men who actually need the money. Do not throw out $500,000,000 or $100,000,000 or $50,000,000 at random, and to a considerable extent to strong men who are in comparative health and have a little property or who did not suffer enough to induce them to apply till from fifteen to twenty-five years after the war. Perhaps the man can get along pretty well without it. Aim as sharply as you can at the actual necessity and take care of the old soldiers, and do not—I was about to say something that is not polite—do not be stampeded by claim agents. Do exactly

what you think is generous and right. The country will sustain you, and it will not otherwise.

Henry M. Teller [Col.].—Mr. President, there never was such a war in the history of the world as ours. There never was a contest in all the long line of history that had any comparison to it. No other people ever fought their equals as we fought ours—a national affair, with the very pick and flower of the world on both sides, the men of the highest intellectual standing and culture on the face of the earth. When we got through with that conflict we had lost one-half of the accumulated wealth of the country for two hundred years and we had incurred a debt that the great majority of men in this country and all over the world believed was past the possibility of being paid. We have paid it. We have paid $2 of interest to the men who advanced money to carry on the war where we have paid a single dollar to the soldier.

I do not complain of that, although they bought their bonds at a discount. They bought them when everything was high, and they made money on them, but it was the plighted faith of the Government they trusted. We said, "We will pay this public debt," and we are paying it. That is right; we ought to pay it. But we said more than that. We said to the soldiers and to the sailors of this country that if they incurred disabilities we would pay them a pension. We said more than that. We said in every public place in the North, we said it on the rostrum, we said it from the pulpit, that there was a merit in going into the American army; that we would ever hold its members in grateful remembrance; and that there was nothing they could demand of this Government that they should not receive. When we can pay the great debt of $3,000,000,000 and pay it within a generation and less, we can afford to do justice to the soldier; and whenever it shall be made to appear to me that there is a just and proper demand I shall respond to it without reference to the amount.

The Senator from Connecticut [Mr. Hawley] undertook to demonstrate that we could not do certain things because there was not enough money and that is the cry every time it is proposed that we shall do something for the soldier. At this hour, right now, to-day, we could call on the treasury for $300,000,000 for any purpose that we might desire and the money is there, and it could be taken without detriment to the public interest. If it is necessary to do justice, either to pay our debts, whether they be represented by a bond or whether they be represented by our obligation to the soldier, we can in an hour's notice raise

more money, and millions more money, than is in the treasury. We have the power to make legal-tender notes, if that be necessary, which we made in the hour of our distress, and which we made these men take when they were worth 40 cents on the dollar and when they were working at $13 a month. While the bondholders and the business men who the Senator from Maine says are to rise up in arms against our legislation were piling up their money by the millions, these men were working for $13 per month, many of them, and taking their pay in paper money worth 40 cents on the dollar only.

Senator Plumb's amendment was rejected by a vote of 9 to 46. The bill was passed by a vote of 42 to 12. The negative votes were all cast by Senators from the ex-slave States. Wilkinson Call [Fla.], James Z. George [Miss.], Randall L. Gibson [La.], and E. C. Walthall [Miss.] voted in the affirmative.

The House amended the bill by giving it a service-pension character, and passed it on April 30 by a vote of 179 to 71. The Senate refused to concur in the House amendments, and, after two conferences, these were abandoned, and various other amendments were agreed upon, the chief being the substitution for the uniform rate of $12 of a pension of from $6 to $12, varying according to the extent of disability.

The House passed the bill on June 11 by a vote of 145 to 56. The Senate passed it on June 23 by a vote of 34 to 18. President Harrison approved the bill on June 28, 1890.

CHAPTER X

Civil Service Reform

Lyman Trumbull [Ill.] Introduces in the Senate Bill to Make Recommendations by Senators or Representatives of Persons for Office Unlawful—Debate: In Favor, Sen. Trumbull, John Sherman [O.]; Opposed, Oliver P. Morton [Ind.], James W. Nye [Nev.], Simon Cameron [Pa.]—Carl Schurz [Mo.] Moves as a Substitute Examinations for Civil Service—Debate: In Favor, Sen. Schurz; Opposed, Jacob M. Howard [Mich.]; No Action Taken on Either Bill—George H. Pendleton [O.] Introduces in the Senate a Civil Service Reform Bill—Speech of Senator Pendleton—Bill Becomes Law—Pendleton's Subsequent Career.

ON January 4, 1871, Lyman Trumbull [Ill.] brought forward in the Senate a bill from the Judiciary Committee "to relieve members of Congress from importunity and preserve the independence of the departments of the Government" by making it unlawful for any member of Congress or territorial delegate to solicit or influence in any way the appointment of any person to a Government office, and for the President or any head of a department to make any appointment so solicited, if the appointee were privy to the solicitation. The penalty for the infraction of the act was a fine not exceeding $1,000. The act did not apply to actions by Senators upon nominations made by the President to the Senate.

Recommendations to Office

Senate, January 4-27, 1871

Senator Trumbull.—It is unnecessary to recapitulate the evils of the present system; they are known to all. It is known that in the departments in Washington there are a great many more clerks than would be needed if those there were capable, efficient, and faithful officers; and it is known that many of them are put in merely as a reward for political services.

Why, sir, what does the bill propose to do? It makes it a penal offence for me to exercise a right that belongs to every citizen of the United States. Every person in these galleries, every postmaster has the right to recommend to the President for appointments to office; but this bill proposes to make it a criminal offence for a Senator to do so. And then the President is a criminal if he dares to make an appointment that has been advised by a Senator, if it is done with the knowledge of the person whose appointment is advised. Have we a right to make the President a criminal for doing that?

Why, sir, what is the effect of it? If a Senator recommends a man with his knowledge he becomes ineligible. Have we a right to establish a qualification for office of that kind? It would be a clear violation of the Constitution of the United States. It has been decided by the Senate that where a State constitution provided that a man holding a State office was not eligible during his term of office to be elected to the Senate of the United States, such provision was a nullity, and no State constitution had the power to fix an additional qualification for office.

I know there are some people in this country who believe that everybody in Congress is corrupt, and if we pass this bill they will have a right to believe that we think so; that we ourselves are willing to legislate on the idea that we cannot safely be trusted to recommend men for appointments.

Why, sir, I should be glad to be relieved of this labor. It is particularly afflicting to me in my present state of health. But what right have I to be relieved of it? If I take the office of Senator I take it with its burden. Senators want to make the place entirely pleasant, relieved of all responsibilities and of all disagreeable features. Sir, when a man accepts the office of Senator, or the office of Representative, he takes it with its responsibilities and with its annoyances.

Now, let us suppose it to be the law that the President has a right to call on members of Congress for information in regard to appointments, but they have no right to give an opinion without it; how much are they relieved? Would not the President at least feel under political and moral obligation, ordinarily, to consult his political friends in either House as to appointments from their States? Would not that be expected as a matter of course, and would it not be regarded as unfriendly if he did not do it? Every man who wanted to be a district attorney or a marshal in his State would understand that the Senator would be called upon to give his opinion, and so he would send his application to the President and refer the President

If Congress divests itself of this subject, the responsibility is then upon the head of the department. He will be held responsible for the persons he appoints to office, and there will be no political influence here to compel him to keep incompetent men in and no political influence here to compel him to appoint incompetent men. If the duties are not properly performed, if more clerks are there than are needed, Congress will hold the proper secretary responsible.

Senator John Sherman [O.] supported the bill. At first he said he had been opposed to it on the ground that it changed the custom established from the beginning of the Government, but now he believed it necessary to relieve not only Senators, but the President.

Members of Congress, especially of the House of Representatives, claim the right to dictate local appointments, and if their wishes are not yielded to in every case it creates at once a cause of quarrel, which finds its outlet in some legislation or other. The legislative and executive departments of the Government should be as distinct and marked as if they were separated by a broad river. The only connection between the executive and legislative departments, so far as appointments are concerned, should be between the President and the Senate.

The President ought to have the right to seek information everywhere, not only from members of Congress, but in the selection of officers he ought not to be embarrassed by the demands of persons upon whose votes he is daily subject, in the course of ordinary legislation, and over whom he might wish by patronage to establish a control.

I have regarded this measure for the last year as being not a complete civil service reform in itself, but as being an entering wedge indispensably necessary to bring about a civil service reform separating the civil service in the executive departments entirely from the legislative until the unconstitutional habit that has sprung up in this country of allowing members of Congress to control appointments is broken up. Unless we ourselves abdicate, surrender, give up that power of control over the executive appointments, we cannot expect to agree upon a civil service reform.

Oliver P. Morton [Ind.].—The bill, in my opinion, is unconstitutional from beginning to end, and proceeds upon false principles. I undertake to say that this Government could not be readily nor safely administered upon this bill.

to the Senator from Illinois; and that is the way they would all do, and the Senator would not be relieved at all.

Now, Mr. President, I come to the principle of the bill, and insist that it is false in itself. I undertake to say that the greatest security an executive can have, who can know but a very small number of the American people, is the fact that he can rely upon members of Congress, his political friends, for recommendations to office. Take a member of the House. He is expected to recommend, if he is a political friend of the President, for the local offices in his district. The people understand that, and if there is a bad appointment made, if there is a bad postmaster, if a horse thief is appointed postmaster, they hold the member of Congress directly responsible for it. Therefore, it becomes his interest at once to recommend good men for these offices; his reëlection depends upon it.

James W. Nye [Va.].—Suppose by some chance a Senator should find out that a most unworthy man, some horse thief say, was being recommended and likely to receive an appointment to office; would he be subject to this penalty if he should tell the President of that fact?

Senator Morton.—I do not know whether opposing a nomination would come within the penalties of this bill; but I will state what would come within it.

Senator Nye.—If you cannot recommend, you cannot oppose. I simply desire to know whether I should be put in the penitentiary for doing that act, instead of the thief? [Laughter.]

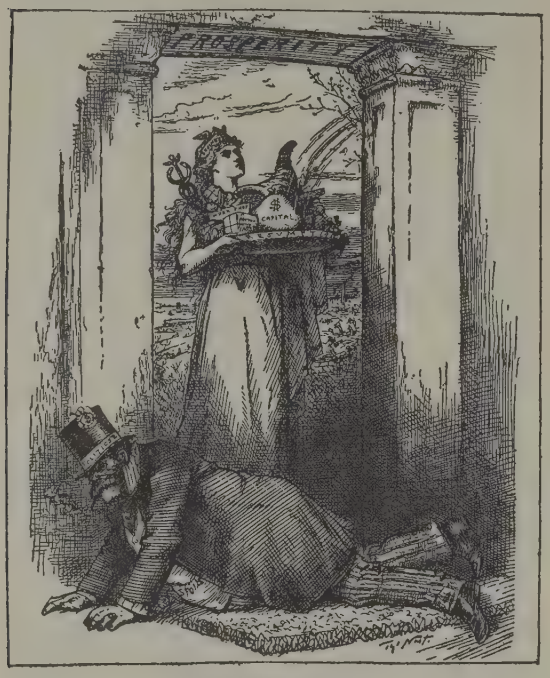
Senator Morton.—I suppose *prima facie* you would, under this bill. [Laughter.]

The discussion was resumed on January 10.

Senator Trumbull.—The only interference that Congress or any member of Congress legitimately has with the appointment of officers is in giving the advice and consent of the Senate to the nominations that are made by the President. With that exception this whole executive power is vested in the executive department, and, so far from its being unconstitutional to prohibit interference by members of Congress with appointments, it is carrying out the very spirit of the Constitution to prohibit such interference, and it is an encroachment on the rights of the Executive whenever appointments are made or dictated by members of Congress from either House.

And such, Mr. President, was the early understanding. For

the first forty or fifty years of the Government members of Congress did not interfere with appointments. It was regarded at



OUR STUMBLING-BLOCK
Cartoon by Thomas Nast
From the collection of the New York Public Library

that time as exceedingly indelicate and improper for a member of Congress to go to the President, or to any head of a department, and suggest the name of a person for office. The practice that now obtains is of modern origin. The principle that "to

the victors belong the spoils" was not announced until Jackson's administration, some forty years ago; and when first promulgated it shocked the country, but it never went any further than to fill the offices of the country with the friends of the Administration. The practice was not carried to the extent at that day of allowing a member of Congress to dictate among the friends of the Administration who should and who should not hold office in his district.

Now, Mr. President, it is that very custom which is an infringement upon the Constitution, and which, I think, should be corrected.

In view of these abuses, which were apparent to President Grant, in his annual message he called our attention to the subject in this language:

> "Always favoring practical reforms, I respectfully call your attention to one abuse of long standing, which I would like to see remedied by this Congress. It is a reform in the civil service of the country. I would have it go beyond the mere fixing of the tenure of office of clerks and employees who do not require 'the advice and consent of the Senate' to make their appointments complete. I would have it govern, not the tenure, but the manner of making all appointments. There is no duty which so much embarrasses the Executive and heads of departments as that of appointments; nor is there any such arduous and thankless labor imposed on Senators and Representatives as that of finding places for constituents. The present system does not secure the best men, and often not even fit men, for public place. The elevation and purification of the civil service of the Government will be hailed with approval by the whole people of the United States."

What is the remedy for this state of things? A civil service system has been proposed, one where there should be competitive examinations, and under which appointments should be made without regard to politics, and the best men should be sought to discharge the duties of the respective offices to which they might be appointed. I think if a system of that kind could be devised it would be very desirable that we should adopt it.

The remedy suggested by the late Secretary of the Interior, General Jacob D. Cox, in a recent article in the *North American Review,* is:

> "To apply to the civil service, completely and thoroughly, the plain principles of common business administration; to separate the public offices, absolutely and forever, from all favoritism, nepotism, and 'influence'; to declare patronage in all its forms to be anti-Republican and dangerous to the State; to find and practice upon a principle of selection for office which shall give every citizen of the country a perfectly equal chance to prove his capacity and fitness for the public service; and to obtain a position in it when he has made the proof, with thorough inde-

> pendence of President, Secretary, or Congressman, and simply and solely because of his citizenship and his fitness.
>
> "The entire separation of the civil service from the control of politicians would secure a thorough and impartial congressional criticism of all the administrative bureaus and their operations. The sloth and incompetence found in any department now are known by the members of Congress to be in no small measure due to the fact that their own friends and dependents have been forced into places. They know, also, that the pruning-knife would reach their own scions as quickly as another's if retrenchment under a better system were begun; and it requires no ordinary character to pass a 'self-denying ordinance' of that kind. There have not been wanting demagogues who would declaim in favor of reducing the clerical force, and march straight to a department with an earnest appeal to crowd in one more clerk for them; but few men have the assurance for this."

It was not to be expected that any measure of reform would pass this body without opposition. Any bill which is calculated to destroy an abuse will always encounter the opposition of those who profit by its continuance.

Members will not support this bill who owe their nominations and elections to the offices that they have farmed out in their respective districts, to the promises they have made to put this man in as assessor and that one as collector in their districts, to appoint one person postmaster at this crossroads and another in that village, to make one an inspector and another a gauger of whisky in their districts.

The measure which I have introduced does not go as far as recommended by Mr. Cox; it does not go as far as the measures which have been adopted in Great Britain, which have secured such substantial and beneficial reforms; but it is one step in the right direction. We can probably pass no thorough bill, a bill establishing competitive examinations, a bill separating the appointment of subordinate officers from politics, until we shall have first separated Congressmen from all participation in appointments, and then we shall be in a condition to go to work and frame a bill that shall accomplish a thorough reform in the civil service.

The Senator from Indiana denies the right of Congress to declare that persons recommended by members of Congress shall not be appointed to office.

Has the Constitution of the United States fixed qualifications for clerkships, for assessors, for whisky inspectors, for postmasters? Surely not. All these are the creatures of law, and the Congress of the United States has a right to prescribe any qualifications it pleases.

Congress may, in its discretion, take away from the President the power to appoint all inferior officers, every postmaster

in the United States; may not only tell him that he shall appoint no man that is not qualified, no man that cannot read and write, no man that is recommended to him by a member of Congress, but they may say to the President of the United States, "You shall not appoint a postmaster throughout the United States."

SENATOR MORTON.—In making that argument I was speaking of those appointments that are by the Constitution vested in the President of the United States.

SENATOR TRUMBULL.—It is just as competent to control those that are vested in the President as those that are vested in the heads of departments or the courts. Are not most of the appointments in the army and the navy made by regular promotion, in pursuance of a law of Congress?

But the Senator from Indiana objects to this bill that it makes it criminal for members of Congress to make recommendations to the President; in other words, to dictate appointments. He says that is degrading. Why, sir, the law will have no operation upon anyone who does not violate its provisions. There is an old couplet somewhere, in "McFingal" I think, which says:

> "No man e'er felt the halter draw
> With good opinion of the law."

Very likely those who propose to violate the law do not want a law that shall impose a penalty for so doing. A law prohibiting Senators and Representatives from making recommendations to office will affect no Senator or Representative who does not violate its provisions. What is there about a Senator or Representative that puts him above the criminal code? Suppose he is guilty of bribery, or corruption, or larceny, or robbery, or murder, is he not to be punished? Is there any divinity that hedges a man because he happens to be elected a Senator or Representative? Why, this is the old story of the divine right of kings: "The king can do no wrong."

It is the law now that if any Senator or member of Congress receives a present or any consideration, with a view of obtaining an office for another, he is liable to punishment by imprisonment in the penitentiary.

I am as tenacious, I think, of the privileges of this body and of its individual members as any Senator; but I am not for degrading the office of a Senator or Representative by making him the mere instrument for procuring offices contrary to his duty and to the Constitution.

This bill, if passed, will have the effect to render the depart-

ments independent. It will make the head of every department responsible for the appointments which he makes, and no secretary will then venture to have in his employ double the number of clerks required. Congress will hold him responsible when the responsibility is put upon him. It will make members of Congress independent also, and it will relieve them from obligations to the President and heads of departments. It will take away a source of temptation; and in cases where bad and corrupt men occupy positions in Congress (not an impossibility) it will impair their power to corrupt and debauch the public service.

And it will restore appointments to the executive department, where the Constitution places them, and to the people, where they belong.

On January 12 Senator Morton replied to Senator Trumbull.

The Senator seems to consider that we can enter upon an administration of the civil service which would require perfection in human nature, require men to be destitute of ambition, of jealousy, of all the passions which ordinarily interfere with the proper administration of government. Sir, we shall never have such an administration. It is not possible. We must take human nature as it is. Plato's dream of a republic can never be realized.

The Senator says that he is in favor of organizing the civil service so that officers shall be appointed without regard to politics. Now, sir, to have appointments made without regard to politics will suit our Democratic friends remarkably well while they are not in power, but it would not suit them one moment after they came into power.

The Senator went on to state some of the abuses which required this interference. He said that there are here in the departments of this Government more than twice as many clerks as are needed to do the business. I regard that as a very injurious statement. It is one that will excite and alarm the country. It will lead the country to believe that everything is corrupt; that everything is rotten in the administration of this Government in this capital. I submit that the Senator is mistaken; that it is not true. There is not, in my opinion, five per cent. of it true; the evidence cannot be found to establish its truth. If the Senator can produce the evidence of this, let the country have it, and let those men who are placed in

charge of these departments be held responsible, and be condemned by Congress and by the people.

SENATOR TRUMBULL.—I read from the article of the ex-Secretary of the Interior, in which he states the fact that a moiety of the clerks could perform the duties.

SENATOR NYE.—Is not the number of clerks in the departments prescribed by law?

SENATOR TRUMBULL.—I suppose it is; but the Senator will understand that the pressure of Congressmen makes it necessary to increase the number beyond the necessary amount; Congressman after Congressman asks for one more, and in that way we provide for twice as many as are necessary.

SENATOR NYE.—Would it not be better to strike out from the law the requisition as to the number of clerks, and leave it discretionary with the heads of departments to employ as many as were needed? Would not that be a better remedy than to provide for putting us in prison?

SENATOR TRUMBULL.—I think the Senator from Nevada will probably be able to keep out of the penitentiary. He has been able to do so thus far, and I think he is in no particular danger now in that respect.

SENATOR NYE.—My apprehension was not for myself, but for my distinguished friend from Illinois. [Laughter.] I think if the files of the departments were consulted quite as many of his recommendations would be found there as of anybody else's.

SENATOR TRUMBULL.—Let me say that I have adopted the plan I propose for myself. I think the Senator cannot find within a year or two a recommendation of mine for a clerk in any department.

SENATOR MORTON.—"A year or two!"

SENATOR TRUMBULL.—I do not pretend to be better than other people. If I made recommendations while this system prevailed it would be a mere personal matter; and it would not change the force of the argument if I had recommended a thousand.

SENATOR MORTON.—The Senator from Illinois praises the civil service system of Great Britain. A system that might be appropriate to Great Britain would not be appropriate here; our institutions are different. In England the tenure of office in the civil service is for life. They hold their offices during good behavior; that is to say, during life. Can we adopt the life tenure here?

Why, sir, ten thousand men in this city holding office for

life would form a privileged class that would revolutionize the very foundation principle of this Government. We have but one life tenure under our Constitution, and if we had it to make over again we would not have that. I refer to the Supreme Court of the United States. An experience of seventy-five years has shown that the reason which induced the incorporation of the life tenure in the organization of that court is not a good one; it has failed; and we would not now reëstablish it. Certainly we would not apply the life tenure to seven or ten thousand men in the employment of the Government, and place them beyond the ordinary responsibilities that men in office are placed under. If a man has an office for life it takes a very serious cause to get him out. An ordinary delinquency, an ordinary neglect or abuse or failure is never sufficient to oust a man who holds an office for life. No, sir, we cannot afford to adopt the English system under any circumstances; it is anti-republican; it is contrary to the fundamental principles of this Government; and yet the Senator held up to us the beauties of the English system!

Sir, what is the fact there? Are the English clerks better qualified than those in our departments are? From the evidence I have, they are not; but they have one quality that our clerks have not got; that is, they have "the insolence of office" that results from a life tenure. I could refer to facts on this point. You have all read "Little Dorrit," by Charles Dickens, where he described the Circumlocution Office and the Somerset House.

I am not arguing against competitive examinations; I am in favor of them; but they are not infallible by any means. Men may pass an examination, and a first-rate examination, and yet be utterly unqualified for the position. How does it happen so often that the young men who graduate at law schools and carry off the first prizes fail in the practice of the law? So in regard to medicine. And how often does it happen that those who take the honors of the class at West Point do not succeed upon the field of battle or in the army? You can adopt no system that will guard again exceptional cases.

This system of competitive examinations is not new. We have had it ever since 1853, though a good many people do not seem to know that fact. I will read from the act of March 3, 1853:

"No clerk shall be appointed in either of the four classes until after he has been examined and found qualified by a board, to consist of three

examiners, one of them to be the chief of the bureau or office into which he is to be appointed, and the two others to be selected by the head of the department to which the said clerk will be assigned."

For seventeen years the departments have been administered under the operation of this law; and yet under this very system incompetent and worthless clerks, it is said, exist in great numbers in the departments. Against the statement of the Secretary of the Interior I put his own practice. According to his statement there were twice the number of clerks in the Interior Department when he went there than were required. And yet there was but one less when he left than when he entered the department.

The Senator from Illinois said that for the first fifty years of this Government members of Congress did not recommend appointments to the President. I confess I was astonished to hear that statement. This practice of recommendations by members of Congress has existed from the very beginning of this Government. The number of officers to be appointed was very small then compared with what it is now, but the practice was the same. Our Fathers, for whom I have great reverence, were governed by the same motives that govern men in these days. Sir, they recommended appointments just as we do; but they had not nearly so many to recommend.

But the Senator refers to the crowd of office-seekers that haunt members of Congress and that haunt the anterooms of the White House. I ask him, if he changes the system, if he makes it a penal offence for a member of Congress to recommend anybody for office, how that will diminish the number of office-seekers? Will that cut off the ambition of men all over this country? Certainly not. And if they cannot apply to a Senator or Representative they will come here themselves; and the crowd of office-seekers will be greater than it is now. Why, Mr. President, this Government has got to be carried on; and the thousands of offices have got to be filled. There will be competition for them, as there always has been. Men will come in droves just as they always have done. If they cannot present their applications through members of Congress they will go up in an army to the White House and seek to do it themselves; and, if they cannot get admission, they will seek to do it through gentlemen who open brokers' offices here for the purpose of securing appointments, and who secure appointments for money, just as lawyers secure patents for fees.

But the Senator says that officers ought to be appointed without regard to politics. Whenever you can carry on this

Government without regard to politics that doctrine will do. But this is a Government of the people and a Government of public opinion, in which the mass of the people take a deep interest, as they do not in England and in countries on the continent of Europe. Just so long as the character of this Government continues as it is, appointments will continue to be made with reference to politics; and no system can be devised that will prevent it. I do not care how many competitive examinations you institute, or whether you make the tenure for life or a tenure for ten years, you cannot change that thing unless you change the character of the Government. But what propriety is there in it? A man high in office, who has climbed up the political ladder, may then turn around and slap the faces of his friends who helped him up, if they should want appointments, and call that virtue! Would it make it virtue?

The amendment suggested by the Senator to his bill is that the President may, in writing, call upon a member of Congress to answer in writing in regard to a recommendation to office. That is the establishment of a circumlocution office—"how not to do it." The Senator from Illinois may be with the President of the United States, and the President may choose to consult him about an appointment; but the President must sit down and put his question in writing in due form, signed, sealed, and delivered, I suppose in the presence of witnesses, and then the Senator, in writing in due form, may answer that question!

But it is said the member of Congress will recommend his own friends. He has to recommend somebody's friends, and, if he recommends his own, provided they are as well qualified as another man's friends, what is there wrong about it? The point I make is that, as the thing stands now, a Senator or a member of Congress is held responsible at the bar of public opinion for an appointment, it being supposed that he recommended it, and therefore, if he does recommend his friend, the President has the assurance that he will recommend a good friend, one that is qualified and respectable, because, if he fails to do it, the responsibility for it will fall upon him, in common with the Administration.

I would say to the Senator that his intimation that those who oppose this bill oppose it because they are interested in having those appointments made does not hit me. I have been in the Senate now nearly four years, and there have been but three clerks appointed upon my recommendation. As far as I

am personally concerned, I would be glad to be relieved of all this labor; but what right have I to be relieved? My friends have the same right to call upon me that I have had in times past to call upon them, and, if they are respectable, and capable, and honest, why should I refuse to give them that legitimate aid which may be within my power? Why, sir, men act upon this principle in all conditions of life, whether in regard to politics or in regard to business; and you cannot change it by any enactment which you can make.

SENATOR NYE.—The character of this legislation, in my opinion, tends to belittle the office of Representative, either in the other House or in this body, in the eyes of an intelligent people. I was pleased a good many years ago to see that it was said by Henry Ward Beecher that when it made him any the less a man to be a minister he would quit the business. I repeat that remark here: when it makes me any the less a man to be a Senator of the United States I shall resign my position.

Now, sir, it seems to me that the appointing power, so cast as it necessarily is and must forever continue to be in a Government like our own, turns as naturally toward the Representative for counsel and advice as the child turns to its mother for sustenance. Who else is there that the President can consult? My honorable friend from Illinois says he can consult other people away from here. So he can. But where are those people? How does he know them? What means has he of knowing whether their judgments are right or wrong when he does consult with them in a State as distant as my own or as California? Sir, the impossibility of avoiding this responsibility is too palpable to legislate upon.

I accept for good or for evil, with my party friends at home, my full responsibility for advising who is a proper man to hold this position or that position in the State which I have the honor in part to represent. I shrink from none of that responsibility; and I claim that I have advantages for knowing who are best fitted to hold those positions far superior to the appointing power. My advice is not always heeded, nor is that of the honorable Senator from Illinois; but when it is not heeded the appointing power does not generally get quite as good a man as it would have got if it had taken the one I recommended. I have seen it tried. I assume that this is a part of the responsibility of a Representative. I undertake to represent a district in my State in Congress; I undertake to do all its representative duties. What are those duties? My first duty is to see to it that no officer is appointed by the appointing power

who is not worthy and capable of filling the place. That is my duty as a man.

Now, what is my duty as a politician? It is to see that nobody but a good Republican fills an office. I hold that nobody but a good sound Republican is fit to hold office. I am not going to be mealy-mouthed about this subject. Why, sir, you and I have labored with the masses until our locks were wet with the drops of the night to convince them that nobody but Republicans were fit to hold office. We have echoed that cry on every hilltop and in every valley until a large majority of the people believe it. We tried the Democrats; we weighed them in the balance and they were found wanting; and the people said, "Turn them out"; and they were turned out, and stayed out and browsed out until their hair is as long as that of him who browsed of old. [Laughter.]

The honorable Senator from Illinois in his zeal is going to make it a penal offence for me, a Senator, to say what I have said on every stump in almost every State in the Union. I repudiate all such doctrines as that. I believe that nobody but a person who has honestly imbibed and carries out Republican doctrines is fit to hold office. I do not mean to say that everybody else is dishonest; but I mean that for the harmony and well-being of the whole it is best that those who believe in the great principles espoused by the Republican party should hold the offices of the country. They have won them not only upon a thousand fields of blood, but on a thousand fields that were not so bloody but quite as important in their results.

I have observed since I have been here, now more than six years, a tendency of things that has occasioned me painful reflection. We are assailed at one time from one department, saying that we must not frank letters, because the members of Congress are dishonest; and a hue and cry is got up from ocean to ocean to abolish the franking privilege; and a bill for that purpose runs, like fire through the prairies, through the House. It is brought here, where men sometimes reflect before they vote, and it is brought to a little stand. What was the object of it? To establish the fact to the world that Congressmen were dishonest. Why, sir, I cannot get a sheet of paper in my committee-room unless I send a written order with a seal on it as big as that of a surrogate. I cannot get a box of matches to light my cigar unless I send a written order for it. And I am to account to a Committee on Contingent Expenses—I believe that is what they call it. I cannot get a knife to make a pen without a written order. We are going to keep

Congressmen honest! [Laughter.] Great God! When did ever a Congressman steal a sheet of paper, or a knife, or a pen, or a box of matches? [Laughter.]

All this character of legislation, this estimate that is put upon the honorable Senators on this floor, has tended to degrade them in the eyes of an intelligent people. I repudiate the necessity of such legislation for my brethren, and I hope some one will rise and say he will do it for me, that I did not come here to establish a penknife store, nor a match store, nor a stationery store. I came here, in my humble way, to represent the best interests of the State that honored me with its commission. The people of that State did not believe that I would steal paper at home. If they had they would not have sent me here. [Laughter.]

Sir, this is a part of the same species of legislation. You are not to be trusted because you are clothed with the senatorial mantle. Mr. President, from my earliest boyhood I looked up with reverence to a United States Senator, and I should have felt insulted in my own person if anyone dared to assail the integrity and the fidelity of a Senator to his trust. If we do not feel so now, we ought to do so. If we indorse this mean, dirty suspicion that pervades the public mind, we deserve all the opprobrium that we get. Away, then, with this character of legislation!

We must not frank; we must not have the chance to use all the paper we want without accounting for it; and now my friend from Illinois, in stepping to the music of the time, is going to put us in the penitentiary for advising or not advising the nomination of a man to office! Well, sir, I think we had better go home. I am so constituted, I will tell you the honest truth, that I am afraid I shall get into the penitentiary if this bill should become a law, and I have not time to go [laughter]; because, if I should see the President or any of these departments putting in one whom I knew to be a bad man, I should commit this offence to a dead moral certainty. [Laughter.] I could not help it. My friend from Massachusetts [Mr. Sumner], with his honest impulses, would be there, too. Such a company would hardly ever be seen in the penitentiary. "What is your offence, gentlemen? You have advised the President not to appoint a bad man, or you have advised him to appoint a good man without any request of his!"

But gentlemen say that they want a civil-service bill. I do not; and we may as well meet this question at once. There is nothing on this earth so unendurable to a sensitive man as "the

insolence of office"; there is nothing that becomes so odious in every government as "the insolence of office," where the officers have life tenures. Sir, a thousand-fold would I rather take the chances of changing these clerks as often as the political control of the Government changes in this country than to have them there by law whether they do their duty or not, and becoming insolent with age and defying all power to eject them. I say that under a republican form of government such a bureaucratic system of office-holding is repugnant to the genius of our free institutions. Let it prevail in monarchies and empires if you please, but let it never gain an entrance in republican America.

I like to see young men enter the race of competition for these offices. I like to see from every State a class of young men moved by the ambition and the incentive to some day fill these places; and by daylight and dark they toil to obtain the necessary acquirements, and, when they have obtained them, by every rule of our institutions and every law of right, they have a right to enter into competition for them. Fill them once and shut the door for thirty years, only opening it on funeral occasions, and the incentive to qualify for such places becomes very small indeed.

Mr. President, what will come next in the way of legislative hamper or shackle upon Senators and Representatives is yet to be seen. You have got them cornered now so that they must have "eyes right" and "faces to the front," or it is a penal offence. If they say so and so, it is unlawful. Sir, I said once what had well-nigh cost me more than I should like to have this saying cost me. I said it in an unfortunate latitude, when the Fugitive Slave law was in existence, that there was not power enough in this Government to make me chase a negro. I assert here now that there is not power enough in this Government to make me hold my tongue if I see them putting a rascal into office. I could not. It would be sinful in me if I did, for I may have knowledge that nobody else possesses. When the time comes that I cannot join my poor recommendation to that of nobler and better citizens, then I think it is time I took my departure from this place, from a place that needs laws to correct the ordinary moral duties of life.

Mr. President, I have opposed a steady opposition to this whole character of legislation. It serves to belittle the Senate in our own estimation and in the estimation of a gazing world. At the proper time, after my friend from Illinois has had a full chance at his bill, I shall move, unless some one else does so,

to lay it upon the table, to sleep, as I hope, the sleep that never wakes.

SIMON CAMERON [Pa.].—Senators talk about not taking care of your friends. A man who has no heart may have no friends, and he may have no feeling of friendship; but when I cease to have regard and friendship for those who are my friends I will pray God to take me from the earth immediately. If a man is ambitious of getting a place in this free Government of ours, of which he is a part, why should he not come here and ask for it? And why should not I, whom he has helped to my position, assist him in getting that which he desires? I have never in my life recommended to the President a man for office whom I did not believe better fitted than anybody else who had been presented for the place; and I shall continue to do so.

Sir, look at the history of all parties with reference to this subject. The elder Adams commenced by saying that men who were peculiarly fitted for places ought not to be removed, and should not be; and Mr. Jefferson pursued that course, removing very few men. There were not many offices then to be filled, but whenever vacancies occurred he put in his own friends. Was not that right? Will not the friends of an Administration be likely to be more faithful to it than its enemies So it was in the time of Mr. Madison; so it was in the time of Mr. Monroe; none but the supporters of the Administration were then put into office. When General Jackson came in he was a little more liberal toward his friends. He made removals of those whom he thought dishonest; but no man peculiarly fitted for a place was removed by him. Why, sir, there yet remain in office men who were appointed before General Jackson went into the presidency. No Administration has ever thought of removing a man who was better fitted than anybody else by his experience for the place that he occupied.

When this measure was introduced I was glad of it, because it was an admonition to people not to come here and ask for office. I have thought, from the beginning of my experience here, that the greatest misfortune a man could have put upon him was to get a place in Washington City. I know men in these departments who are fit to fill the highest places in the Government who are now fourteen hundred or sixteen hundred dollar clerks, and who have not means enough to educate their children or to clothe their wives. I have had many appeals to assist them in getting bread in this city of Washington; men who, if they had remained at home and had aspired to office, could have the highest that the State had to give, and who, if

they had turned half the industry and half the energy they employ here in any capacity at home, even as mechanics or laborers, would have been able to support themselves much better than they do now.

I am for leaving this thing as it has been in the past and let Nature work out its own way. Some men will be prosperous and some will not; some will do wrong and some will not. But you can make no laws here which will regulate this thing upon utopian doctrines.

On January 27 Carl Schurz [Mo.] moved a substitute to the bill, which provided that after its passage all appointments of civil officers, with certain exceptions, such as postmasters, should be made from those persons found qualified therefor by open examinations or other tests of fitness. To aid in the execution of the act a paid Civil Service Board of nine commissioners was to be appointed. The board was to investigate the character of all applicants, including postmasters, etc., not examined. Appointments were to be made and vacancies filled in order of merit. Promotions were to require examinations for the new grade. In special cases the board could call for assistance upon experts in the office for which appointments were to be made and upon civil and military and naval officers. Appointments of present officers were to be made for five years, and of new officers for eight years, the first being a year of probation, during which the officer could be removed at the pleasure of the President; thereafter, he could not be removed except for cause. The board was to establish the causes and rules of removal, etc., and act as a court in the specific cases, reporting its findings to the President for action. Judges and clerks of the Federal courts, members of the Cabinet, ministers plenipotentiary, and officers of Congress were to be exempt from the provisions of the act.

Senator Schurz supported his bill in a long and able speech. He imagined each of his hearers to be a foreigner who, admiring our Republican institutions, had come to this country to see them in operation. He represented him as a spectator at the inauguration of a President, and depicted the scene—"grand, simple, and

in imposing harmony with the nature of our institutions"—which would impress him.

So far your mind receives impressions corresponding with the convictions you had previously formed. But you spend some time at Washington, after having viewed this interesting and grand spectacle. Presently it strikes you that upon the avenues, and in the hotels, and at all public places you meet a motley throng with anxious eyes, nervous movements, a curious expression of countenance. Gradually you learn to understand what it means. After a few days you desire to pay your respects to the President. With something akin to awe you enter the White House to visit the Chief Magistrate of this grand Republic. Of course you expect to find him surrounded by his council of state, and, being new to the duties of his great office, diligently and earnestly studying those great problems which it will be his mission to solve. But how do you find him? In the midst of the same anxious faces, the same eager eyes, the same nervous countenances which have already attracted your attention before, and man after man pressing upon him, pouring hurried tales into his ear, or pressing papers upon him with the vehemence of extreme urgency. What do they ask for? They all want office, and want it quickly. You see the President bewildered, confused; and after a little while you come to the unwelcome conclusion that the great chief of the American Republic, in his present situation at least, is an object of pity. From him you go to visit the ministers of state, the heads of the departments, and what do you find there? You expect, of course, to see them at least, if the President is otherwise occupied, engaged in an arduous study of their great duties, for to them also these duties are new. But you find the same spectacle there; a pressing multitude asking for office. You visit Senators and Representatives, and how do you find them? Engaged in the consideration of the great political questions whose solution the situation of things demands of them? No; you find them surrounded by the same crowd, dogged from place to place, marching along the avenue at a hurried step, followed by a long train of anxious pursuers, running to the President, running to the departments—nay, you may follow them even to another place in some of these splendid public buildings of ours—a side office, where they pay their respects to a young gentleman who at first must appear to you one of the high dignitaries; and you are somewhat astonished when you hear that he is the appointment clerk, who very graciously receives

the representatives of the people, with their hats in their hands, and condescendingly dispenses his favors upon them, or with polite regret assures them that he cannot accommodate them all.

What does this spectacle of frantic hurry and pressure mean? It means nothing more nor less than that the President, the members of the Cabinet, Senators, and Representatives, and the whole multitude which fills the capital are busy in taking to pieces the whole machinery of the Government immediately after the accession to power of the new Administration, then to recompose it again out of new materials.

Now, sir, what is to guide the appointing power in this fearful and perplexing task? Is it personal knowledge? Impossible. They do not know the men who are applying for office. They are required to act on recommendations, and those recommendations are put on paper. The applicant for office is represented to be the model man of the age in point of character, of intelligence, of capacity, and of political merit; he is just the man for such a place, and it would inflict serious damage on the country not to appoint him.

Now, sir, how are these recommendations made and how are they obtained? Look at the Congressman who is to distribute the offices in his district. Laboring under the pressure coming from those who exercise political influence among his constituents, he is not permitted to follow his own judgment. He is bound to a great many of his "political friends" by what he considers honorable political obligations, and he is forced to take their judgment in a great many cases for his own.

But as to offices not local, you witness the interesting spectacle of Senators and Representatives coöperating. It is the organization of a mutual insurance society: "You sign this recommendation of my friend, I sign that recommendation of yours." It is a matter of mutual accommodation. And here the element of personal knowledge enters but rarely. What must the consequences be? Suppose we find that we have recommended an improper man. What should we do when called upon to confirm or reject the nomination? Reject the nomination we ourselves had induced the President to make? Or confirm it against the dictates of our own consciences? Do you perceive the conflict between duty and fairness which the present way of doing things is so apt to bring upon us?

And, sir, this is not the worst feature of the business. I have known instances where a regular office brokerage was established, and where a member of this Senate, not now here, a gentleman of the most honorable character, was induced by a

so-called friend to sign a recommendation for a third individual, by which that third individual was to obtain an appointment in one of the departments, the "friend" having exacted and obtained a fee of $100 to procure the signature of the Senator. The Senator would have kicked that friend out of his presence had he had any suspicion of the dishonorable traffic. But I ask you, can you tell, or can I tell, if we are facile enough to sign papers at the request of outside friends, that we have not fallen into the same snare, and that your and my signature have not been sold by an office-broker for money?

Now, sir, a glance at the absurdities that are occurring under this system. There is that most formidable of men, "the man to be provided for"; a man who must necessarily have an office; a man who has "claims" that cannot be disregarded and who cannot be neglected with impunity; a man to be put in position at all hazards.

I will tell you of the case of a man to be provided for that came under my own personal observation. He aspired to a post-office, a pension agency, a minister residentship, a full mission, and finally landed in the governorship of a Territory; and the appointing power, yielding to the peculiar pressure characteristic of the existing system, declared him fit for all these places consecutively. And all this in seven days.

Must it not be clear to every observing mind that our present mode of making appointments is a blindfold game, a mere haphazard proceeding? Was Mr. Lincoln very wrong when once, in a moment of despair, he said, with grim humor, "I have discovered a good way of providing officers for this Government: put all the names of the applicants into one pepper-box and all the offices into another, and then shake the two, and make appointments just as the names and the offices happen to drop out together"?

The other day the Senator from New Hampshire [Mr. Patterson] showed you that, as the investigations of the Retrenchment Committee prove, the New York Custom House, too, suffers from men to be provided for, for whom offices must be created, even if the service does not need them.

You notice officers there called inspectors; officers whose duties are of the very highest consequence. They, in fact, to a very great extent, hold the revenue of the custom house in their hands; for they have to watch the unloading of ships and see to it that no goods are smuggled into the city from the vessels arriving in that port. What class of people are those inspectors taken from? We heard it said the other day by the Sen-

ator from New Hampshire that they, as they themselves confess, are in the habit of accepting bribes of fifteen to fifty dollars for each vessel that is unloaded under their supervision; that they accept those bribes as a rule, not as an exception. And those officers are selected from that class of people of whom the Senator from New York told us that, yielding to the frailties of human nature, they would naturally drift into the habit of taking presents or bribes, and you would not expect anything else. If you cannot expect anything else, what becomes of the revenue? But, I will admit, under the present system of distributing offices, you have, indeed, no right to expect anything else. If you cannot expect anything else, what becomes of the revenue? But, I will admit, under the present system of distributing offices, you have, indeed, no right to expect anything better.

Go to San Francisco and you will find exactly the same system working there, leading to similar results. You will be told there that under the prevailing system five collectors went out of office as defaulters to the Government. You will be told that under the law officers are to be examined before they are appointed, and yet the very heads of those establishments will, at the same time, inform you that the examination is a mere farce; that, as soon as the examining board knows whom the collector wants appointed, the favored candidates will pass the examination without the least difficulty.

Senator Schurz, reverting to the laying aside of important business to settle applications for office at the beginning of an Administration, said it continued throughout the Administration.

Mr. President, I ask you, in all candor and soberness, is not this something like Bedlam? Look over all the civilized countries of the world: do you discover anything equal to it?

Under such a system it cannot be otherwise but that inexperience should follow inexperience and rascality should follow rascality in rapid succession. There is nothing unnatural to your mind now in the needless and expensive multiplication of offices. There is nothing surprising to you now in the frequency and magnitude of embezzlements and defalcations. You understand now perfectly well that when the whiskey tax was fixed at two dollars it was absolutely impossible to enforce the law with the machinery of the public service we had. You are no longer surprised at the frequency of mail-robberies which are perpe-

trated in post-offices. You see the smugglers in our ports lying in wait to watch their opportunity when, taking advantage of the inexperience of new officers, or with the aid of dishonest ones, they can rush whole cargoes into the ports of the United States. It is no longer surprising to you henceforth when you read in the reports of the Committee on Retrenchment that from this source losses have occurred for many years amounting to from twelve to twenty-five million dollars annually at the port of New York alone. Nor is it surprising to you to learn, as is calculated by gentlemen of experience in that institution, that each change of a collector in the Custom House at New York costs the country an average of ten million dollars, in consequence of the confusion and disorder which necessarily follow.

No, sir; there is nothing astonishing in all this, for you have learned that the offices of the Government are mere "spoils," "public plunder"; that, instead of being regarded as the places of duty, they are regarded as conquests, the conquest of a party; as "berths" into which men are put, not to use the best of their energies, not to look with anxiety after the interests of the Government, but to make it comfortable for themselves and to serve their friends. And you have learned more: how current these words "spoils" and "plunder" have become in the mouths of the people, so that we have lost all sense of their fearful meaning.

Sir, when a man receives an office as a reward for political services rendered, or as an incentive for further political work; when he feels himself sustained, less by his own energy and efficiency than by political influence, is he not naturally led to rely upon that political influence instead of his own fidelity and efficiency to sustain him in office? Is it not a matter of experience that even well-intentioned men who go into office honest and industrious frequently become dishonest and lazy there, feeling that political influence is more potent than the appreciation of dutiful conduct?

Let us look further. Is not the short and uncertain tenure of office a very severe temptation to a man burdened with the ordinary frailties of human nature to make the most of short opportunities, or at least to have the greatest possible benefit from the least possible work? Hence the formation of "rings" in the public service.

Now, sir, observe the effect which this system is calculated to produce upon the character of those who are under its influence. Officers being party servants, have they not to sacrifice to a very great extent the independence of their own opinions?

Is it not true that their very position breeds hypocrisy, sycophancy, and venality, and that this is apt to result in a deterioration of manhood?

Is it not also natural that, in consequence of this, the public service should not stand as high in public opinion as it ought to do; that men who aspire to office do so not infrequently at a sacrifice of self-respect? There is the destruction of that *esprit de corps* which preserves the morality of the civil service in other countries, and which here distinguishes the army and navy in point of personal honor and integrity. Render our public servants proud of the dignity of their position, and most of the immoral practices will disappear from which the public service is now suffering.

But, sir, the effect upon the efficiency of the civil service itself is not the worst evil we have to deplore. Follow a Congressman into his State or District. Look at him as a candidate. Some of them rely for success upon their ability, their character, their merits; others do not. These others speculate upon the frailties of human nature among their constituents. Observe one of the latter; how he attempts to build up the machinery of his influence at home; and for this the patronage offers him the ready means. He makes promises of office for the purpose of obtaining support, sometimes promiscuously, recklessly, in duplicate and in triplicate—promises impossible to be kept. Look at the situation of such a man. He is covered all over with fraudulent mortgages, and he stands before himself as a dishonorable deceiver before he is elected. By his promises he may have endeavored to buy others; he has certainly succeeded in demoralizing himself.

But now he is elected, and he commences to distribute offices. The Senator from Indiana [Mr. Morton] says that the system by which a Congressman is to distribute local offices is a guaranty for conscientious recommendations, for a Congressman would make himself unpopular by recommending unworthy men to public place. In some cases that may be so; but is it not frequently otherwise? Does not a Congressman frequently make recommendations for office merely for the purpose of paying old debts, discharging political obligations, or preparing for a new campaign with a view to his own reëlection?

But, sir, when he commences to distribute the offices, those duplicate and triplicate promises come down upon him; and what then? Then you will find those cases which are referred to in the essay of ex-Secretary Cox, where he describes honorable Senators and members of the House of Representatives standing before a member of the Cabinet with recommendations in their hands and with the candidates for office on their arms, abounding in expressions of good will and friendship for their *protégés*, presenting them as the worthiest of mortals, whose appointment they most ardently, anxiously advocate, while the Cabinet minister has in the drawer of his table confidential notes from the same honorable Congressmen requesting him not to pay any regard to the recommendation which they are just so eloquently and affectionately urging. What will you say of a system which brings forth such results among the Representatives of the people, who make the laws of the country?

Let us proceed. The machinery of the home influence is now constructed, and the Congressman thinks he has accomplished what he needs for his future prospects. But something new intervenes. It happens that the Executive has a pet scheme of which the Congressman conscientiously disapproves. Here is a complication. Does he insist upon his opposition? Then the Executive may threaten to withdraw his favor from him and to remove his appointees. If, on the other hand, he yields, the Executive may promise not only to keep those in office who were appointed upon his recommendation, but to grant new favors to him. There, sir, is that great struggle between conscience and interest which has brought so many a man to his fall. Will such things happen? They may happen; nay, sir, they have happened; and the spoils system invites them with such power of seduction that they certainly will happen again. Here the system develops its full effects upon the frailties of human nature.

The temptation to the Executive is certainly great. It is that temptation which is always connected with power; a temptation which but few men, if any, have been able to withstand. But the temptation to the Congressman is still greater. His interest is potently working upon his mind. The Congressman, losing favor with the appointing power, loses his power also to keep that machinery of home influence, upon which in a great measure he depends for success, in working operation. His chances at the next election are constantly before his eyes. His own appointees, if he persists in his opposition to the Executive, may turn against him, for the Executive has means to work upon the frail human nature of office-holders. Thus the Congressman may suddenly find himself deserted by the very friends upon whose gratitude he counted. The clamor of new aspirants for office will be still stronger.

Sir, we have all experienced that kind of pressure upon us.

Do you remember at the commencement of this Administration, when we were asked to repeal the tenure of office act, how the clamor of office-seekers arose around us to influence our decision; how they denounced those who resisted the repeal of that law as the enemies of the President at the very beginning of the Administration; and how they vociferously demanded that we should fling the laws at the feet of him who sits at the fountain-head of favor?

Thus the spoils system, with the vast ramification of its influences, works upon the independence of the legislator.

But the same temptation presents itself in another shape. A Congressman discovers abuses in a department. If he attacks them he is in danger of having his clerks removed; he may be informed that he is no longer entitled to the favors of that department. Shall he give up his appointees or violate his duty in ignoring the abuses?

The thing has sometimes been turned the other way. I am reliably informed that Congressmen have gone to a head of department and threatened him that unless he appointed their particular *protégés* they would vote against the appropriations for the department. To appoint supernumeraries would have been a grave violation of duty on the part of the head of the department. And yet, under the pressure of the spoils system, a Congressman demands it, with the threat that unless it be done he will violate his duty in a manner equally gross, by voting against a necessary appropriation.

But it appears in still another shape. A Congressman has procured an appointment for one of his friends, an appointment of great responsibility. He has, so to say, pledged his honor for the honor of the officer. That man commits gross misconduct; under his management serious abuses develop themselves. Is not that Congressman sorely tempted to cover up or whitewash that delinquency instead of fearlessly exposing it and bringing the guilty man to punishment? Is not there again the interest of the Congressman, under the influence of the spoils system, working directly against the interest of the public good?

And now, sir, we arrive at a very interesting and somewhat startling question: Can a Congressman, under the present system, be entirely honest? That question has been addressed to me by an intelligent observer, and my first impulse was at once to say certainly he can. Yes, I believe he can; but I declare, sir, when you survey the whole field, when you study the influences of the present system upon the frailties of human nature, you will admit that it is exceedingly difficult for him to be so.

The system is a hotbed of that peculiar kind of corruption which is the more dangerous as it does not appear in the palpable, gross, and unequivocal form of money, but appears in the seductive shape sometimes of an apparently honorable political or personal obligation. It insinuates itself like a subtle poison into those crevices of the human conscience which are opened by the expansion of generous feelings. And when that poison finds in an individual already the least corrupt tendency to work upon, it will develop it with wonderful rapidity.

Now look at the effect upon the workings of the Government. It is said that, by the patronage as it is now dispensed, a part of the executive functions is transferred to the legislature. This is true. But at the same time the independence of the legislature is seriously endangered by the corrupting power of the Executive. The true statement of the case seems to be this: by the so-called right of recommendation, as it is at present practiced, members of the legislature encroach beyond the point foreseen in the Constitution upon what the Executive ought to be most independent in and responsible for, namely, the administrative functions; and, on the other hand, by the power of giving and withholding patronage, the Executive exercises control over what the legislature ought to be most independent in, namely, the law-making function. Thus the system weakens and demoralizes both ways. It is a disturbance of the constitutional balances; it is a perversion of the powers of the Government.

But, sir, on the whole, it strengthens the Executive in the worst sense by giving him power over the meaner instincts of human nature. See how it works. The Representative of the people stands before the Executive in the attitude apparently of an adviser, but in fact of a petitioner—an attitude always improper, and not seldom degrading. The appointments to office he asks for, even if they are calculated to promote the public good, are granted to him as favors, favors that can be withheld just as well as they can be granted. If such favors are necessary to him to keep up the machinery of his influence at home, then he feels himself, as he really is, in the power of the Executive.

The temptation is terribly strong, therefore, to buy those favors, even at the expense of his convictions and of his manhood. Thus it is that this system weakens the backbone and makes supple the knees of public men before the great dispenser of gifts. Thus it creates and nourishes that fawning servility which stifles the voice of honest criticism; and it re-

quires very great emergencies indeed, like Andrew Johnson's glaring tergiversation, to break that dangerous spell.

But, on the other hand, the system is a source of peculiar dangers to the Executive also. Those who ascend the presidential chair do not leave all the frailties of human nature behind them. The voice of interested sycophancy is apt to fill their ears and to befog their judgment. Even their errors find some who will applaud them. Even their follies will meet with obsequiousness. The servility which cringes before them is apt to lower their general estimate of manhood. They will form the dangerous conclusion that they can wield the people as readily as they can wield those individuals who live and thrive on the presidential smile. They are not seldom easily persuaded that, whatever a few factious critics may say, the country is fairly aglow with delight over its ruler. Why, sir, even Andrew Johnson, when he arrived at that point where those of his friends who respected themselves turned their backs upon him, was firmly convinced that his popularity with the people was omnipotent; and Presidents of better sense are not exempt from the danger of falling into errors of similar significance. They are not unfrequently led to despise an unpleasant truth because it appears so lonesome and forlorn in the crowd of agreeable fictions gotten up for the purpose of pleasing and propitiating the presidential fancy. And thus Presidents, seduced by the picture of popular admiration which is constantly held up before them, are apt to drop from mistake to mistake, to dare one blunder after another, until finally the verdict of the people, unmistakably expressed, wakes them up from the dangerous and deceptive dream of invincible popularity.

And why all this? The reason is very simple: because the spoils system has made the atmosphere of the Executive mansion so thick with favor-seeking flattery that the sound waves of an independent public opinion can no longer penetrate it. Thus even Presidents are apt to become the victims of the spoils!

And yet this is not the worst feature of the system. You extend your observations further. A new presidential election is coming on; a great contest of principles and policies, but at the same time a great contest for "public plunder." There are the spoils ahead, with the prospect of "a new deal." Men of patriotic and pure motives enter the arena; but also the speculators rush to the front, with whom all patriotic motives are overshadowed by mercenary impulses. They are ready for what is called "dirty work," and their presence will create it where they do not find it.

The periodic recurrence of a "new deal" of the spoils has created a greed for office which is raging like an epidemic disease and is continually growing worse. There is a desire, unfortunately spreading among the young men of the country, to live either without work or with as little work as possible, and that desire is stimulated to a morbid degree by the seductive opportunities of political life. Many good men, young and old, are drawn off from honest and remunerative labor, because they are told that it is so easy to get an office and so pleasant to enjoy a living at the public expense. A political proletariat is forming itself in consequence, which is recruited from men who, following that morbid infatuation, are drawn away from productive pursuits. That proletariat is pressing upon candidates, not infrequently forming their bodyguard. The most reckless politicians become very important in the fight, voluntarily undertaking the work which sometimes candidates would shrink from advising. And these men will be the most clamorous for reward; and, being the most persistent and the most dangerous, they will not unfrequently be also the most likely to receive it. Thus a class of camp-followers, caring for nothing but the spoils, fastens itself upon political parties.

You ask, Why cannot political parties preserve their purity? Mainly because the spoils system attracts to them, and makes prominent and important in them, impure elements. On the other hand, men of a higher tone, disgusted with this spectacle, will sometimes fall to the rear; and thus we deplore the loss of some of the most valuable elements of the population from active political life.

Now, sir, the presidential election being over, the same spectacle, as I have described it, is repeated, whatever party may have carried the day. Another question presents itself: the spoils system being carried on under the auspices and responsibility of political parties—can a political party be honest? Sir, I look upon it as almost, I might say entirely, impossible. The reason is simple: the party in power being held responsible for the conduct of partisan officers, will always be irresistibly tempted, in order to save itself, to conceal and whitewash the dishonest practices and abuses carried on by such officers, instead of fearlessly exposing, punishing, and correcting them. Party interest, as now understood, exercises a terrorism over the members of political organizations which but few are able to resist. He who honestly and fearlessly denounces abuses is considered not only a dangerous character, but he is considered a bad party man; and it may interest the Senate to know that

a member of this body, who but a few days ago spoke about the abuses carried on in one of the offices of the country, was approached by anxious political friends and blamed for having made a speech against his party!

Sir, it is in vain while the spoils system prevails to look to any party for a thorough reform of abuses. It is in vain, because those very abuses have become an integral part of the machinery through which parties obtain and wield power.

But by far the worst and most dangerous effect of the spoils system is the demoralization of the public sentiment. We know that on certain frontiers smuggling, robbing the revenue, is not considered an entirely dishonorable business. Now I ask you, sir, is it not true that here it does not render a man generally infamous if he robs the United States, provided he does it cleverly? Is it not true that things are considered fair in politics which would be looked upon as positively dishonorable in private life? Has not the taking dishonest advantage of political power and influence for the acquisition of wealth become a thing which is judged by a great many with alarming leniency? When the offices of the Government are looked upon as spoils to be enjoyed, instead of duties to be performed, is it a wonder if in certain quarters the atrocious notion has gained currency that he is a fool who in a political position is not knave enough to steal? Is it a wonder that under the spoils system the pursuit of politics should be looked upon as a trade of somewhat tainted character; that in explaining the actions even of the most honorable men the suspicion of impure motives should, in preference of all others, be resorted to by the multitude, not with proper indignation, indeed, but with stolid levity and with resigned indifference, an indifference still more demoralizing?

Is it a wonder if professional politicians, sensible of the tainted character of their business, sometimes ask themselves, "Why should we be better than the reputation of our trade? Why should we not enjoy the benefits of dishonest dealings if they are imputed to us all the same?" Is it a wonder that even well-meaning men drift into corrupt practices without knowing it, since long habit and the general example have dulled their moral apprehension of the true character of such practices, and since public opinion has become so indifferent to them?

Thus, sir, the demoralization nourished by the system of spoils has filtered through the whole body-politic from top to bottom, even to the lowest strata of the population; and you

cannot fail to feel the deep significance of the words once uttered by Mr. Lincoln, to which the Senator from Massachusetts [Mr. Wilson] has already alluded. One day, shortly before his death, after the commencement of his second Administration, he pointed out to a friend the crowd of office-seekers besieging his door, and said to him: "Now we have mastered the Rebellion; but there you see something that in the course of time may become far more dangerous to this Republic than the Rebellion itself." And indeed, sir, he had a prophetic mind.

I have endeavored to describe the evil; what now is the remedy? Is there any probability that the evil will correct itself? I doubt it. A revolution in public sentiment ever so decided would hardly have lasting effect unless clothed in the form of law. We have to deal with a system of temptations which will work the same results as long as it exists at all. Let us see, then, whether legislative means are available and bid fair to be effective.

The present practice of distributing office in the way of patronage being the root of the evil, the problem consists in reaching that without running against the spirit of the Constitution. I desire to move the bill to reform the civil service which I introduced at the beginning of the last session as a substitute for the bill introduced by the Senator from Illinois [Mr. Trumbull]. I have changed it in only one essential point.

I do not indulge in the delusion by any means that the substitute I offer has any claim to perfection; on the contrary, I am painfully sensible of its shortcomings; but at any rate it may serve well as a basis for discussion. As I have already stated, the weak point in the bill of the honorable Senator from Illinois is this: that, if he renders it impossible for the appointing power to derive information about the appointments to be made from members of Congress, another source of information must be substituted, which his bill fails to do. This source of information is supplied in my bill. The bill establishes a civil service board before which all the applications for office are to go. This board is not to be in any sense a partisan engine. The mode of appointment and the tenure which it is to have will give it a certain independence of party government. It is to be renewed one-third by every successive Administration, and will soon have a mixed political character, as one Administration succeeds upon another, probably under the auspices of different parties. The members of the board shall not be removed except for cause, according to the provisions of the tenure of office act before it was amended by this Congress at its first

session. But they may be removed for cause deemed sufficient by the Senate. The salary of the commissioners is to be ample enough to command a respectable degree of ability and acquirements, and the value of the salary is enhanced by a long tenure. I will add that the number of commissioners composing the board, as the bill fixes it, is not essential. It ought not to be too small at first, for there will be a great pressure of work. It might be reduced afterward, when the machinery is in successful operation.

The officers of the Government are divided into two classes; first, the subordinate officers, whose appointment is now by law vested in the heads of the different departments, the routine men, the clerks; and, secondly, the executive officers, who are now appointed by the President of the United States by and with the advice and consent of the Senate. The subordinate officers are to be appointed after competitive examination.

The fitness of candidates for presidential appointments shall also be examined by the board. There are certain offices the discharge of the duties of which requires special knowledge, experience, and skill; and candidates for such offices are fit subjects for regular examination. There are other offices—for instance, country post-offices—in connection with which the examination of a candidate would hardly be deemed necessary and proper. The distinction is to be fixed by the regulations of the board. Where no examination is considered necessary the board shall institute such inquiries as may be necessary to ascertain the character, antecedents, standing in society, and general fitness of candidates. The results of such examinations shall be reported by the board to the President and to the Senate, to guide the Executive in making nominations and the Senate in confirming or rejecting them. The interference of Congressmen will then no longer be required.

You will notice that in the case of presidential appointments the President is to choose freely from the whole number found fit, and that those only are to be excluded from his choice who are found unfit for the office for which they present themselves. Thus the choice is by no means to be made by the board, but by the President.

One of the most important features of the substitute is the change in the tenure of officers. The section of my bill touching subordinate officers, as it originally stood, provided that those subordinate officers who are appointed by the heads of departments, except postmasters, should be appointed on good behavior. The current objection to this was that it would create

a distinct and aristocratic class among our population. I, for my part, must confess that I never feared any such result. In fact, the idea of a class of aristocrats, consisting of departmental clerks at Washington and of custom house and post-office clerks at New York and other cities, seems to me somewhat ludicrous.

WILLARD WARNER [Ala.].—Would not this system prevent the President from appointing to office any man who did not apply?

SENATOR SCHURZ.—No, sir; it would not. The President may select a man whom he wishes to appoint to office, and then send him before the civil service board, to ascertain whether he is fit. If that man does not want to go before the civil service board, the presumption is that he does not want to go into office.

I was just remarking that, in my opinion, the tenure on good behavior of those subordinate officers would, in my opinion, by no means be productive of the dangers which have been pictured in such glaring colors. I do not believe that these dangers exist in a country which is ruled by public opinion, and where the administration of affairs changes so frequently. And yet it is so obvious that a proposition like this could not carry in either House of Congress, or perhaps even before public opinion, that it has been abandoned. This, however, is not the only reason why it was given up. I believe that free competition and a rigid competitive examination before a board composed of conscientious examiners, as a condition of appointment, will prevent the frequent occurrence of removal without sufficient cause. At any rate, when vacancies in the departments are to be filled only with men having issued best from a competitive examination, the service will not suffer by the change, removals and appointments on partisan grounds will cease, and greater stability will be secured without the elasticity of the system being sacrificed.

It is provided that the regular term of office shall be eight years, and whenever a vacancy occurs it shall not be filled merely for the balance of the unexpired term, but the officer filling the vacancy shall be appointed for another full term of eight years. The object is this: in the first place, regular rotation with every successive Administration shall cease. Officers being removable only for cause, and officers appointed by one Administration holding through the term of another, we shall accustom ourselves to the practice of having men in office belonging to another party than that which controls the Administration. And as vacancies gradually occur, by death, resignation, or

removal for cause, to be filled for full terms of eight years, the expiration of the terms of the different officers will no longer occur at one time, but be scattered over the period of eight years, thus giving the civil service board sufficient time to conduct their examinations and inquiries as they successively become necessary to fill vacancies, and enabling the Executive, as well as the Senate, to act leisurely and intelligently upon all the cases coming before them.

That the regular term should be just eight years I do not deem absolutely essential. It would, indeed, give the public service the benefit of more experienced officers. But to attain the other objects described it would be sufficient to fix a term of five, six, or seven years as well. I admit that the practical capacity of a candidate for office, his executive ability, cannot be with sufficient certainty ascertained by examination. This might lead to embarrassments, as the officer is not to be removed during his term except for cause to be tried. It is therefore provided that the first year of service of an officer belonging to this class shall be his year of probation, during which his practical ability may be well ascertained. And during that year of probation the Executive shall have power to remove the officer at pleasure, without assigning or proving a cause. It will thus be seen that no distinct and privileged class of Government officers, no bureaucracy is to be created, but the elasticity of the present system is to be preserved, improved, however, by a system of selection, which will secure a better class of officers, and by a longer and more secure tenure, which will remove the partisan character and raise the moral standard of the service.

Finally, sir, certain officers are excluded from the operation of this bill. As far as the judges of the United States are concerned, it may be presumed that no other than men universally recognized as being eminent in the law would be selected for such places by any Administration; and, as to members of the Cabinet and diplomatic officers, representing, as they do, not only a public duty but in a certain sense also the political views of the Administration, it is proper that the Administration should have the free disposal of those places.

JACOB M. HOWARD [Mich.].—I would ask the honorable Senator why he excepts the judges of the Supreme Court from the category of persons to be examined before their appointment? Is there not greater necessity for the examination of applicants for judicial station than for any other position in the civil service?

SENATOR SCHURZ.—As I have already stated, it may fairly be presumed that no Administration would select any other but men very eminent in their profession to fill such positions.

SENATOR HOWARD.—Is not the eminence of the station the strongest reason that can be conceived for subjecting the applicant to an examination as to his fitness?

SENATOR SCHURZ.—It might there with propriety be asked who is to examine the candidates for such places as judgeships on the supreme bench? There are examinations in the army for a number of grades. We might just as well ask who is to examine a candidate for the position of general-in-chief.

CORNELIUS COLE [Cal.].—Would not that reason apply to all offices?

SENATOR SCHURZ.—It would not. In the nature of things, it may fairly be presumed that the applicants will exclusively belong to the small class of those who are eminent enough to be mentioned in connection with such places.

AARON H. CRAGIN [N. H.].—The Senator, I presume, has not forgotten that these appointments are for life, and therefore there would be greater necessity of having exactly the right men.

MR. SCHURZ.—I have certainly not forgotten that. But, on the whole, I think the experience of the people of the United States has been that but very few mistakes in the history of this country have been made in the selection of members of the Supreme Court of the United States. As to the diplomatic officers of the Government, there, I admit, this question might be asked with much greater propriety. But as diplomatic officers of the Government are to represent not only a public duty, but also the political views of the Government, it is proper that the Administration should be left free in their choice; and I believe also that when no longer any danger exists that a man will be appointed minister-resident or minister-plenipotentiary because he fails in obtaining a post-office, we shall have a better set of diplomatic officers than now.

Now, sir, I repeat, I do not pretend that this plan is in any way perfect. On the contrary, I feel its shortcomings. Let us regard it as a suggestion that may call out others. I invite the Senate to consider the benefits arising from some such system. It would, of course, not at once remove all the evils complained of; but it would certainly secure greater efficiency in the civil service. It would certainly procure for it men of higher capacity, even by deterring ignorance and men of low reputation. It would certainly raise the respectability of the

service; and a certificate of fitness issued by the civil service board would be a mark of distinction and serve as a passport in all the walks of private life everywhere. It would certainly inspire a sentiment of honorable pride among officers. It would secure more efficient control by putting by the side of an officer one belonging to another party, instead of making the whole one great partisan ring. It would abolish the absurd practice by which an Administration is pressed to take to pieces and rebuild at the start the whole machinery of the Government. It would relieve the President, Cabinet, and Congressmen from importunity, and give them time to attend to their legitimate duties. It would restore the independence of the different departments of the Government. Offices ceasing to be party machinery, political parties would be relieved of responsibilities and would be encouraged in the freedom of criticism. Then a thorough retrenchment and reform of abuses would finally be attainable.

But, more than that, the spoils system once destroyed, a healthier moral feeling in political life will be rendered possible; the corrupt temptations working in all spheres of the body-politic will be greatly lessened; the standard of morality in political life will be raised; political contests will once more be contests of principles and policies, instead of being scrambles for spoils; the political proletariat, with its demoralizing practices and influences, will gradually be broken up, and all the best elements of the population will again be attracted to political life. Politics will then become once more what they always ought to have been, a most honorable occupation engaging the noblest aspirations.

I know some of the objections that are currently brought to a system like this. It is said that the reform proposed would be obnoxious to the theory of our Government. I maintain that in its effects it would be in strict accordance with the original intentions as exemplified by the early practices of the Government. The Senator from New Hampshire a few days ago quoted a passage from "The Federalist," in which Alexander Hamilton states most strongly the intention of the makers of the Constitution to prevent the interference of members of Congress in the appointment of officers and to secure stability in the civil service.

GEORGE H. WILLIAMS [Ore.].—Does it not appear from the early history of this Government that it was held that officers were subject to removal at the will of the Executive?

SENATOR SCHURZ.—It does; but it appears also that the

power of the Executive in that direction was but very rarely exercised. It appears from the teachings of the fathers, as well as the early practice of the Government, that nothing was further from the minds of the statesmen of those times than that there should be a general breaking up of the administrative machinery every four years, to be accompanied and followed by the scandals which we now witness. Who of them ever thought of it, that a competent and worthy officer should be removed as long as he was competent and worthy? Nay, let me say to the Senator: if the great Fathers of the Republic, if Washington and Adams and Jefferson and Madison and Hamilton could rise up from the dead and look at the spectacle which now so frequently presents itself to our eyes, they would stand aghast at the perversion which the beautiful fabric of the Government, as they designed it, has suffered at the hands of subsequent generations.

SENATOR WILLIAMS.—I wish to ask the Senator if the system which he is now assailing was not established by the fathers of this Republic, and if all the evils of which he complains may not be remedied by electing a man President of the United States who will return to the early practices of the Republic?

SENATOR SCHURZ.—Have we not elected more than once men to the presidency of the United States upon whose integrity and sagacity and wisdom we built the highest hopes? Can the Senator recollect within the reach of his memory a single President of the United States who ever dared to attempt the sweeping reform of which he speaks? Does he expect, as long as the present system prevails, if a change of party control should occur, that then a President would have the strength to rise up and say, "I will have no longer a partisan organization in the public service"? Does he think that such a President could thus control the greed of his partisan followers? Does he expect any party that may follow ours in the control of affairs to abstain from grasping the spoils if there is no impediment in the way? To produce such a result would require a tremendous revolution in popular sentiment. I certainly would hail with delight such an event; but have we a right to expect a moral revolution so powerful unless we prepare the way for it by removing the temptations which are now operating on the minds of the politicians and the multitude?

We are told that there is a popular notion prevailing in this country that every American citizen is entitled to public office. Yes, so he is; but would it not be well to create the additional popular notion that then every American citizen shall fit him-

self for public office in point of intelligence, acquirements, and character? Thus office may even become an educational element in society.

"Are we to do nothing for our friends who helped send us here?" we are sometimes asked. "Shall we say to them when they come to us asking for an office, 'No, you shall not have it'?" Sir, I am willing to do much for my friends; they shall command my best endeavors. But I think we can do something vastly better for them and their children and their children's children than giving them post-offices and places in custom houses; and that is to pass laws which will secure to them good government.

Again, the objection is made that a reform of this kind would be incompatible with republican institutions. Sir, it seems to have become fashionable with some, whenever a great abuse is attacked that has worked itself into our political habits, to say that this is one of the evils inseparably connected with republican government, and that we must not touch it lest we touch republican government itself.

I, sir, have a far higher idea of republican government. I do not believe that true republican government is in any sense necessarily wedded to organic disorder and demoralization. I certainly do not indulge in the delusion that all the frailties and weaknesses of human nature can be abolished by an act of Congress; but I do not think that republican government will suffer if we repress ignorance and mercenary motives, and thus open a wider practical field for the intellectual and moral elevation of man. I am sure that republican government can endure the examination of candidates for public office before they are intrusted with public responsibilities; and that it can endure also the exclusion of those who are intellectually and morally unfit for public station.

Republican government, it seems to me, does not depend upon an official tenure of four years. I think it will not suffer by an extension of that tenure to six or eight. I maintain that republican government will rather gain than lose, and gain immensely, by a reform which takes from the machinery of the public service its partisan character, and which will remove from our political life that most dangerous agency of corruption and demoralization which consists in partisan patronage; which will restore to political activity again all the best elements of our population, and to predominance the loftiest and most patriotic feelings of the human heart. I therefore repel that cry, as a slander upon the beneficent institutions under which

we live and as an insult to the good sense of the American people.

It is said also that the country cannot be governed, that parties cannot be sustained under any but the existing system. Why, sir, such assertions are almost as old as history. There never was an absolutist, there never was a devotee of despotism who did not strenuously affirm that if you limited the power of kings the whole world of morals and civilization would fall into chaos. If you had asked Walpole, he would have told you that it was impossible to govern England without a corruption fund. If you had asked the Duke of Wellington, he would have insisted upon it that the constitution of Great Britain would be ruined beyond redemption if you abolished the rotten boroughs. Why, have we become so imbecile as to declare ourselves incapable to conceive and act upon a new idea which is to do away with existing abuses? Has republicanism really arrived at its wit's end? Nay, sir, we are not permitted to stand still in this matter; we must go either forward or we shall be driven backward. We must control these evils or these evils will control us.

It has been said that a practice like the one proposed might have been proper when the Republic was young and small, when the interests it had to deal with were limited, and when the number of offices was insignificant; but that now, since the Republic has grown great, since the functions of the Government have become complicated and the number of officers immense, it is entirely out of the question. Is that so? I affirm that just the reverse is the case. When the machinery of government was simple and when the eyes of the Executive and his chiefs could be everywhere, then rotation in office might have been endurable; it might not have left these dangerous consequences behind it. But now, since the interests we have to deal with have grown so tremendous, since the number of officers has risen to the dimensions of an army, and since the machinery of government stretches its arms into every relation of life, now, sir, is it not evident that the evils springing from the demoralizing tendency of the existing system increase a thousandfold as we go on, and that a reform is imperatively commanded by this very circumstance?

On previous occasions I have alluded to the dangers threatening from the growing power of great moneyed corporations; how that power is already felt in State and national politics, and bids fair to exercise a controlling influence, dangerous even to our free institutions. Can we afford to disregard that danger?

Is it not time to consider what will become of our political life when such a power takes possession of political parties, whose very discipline is enforced by continual appeals to mercenary motives, and by practices in their very nature corrupting? Is it not time to consider what, under the influence of such a power, a government will become which is surrounded by demoralizing temptations on all sides, and which holds in its hands means of corruption penetrating all spheres of society? And considering this, in the face of such dangers, is it not high time that those temptations should be removed, that the means of corruption should be curtailed, and that a moral spirit should be infused into our body politic capable of resisting such sinister influences?

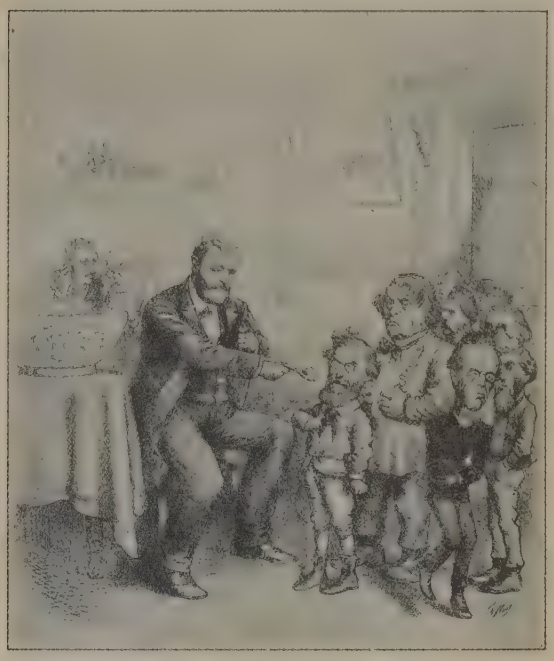
Sir, this is no mere fancy. The demand for civil service reform is not a mere cry of croakers who are constitutionally dissatisfied, or of restless innovators who want to achieve a little cheap notoriety. It springs from the patriotic anxieties of serious-thinking men, who, with profound solicitude, watch the growth of evils threatening the future of the Republic which they love. That demand cannot be laughed out of the way; it will not be put down by jests and sneers. That demand will become stronger every day; and I predict the time is not far when no political party can disregard it with impunity.

It was to me a hopeful sign when the President had a favorable word for civil service reform in his message. Why should we hesitate to act upon that suggestion? Do we not know that the older the evil grows the more difficult will be its eradication? Do we not feel that every session, every day lost is an opportunity lost? It is in this spirit that I have submitted to the Senate the plan I have explained. I repeat that I have no pride of opinion about it. On the contrary, no man would be happier than I if the wisdom of the Senate should discover and furnish one which is better. But let us at last approach this important problem with that fearlessness of thought which will enable us to be candid with ourselves, and with that determination of purpose which is necessary to arm us for the struggle with inveterate habit, prejudice, and the corrupt influences developed to such alarming power in our political life.

Senator Howard closed the debate with a speech in opposition to Senator Schurz's proposition.

I have no confidence in the civil service bill whatever. I look upon it as a mere dream of a political millennarian, who

entertains the hope that the political millennium will some time or other come, when nobody will be recommended or appointed to office except such as may be entirely fit for it. Sir, we shall see no such day. Our Government is a republican-democratic government. The theory of it is that the representative shall be as near the constituent as possible. It is the constituent that is ultimately responsible for the use of the political power which



"CHILDREN CRY FOR IT"
U. S. G. "IF YOU CAN STAND IT, I CAN"
Cartoon by Thomas Nast
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he bestows upon his representative; and the nearer you keep the representative to the constituent the better, and the more perfect is our republican representative system. But if you undertake to separate the representative from the constituent, and place the former above the latter at such a height that he cannot approach to him or speak to him, you have taken the first step toward converting a representative republican government into that more simple and dignified government known as a despotism.

There are evils connected with all governments. It is undoubtedly true that, on the inauguration of every new President, Washington is filled with visitors, many of whom resort hither for the purpose of securing offices. Sir, they are part and parcel of the sovereigns of the country. They have a right to come here, and to ask the President or a secretary or the head of a bureau for an office. They have a right to express their wishes and to represent themselves as persons fit for and wanting an office. Who doubts it? Is this a crime? Is it even a fault?

The honorable Senator from Missouri spoke of the crowd of visitors who attend inaugurations here as a "motley crowd," intending, doubtless, to cast odium upon those visitors who happen to come here on that occasion for office-seeking. As a general thing, the crowd who assemble here are not a "motley crowd." The most respectable and intelligent portions of the people of the United States ordinarily compose this crowd of visitors. Is it the purpose of the honorable Senator from Missouri to debar the people of the United States from making these visits to Washington, whether they come for office or not? Does his fanciful and imaginary republican form of government exclude all contact between the people and the persons they elect to office?

Now, sir, I am opposed to this civil service bill because its direct tendency is to build up a privileged class, a sort of office-holding aristocracy in the country; and I tell you, sir, enact this bill, put it into operation, and say to the masses of the people of the United States, "You shall not be eligible to an office under the Government of the United States unless you have placed yourself within this charmed circle of persons who have been examined before a board of examiners," and your statute will not remain the period of one single Congress upon the statute book. Have we not schools in this country? Have we not institutions of learning where persons may fit themselves for the discharge of official duties? And what magic is there in a "board of examiners"? How will this board of examiners

ascertain the fact better than the friends of the parties who are not members of the board as to the fitness of the applicants?

Sir, intending no disrespect to the honorable Senator from Missouri, I must say that this is one of the emptiest visions that I have ever seen, one of the most impracticable projects; and, if it were practicable, one of the most objectionable and odious. I hope that the amendment of the honorable Senator from Missouri will meet with the fate which in my judgment it so richly merits, and that it will be rejected.

The Senate took no action this session upon the bill either of Senator Trumbull or of Senator Schurz.

In the fall of 1882 the Democrats won a sweeping victory in the Congressional elections chiefly on the issues of tariff and civil service reform.

Early in the session of 1882-83 the Senate Committee on Civil Service and Retrenchment reported a bill framed by George H. Pendleton [O.], of the committee. Senator Pendleton supported the bill on December 12, 1882.

Civil Service Reform

Senator Pendleton

I beg the Democratic party throughout the country not to mistake this result of last fall as a purely Democratic triumph. It was achieved by the Democratic party with the assistance of men of all parties upon whom their love of country sat heavier than their love of party. It was a protest made by an awakened people who were indignant at the wrongs which had been practiced upon them. It was a tentative stretching out of that same people to find instrumentalities by which those wrongs could be righted.

The people demanded economy and the Republican party gave them extravagance. The people demanded a reduction of taxation and the Republican party gave them an increase of expenditure. The people demanded purity of administration and the Republican party reveled in profligacy; and when the Republican party came to put themselves on trial before that same people the people gave them a day of calamity.

I beg that my colleagues on this side of the Chamber may remember, I desire that our party associates throughout the country shall remember, that the people will continue to us

their confidence and increase it, that they will continue to us power and increase it, just in the proportion that we honestly and fairly and promptly answer to the demands which the people have made, and which were thus responded to by the Republican party. They asked revenue reform and they received none. They asked civil-service reform and they obtained none. They asked that the civil service of this Government should not either as to its men or its expenditures be made the basis upon which political contests were to be carried on, and they received for answer that that was an old fashion and a good method of political warfare.

I beg gentlemen upon this side of the Chamber to remember that, if they desire to escape the fate which now seems to be impending over their adversaries, they must avoid the example which those adversaries have set them.

Mr. President, the bill which I have the honor to advocate to-day, and which is reported by a committee of the Senate, is the commencement, in my humble judgment, of an attempt to answer one of the demands which the people have authoritatively made. I speak advisedly. It is the commencement of an attempt to organize a system which shall respond to one of the demands which the people have made.

I suppose the most enthusiastic supporter of this bill will not pretend that it is perfect. I suppose he will not pretend that upon the adoption of this bill a system will immediately spring into life which will perfect and purify the civil service of the Government. But it is the commencement of an attempt to lay the foundations of a system which, if it shall answer in any reasonable degree the expectation of those who by experience and faithful study have framed it, it will in the end correct the abuses to which I have alluded, and which have been delineated by no enemy of the Republican party or of the Administration in the report which I have read to the Senate.

The bill has for its foundation the simple and single idea that the offices of the Government are trusts for the people; that the performance of the duties of those offices is to be in the interests of the people; that there is no excuse for the being of one office or the paying of one salary except that it is in the highest practicable degree necessary for the welfare of the people; that every superfluous office-holder should be cut off; that every incompetent office-holder should be dismissed; that the employment of two where one will suffice is robbery; that salaries so large that they can submit to the extortion, the forced payment of two or ten per cent., are excessive and ought

to be diminished. I am not speaking of purely voluntary contributions.

If it be true that offices are trusts for the people, then it is also true that the offices should be filled by those who can perform and discharge the duties in the best possible way. Fidelity, capacity, honesty were the tests established by Mr. Jefferson when he assumed the reins of government in 1801. He said then, and said truly, that these elements in the public offices of the Government were necessary to an honest civil service, and that an honest civil service was essential to the purity and efficiency of administration, necessary to the preservation of republican institutions.

Mr. Jefferson was right. The experience of eighty years has shown it. The man best fitted should be the man placed in office, especially if the appointment is made by the servants of the people. It is as true as truth can be that fidelity, capacity, honesty are essential elements of fitness, and that the man who is most capable and most faithful and most honest is the man who is the most fit, and he should be appointed to office.

These are truths that in their statement will be denied by none, and yet the best means of ascertaining that fitness has been a vexed question with every Administration of this Government and with every man who has been charged with the responsibility of its execution. We know what is the result. Pass examinations have been tried; professions have been tried; honest endeavors have been tried; a disposition to live faithfully up to these requirements has been tried; and yet we know, and the experience of to-day shows it, that they have all made a most lamentable failure. We do not know that so great has been the increase of the powers of this Government and the number of officers under it that no President, no Cabinet, no heads of bureaus, can by possibility know the fitness of all applicants for the subordinate offices of the Government. The result has been, and under the existing system it must always be, that the President and his Cabinet and those who are charged with the responsibility have remitted the question of fitness to their own partisan friends, and those partisan friends have in their turn decided the question of fitness in favor of their partisan friends. The Administration has need of the support of members of Congress in carrying on its work. It therefore remits to members of Congress of its own party the questions of appointment to office in the various districts. These gentlemen, in the course of their political life, naturally (I do not find fault with them for it) find themselves under strain and

pressure to secure a nomination or a renomination or election, and they use the places to reward those whose friends and families and connections and aids and deputies will serve their purpose.

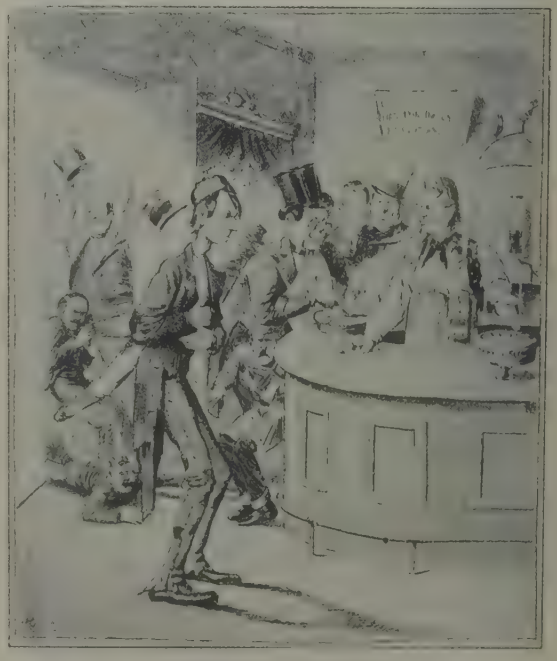
I put it to gentlemen, particularly to my friends on this side of the Chamber, because you have not the opportunity to exercise this patronage as much as our friends on the other side, whether or not the element of fitness enters largely into the questions of appointment in your respective districts and States? It cannot be. The necessities of the case prevent it. The pressure upon men who want to be elected prevents it. The demands that are made by partisan friends and those who have been influential and potent in securing personal triumph to gentlemen who may happen to be in such relation to the appointing power that they have the influence to secure appointment prevent it. The result is, as I have stated, that, instead of making fitness, capacity, honesty, fidelity the only or the essential qualifications for office, personal fidelity and partisan activity alone control.

When I came to the Senate I had occasion more than ever before to make some investigation upon the subject, and found, to my surprise, the extent to which the demoralization of the service had gone. I saw the civil service debauched and demoralized. I saw offices distributed to incompetent and unworthy men as a reward for the lowest of dirty partisan work. I saw many men employed to do the work of one man. I saw the money of the people shamefully wasted to keep up electioneering funds by political assessments on salaries. I saw the whole body of the public officers paid by the people organized into a compact, disciplined corps of electioneers obeying a master as if they were eating the bread of his dependence and rendering him personal service. I saw these evils were fostered, encouraged, stimulated very largely by Senators and Representatives. They had their friends who lent them a helping hand; and, regardless of the fitness of these friends, of the necessity of their employment, they insisted on the appointment and had the power which, on consideration, was found sufficient to secure it.

I believed then, and I believe now, that the existing system, which, for want of a better name, I call the "spoils system," must be killed or it will kill the Republic. I believe that it is impossible to maintain free institutions in the country upon any basis of that sort. I am no prophet of evil, I am not a pessimist in any sense of the word, but I do believe that, if the

present system goes on until 50,000,000 people shall have grown into 100,000,000, and 140,000 officers shall have grown into 300,000, with their compensation in proportion, and all shall depend upon the accession of one party or the other to the presidency and to the executive functions, the presidency of the country, if it shall last in name so long, will be put up for sale to the highest bidder, even as in ancient Rome the imperial crown was awarded to those who could raise the largest fund.

I beg gentlemen to believe that, whatever I may have said



UNCLE SAM'S LUNCH COUNTER

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as to the relation of parties, I do not approach the question of the form of the civil service in any mere partisan spirit. It was because I thought I saw this danger, because I believed that it was imminent, because I believed then, as I do now, that it is destructive of republicanism and will end in the downfall of republican government, that I felt it my duty to devote whatever ability I had to the consideration of this subject. It was that which induced me a year or two ago to introduce a bill which, after the best reflection, the best study, the best assistance that I coud get, I did introduce in the Senate, and which, in some degree modified, has come back from the Committe on Civil Service Reform, and is now pending before this body.

The purpose of this bill is merely to secure the application of the Jeffersonian tests—fidelity, honesty, capacity. The methods are those which are known and familiar to us all in the various avocations of life—competition, comparison.

Mr. President, it is because I believe the "spoils system" to be a great crime, because I believe it to be fraught with danger, because I believe that the highest duty of patriotism is to prevent the crime and to avoid the danger, that I advocate this or a better bill if it can be found for the improvement of the civil service.

There has been great misapprehension as to the methods and the scope of the bill. I desire the attention of the Senators while I briefly state them. The bill simply applies to the executive departments of the Government here in Washington and to those offices throughout the country—post-offices and custom houses, which employ more than fifty persons. I am told, and I am sure that I am not far out of the way, if I am not exactly accurate, that the number of such offices does not exceed thirty, or perhaps thirty-five, and that the number of persons who are employed in them, together with those in the departments here, will not exceed 10,000.

I said that this was a tentative effort; that it was intended to be an experiment, and it is because it is tentative, because it is intended to be an experiment, that the committee thought it advisable in its initial stages to limit it, as they have limited it, in the bill. The bill does not apply to elective officers, of course, nor to officers appointed by the President, by and with the advice and consent of the Senate, nor to the military, nor to the naval, nor to the judicial establishment. It applies simply now to those officials who are employed in the departments here and in the large offices of the Government elsewhere, first, because as an experiment it was thought that it gave scope enough to test its value and labor enough to employ all those who are engaged in putting it in operation until its merits shall be fairly tried and it shall commend itself either to the approval or condemnation of the American people.

There was another reason. The heads of offices and bureaus where the number of employees is small can themselves personally judge of the fitness of persons who are applicants for appointment, knowing, as they do, more or less in their narrow communities their antecedents, their habits, and their modes of life.

The bill does not touch the question of tenure of office or of removal from office. It leaves those questions exactly where the law now finds them. It concerns itself only with admission to the public service; it concerns itself only with discovering in certain proper ways or in certain ways—gentlemen may differ as to whether they are proper or not—the fitness of the persons who shall be appointed. It takes cognizance of the fact that it is impossible for the head of a department or a large office personally to know all the applicants, and therefore it provides a method by which, when a vacancy occurs by death, by resignation, by the unlimited power of removal, a suitable person may be designated to fill a vacancy. It says in effect that when a vacancy occurs in the civil service everybody who desires entrance shall have the right to apply. Everybody, humble, poor, without patronage, without influence, whatever may be his condition in life, shall have the right to go before the parties charged with an examination of his fitness and there be subjected to the test of open, regulated, fair, impartial examination.

The preamble expresses fully the philosophy of the bill. Read it carefully. It sets forth what common justice demands for the citizen and for the Government. It sets forth what the economy, efficiency, and integrity of the public service demand.

> Whereas common justice requires that, so far as practicable, all citizens duly qualified shall be allowed equal opportunities, on grounds of personal fitness, for securing appointments, employment, and promotion in the subordinate civil service of the United States; and
>
> Whereas justice to the public likewise requires that the Government shall have the largest choice among those likely to answer the requirements of the public service: and
>
> Whereas justice, as well as economy, efficiency, and integrity in the public service, will be promoted by substituting open and uniform competitive examinations for the examinations heretofore held in pursuance of the statutes of 1853 and 1855.

I have heard it said that this system of examination proposes to present only a scholastic test; that it proposes only to give advantage to those who are college-bred, and have had the advantage in early life of superior education. The committee investigated that subject to some extent, and I have here the result in the city of New York. Says Mr. Burt:

> About two-thirds of the appointees had a common school education; had not even an academic education.

Of course these examinations must be proper; of course they must be regulated upon common-sense principles; of course they must be conducted to test the fitness of the men who are to be appointed to particular offices. You have tests everywhere. To-day the law requires that there shall be a test of examination in the various departments here in Washington. They are pass examinations; they are imperfect; they are insufficient; they are not thorough. Mr. Graves himself says that the only examination in his case was that the superior in the department looked over his shoulder while he was writing and said, "I think you will pass." That was when he entered the service twenty-odd years ago.

If you have examinations why not have competitive examinations? If you have private examinations, why not have open examinations? If examinations are made in the departments by subordinates of the departments, why not have them made by responsible examiners amenable to the authority of the President under a system devised by the best intelligence that can be supplied?

I hear the system of competitive examination spoken of as if it were something extraordinary. Within the last fifteen years it has gotten to be a custom that I might almost say is universal that when a member of Congress has the right to appoint a cadet to West Point or to the Naval Academy he asks his constituents to compete for it. Formerly it was never done; it was looked on as the mere perquisite of a member of Congress.

Nor are there any aristocratic tendencies about this system, as I have heard suggested; for while it does not in any wise create an official caste it does in words and in effect open up the possibility of the public service to the poorest and the humblest and least influential in the land.

It has been said that the abandonment of the spoils system will exclude Democrats from office when the day of our victory shall come. I do not think it. On the contrary, I believe that the adoption of this policy as our party creed will hasten the day of the victory of our party and its adoption as a law will under any administration fill many offices with Democrats. I think it will bring to our aid very many men not hitherto of our political faith who believe this reform a vital question in our politics. I think it will disarm and disorganize and neutralize the trained bands of officeholders who have wrested from us at least two presidential elections.

The bill was passed by the Senate on December 27 by a vote of 38 to 5, the minority all being Democrats. The House passed the bill on January 5, 1883, by a vote of 155 to 47. Thirty-nine of the minority were Democrats. President Arthur approved the bill on January 16.

The Democratic opponents of the bill were of the Jacksonian school which held that "to the victors belong the spoils." In 1885, when Pendleton's term as Senator expired, this element in Ohio put forward as his successor General Durbin Ward, known as the "War-Horse" of the old "Moss-back" Democracy. The young reform element, known as the "Kids," endeavored to reëlect Senator Pendleton. The legislature was Democratic. Pledges were secured from the Democratic legislators in favor of one or the other of these candidates; and it seemed as if one or two votes would decide the contest, and that only at the end of a long "deadlock." However, on the first ballot, a millionaire, Henry B. Payne, was elected, to the great surprise of everybody, including the legislators themselves who voted for Payne. It was charged by responsible newspaper editors in the State, of both parties, that the election was brought about through the "influence" of the Standard Oil Company, of which Mr. Payne's son, Oliver, who had been active in his father's support, was a prominent officer. Each legislator voting for Payne had been "persuaded" to cast a "complimentary" vote for the heretofore unmentioned candidate in recognition of his "services" to the party, being kept in ignorance of the fact that a majority of the legislators had promised to do the same. After the vote quite a number of these men

found excuses not to return to their constituents until the indignation of these had cooled down.

The Senate ordered an investigation into the election. The committee found in favor of allowing Mr. Payne to retain his seat. Senator Pendleton was appointed by President Cleveland Minister to Germany, which office he held until his death in 1889.

Murat Halstead, editor of the Cincinnati *Commercial*, was named by President Harrison as Minister Pendleton's successor, but owing, it is said, to his having denounced the Payne investigation as a "whitewashing" process, the Senate refused to confirm the nomination.

WHY THEY DISLIKE HIM [CLEVELAND]—HE WILL NOT PROVE HIMSELF A CAT'S-PAW IN THE ENTERPRISE

Cartoon by Victor Gillam

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CHAPTER XI

The Speaker as "Czar"

Autocratic Rulings of Thomas B. Reed [Me.], Speaker of the House, in Disputed Election Cases—Committee on Rules Introduces a New Code—Joseph G. Cannon [Ill.] Presents Majority Report; John G. Carlisle [Ky.], and Samuel J. Randall [Pa.], Present Minority Report—Debate: In Favor, Mr. Cannon, Elijah A. Morse [Mass.], Edward P. Allen [Mich.], David B. Henderson [Ia.], Leonidas C. Houk [Tenn.], William D. Kelley [Pa.]; Opposed, Charles F. Crisp [Ga.], Roger Q. Mills [Tex.], Benton McMillin [Tenn.], William S. Holman [Ind.], William McAdoo [N. J.], Amos J. Cummings [N. Y.], Asher G. Caruth [Ky.], Benjamin F. Shively [Ind.]; the Rules Are Adopted.

IN the session of 1889-90 the Republicans of the House had a rather slender majority with which to carry through their measures, and it was therefore of partisan advantage for them to unseat a number of Democratic Representatives. This they set about doing, disclaiming, however, that there was any animus in their action other than the maintenance of purity in national elections; indeed, they produced a vast amount of evidence tending to show that gross fraud and intimidation had been perpetrated in the contested cases.

The Democrats insisted that the charges of the Republicans were trumped up for partisan purposes, and they felt justified, on this account, in resorting to "filibustering" to enable the Representatives in question to retain their seats as long as possible.

In order to prevent the filibustering, Thomas B. Reed [Me.], Speaker of the House, exerted his official powers to discriminate in favor of Republicans as against Democrats by recognizing speakers who should have the floor and by counting members who were present but not voting as present for quorum purposes—a violation of long established custom.

T. B. Reed

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The Democrats were roused to extreme anger by the Speaker's course; at times they rose and advanced toward his chair with shouts of menace and denunciation, and on one or two occasions indicated their protest by leaving the hall in a body.

The newspapers of the country made much of this interesting "copy." Julius Chambers, of the New York *Times*, wrote a graphic description of the arbitrary action of Speaker Reed. The copy editor of the paper used the word "autocrat" in the headline, and the composing office complained that it was too long. The matter being brought to Mr. Chambers's attention, he substituted the word "czar." This was at once adopted by the press of the country, and as "Czar" Reed the Speaker was permanently enrolled in at least the parliamentary, if not also political, history of the country.

In order to make the procedure of Speaker Reed the established rules of the House the Committee on Rules presented a new code. The majority which made this report consisted of Messrs. Reed, William McKinley [O.], and Joseph G. Cannon [Ill.]. Ex-Speakers John G. Carlisle [Ky.] and Samuel J. Randall [Pa.] made a minority report against the new code.

On February 6, 1890, Joseph G. Cannon [Ill.] submitted to the House the majority report. On February 10 it came up for discussion.

Rules of the House

House of Representatives, February 10-14, 1890

Mr. Cannon explained the difference between the new rules and the old ones.

The committee believe that there should be radical changes touching the manner and the conduct of the business of the House, and the changes recommended in this report are so radical and so proper in our opinion that some gentlemen upon the other side have denounced them as "revolutionary." Before I refer to these rules particularly I want to say that for many Congresses I have sat in my place as a member of the House and have seen, under the rules of former Houses, the Speaker,

frequently without the aid of even a minority of one, but frequently with the aid of a minority of one or at least of a small minority, absolutely hold at arm's length the great majority of the Representatives of the people upon both sides of the House. So far as former Congresses are concerned, especially those of recent date, you may search the whole range of parliamentary history and nowhere in any English-speaking country will you find such instances of absolute power as that exercised by the Speakers of those Congresses, under the code of rules which then prevailed, with or without the aid of a minority of the House of Representatives.

Do you ask for instances and cases? I will give them. In the Forty-ninth and Fiftieth Congresses the Senate of the United States passed what was known as the Blair educational bill. That bill came to this House, was referred to a committee, and there, under the rules of the House, at the will of the Speaker, although a great majority of the House upon both sides desired to consider it, it slept the sleep of death in each of those Congresses, and the majority was, as I have said, held at arm's length by the will of the Speaker. Do you want other instances? Political campaigns were made in North Carolina and in Virginia in which Democratic Representatives excused themselves for not repealing the internal tax upon tobacco by saying that the Speaker of the Forty-ninth Congress and of the Fiftieth Congress, under the rules of the House, would not allow the consideration of a bill for that purpose, and that, too, although the great majority of the members of the House desired its consideration. Do you want other instances? Within the recollection of every member of the last Congress, one man, the gentleman from Iowa [James B. Weaver], stood for three days against 324 Representatives here and said to them, "You shall not consider any matter of legislation unless you first agree with me that the Oklahoma bill shall be considered."

What was the result of that exercise of the Speaker's power? The result was that the business of sixty millions of people piled up on the calendars, and not more than 5 per cent. of it could receive consideration, and, in fact, under former codes of rules, almost as much time was given to obstruction by the minority as was given to the consideration of the business of sixty millions of people. The consequence was that there came to us, from right-thinking members of the last Congress and of this, in their cooler moments, and from conservative public sentiment throughout the country, a demand that we should reverse the engine and should so construct a code of rules as to enable a majority

of the representatives of the people, in the shortest possible time consistent with fair debate and consideration, to register the will of the people in the shape of law.

The Committee on Rules have attempted to do this in the code which they have reported here. And the material matters about which there will be difference of opinion are, I take it, first, the provision which cuts up dilatory motions by the roots; second, the provision under which gentlemen present in the House of Representatives to prevent legislation shall (if they be in fact present) be counted as part of the quorum under the Constitution to aid legislation; third, the provision of the rules by which 100 shall constitute a quorum in the Committee of the Whole; and, fourth, the daily order of business.

Now, first, as to dilatory motions, I desire to read the report of the committee touching clause 10 of Rule XVI, which provides—

No dilatory motion shall be entertained by the Speaker.

The report of the committee on this point is terse and direct, and covers the ground upon which this rule is recommended, and is as follows:

This clause is merely declaratory of parliamentary law. There are no words which can be framed which will limit members to the proper use of proper motions. Any motion the most conducive to progress in the public business or the most salutary for the comfort and convenience of members may be used for purposes of unjust and oppressive delay. The majority may be kept in session for a long time against reason and good sense, sometimes at the whim of a single member, and sometimes for a still longer period, at the will of one-fifth who are misusing the provision of the Constitution for yeas and nays, by the aid of simple motions proper in themselves, but which are improperly used.

In the early days such prostitution of legitimate motions caused by anger, wilfulness, and party zeal was not so much as named among legislators. To-day the abuse has grown to such proportions that the parliamentary law which governs American assemblies has found it necessary to keep pace with the evil, and to enable the majority, by the intervention of the presiding officer, to meet, by extraordinary means, the extraordinary abuse of power on the part, sometimes, of a very few members. Why should an assembly be kept from its work by motions made only to delay and to weary, even if the original design of the motion was salutary and sensible? Why should one-fifth, even, be entitled to waste a half hour of themselves and of four other fifths by a motion to adjourn, when the majority manifestly do not want to adjourn?

If the suggestion should be made that great power is here conferred, the answer is that as the approval of the House is the very breath in the nostrils of the Speaker, and as no body on earth is so jealous of its liberties and so impatient of control, we may be quite sure that no arbitrary

interruption will take place, and, indeed, no interruption at all, until not only such misuse of proper motions is made clearly evident to the world, but also such action has taken place on the part of the House as will assure the Speaker of the support of the body whose wishes are his law. So that in the end it is a power exercised by the House through its properly constituted officer.

Now, motions made in this House if used to forward legislation or for legitimate purposes are perfectly proper; but the moment motions proper in themselves, framed to assist the House in shaping legislation, are used not for the purpose of consideration, but by a minority of one or more to hold the majority at bay and say that legislation shall not be had, that moment they are perverted from the legitimate use for which they are made, they become dilatory, and would fall within the clause of this general rule.

There is no legislative body on this earth so jealous of its privileges and power as the House of Representatives. The Speaker is a member, as you and I are. We made him, and a majority of this House can unmake him at any time, because it is the privilege of the House, and not of the Speaker. So no Speaker would dare to refuse to entertain a motion until it becomes patent to all the House that it is a dilatory motion, and then he ought to refuse to entertain it.

You have come to the point where you must lodge this power with the Speaker subject to the revision of the House or the Speaker and a majority of four-fifths of the House must abdicate power, one and all, and let a minority of one or of a handful of members run the House and the country.

Gentlemen say this is "tyrannical." I deny it. But if it be tyrannical, then the "tyranny" is exercised by the Speaker sustained by the majority of the House; and on the other hand the tyrannical minority that has controlled heretofore fails to control now. If I must choose between the "tyranny" of a constitutional majority, responsible to the people, or the "tyranny" of an irresponsible minority of one, I will stand by the Constitution and our form of government, and so act as to let the majority rule.

Now, Mr. Speaker, I pass on to discuss clause 3 of Rule XV in the proposed code. It is as follows:

3. On the demand of any member, or at the suggestion of the Speaker, before the second roll-call is entered upon, the names of members [sufficient to make a quorum] in the hall of the House who do not vote shall be noted by the clerk and recorded in the Journal, and reported to the Speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business,

I call attention to the general parliamentary law, to adjudications of courts, both State and national, and the practice of general legislative assemblies in the several States in harmony with this rule.

Here the speaker cited a number of cases.

The doctrine is well established that "those who are present and who help to make up a quorum are expected to vote on any question, and their presence alone is sufficient, whether they actually vote or not." If eighteen are present and nine vote, all in the affirmative, the measure is carried; the refusal of the other nine to vote being construed as a vote in the affirmative, so far as any construction is necessary. The highest parliamentary authority is explicit and uniform to the same point. In discussing this question a few days ago in the House, I read from "Principles of Procedure in Deliberative Bodies," by Hon. George Glover Crocker, president of the Massachusetts senate, a statement of the well-established principle touching this matter.

I state now, Mr. Speaker, not *in extenso*, that the universal practice under English and American parliamentary law and the practice of nearly all parliamentary assemblies except this, heretofore, has been to hold under law or constitution similar to ours that a majority shall constitute a quorum to do business; that the presence of that quorum is sufficient, although less than a quorum votes.

The gentleman from Virginia [Charles T. O'Ferrall], who seems to me at times to rise up to leadership, closed his speech a few days ago with a whole page of sentences like this:

> Let the finger of autocratic power in this House direct the way to those who will follow it. Let the voice of autocratic power sound through these halls and command those who may obey it; but as for me and my people—

He is sweet on *my people*—

> but as for me and my people I protest against this usurpation, against this outrage, against this violation of the sacred rights of the weak, against this cruel and wicked and unconstitutional violation of the rights of the minority. [Applause on the Democratic side.]

I say to the gentleman from Virginia that for years and years the Democratic House of Representatives in the State of Virginia has counted a quorum which was present and did not

vote, and, where the yeas and nays were not called, has counted and voted them, too, in the negative. And yet my friend from Virginia gets up here on this floor and gives notice that in these, the last days of this unheard-of proposition, when liberty is tottering upon her throne, when war, pestilence, and famine are abroad, the gentleman from Virginia, with flaming eye, uplifted arm, and flowing hair, will lead the column and defend to the last the liberties of the country as the brave three hundred defended the Pass of Thermopylæ. [Laughter.]

Now, gentlemen, we have counted a quorum in this House and entered their names on the Journal when they were present, through the Speaker, and the action of the Speaker has been ratified time and time again by the House; and in placing this rule in the code we do it as a matter of convenience, so that the clerk may perform that duty under the eye of the Speaker and hand the names when the vote is handed to the Speaker. If gentlemen on that side want to go to the country upon the principle contained in this rule, we are ready to go and let the people choose between us. But as sure as we remain here and remain in a majority during this Congress, after due consideration and debate, a majority of the House of Representatives in the Fifty-first Congress will perform the function that the Constitution and the people make it their duty to perform.

Now, the gentleman from Georgia [Henry G. Turner] and his worthy colleague from Georgia [Charles F. Crisp], when this question was under consideration a few days ago, had much to say about czarism and tyranny. What! Tyranny to count gentlemen present under the Constitution when they were present? Oh! that will break up the country! Let us see about that.

Take the district of the gentleman from Georgia [Mr. Crisp]. Now, the gentleman has probably 30,000 votes in his district, and yet only 1,700 of those 30,000 went to the polls and chose him as a Representative of 30,000 voters in this House. Now, then, I will ask the gentleman if he indorses the principle that will allow 28,300 electors to silently sit by in his district and protest against any election, while 1,704 vote for and elect him. Why, if you carry this principle to a legitimate conclusion, that it requires a vote one way or the other (a majority of a quorum), then by analogy no man is justly entitled to a seat in this House unless a majority of the voters in his district did vote.

MR. CRISP.—A word merely in answer to my friend from Illinois in regard to Representatives here and business: The Constitution of the United States provides that it shall require

a majority of the Representatives here to do business; but there is no such provision as to a popular election before the people.

MR. CANNON.—My friend, we talk about the Constitution. In that same Constitution I find rights given to every citizen of the United States. I will not make further comment. I only said by analogy, and upon correct principle, that the logic which requires a majority of all this House to vote in addition to being present would require a majority of the electors in a congressional district to vote.

BENTON MCMILLIN [Tenn.].—Does not my friend know that, on the contrary, the Constitution and laws which govern a popular election provide specifically that the candidate getting the highest number of votes, whether that be a majority or a mere plurality, shall be entitled to the certificate?

MR. CANNON.—I will answer frankly, yes; and in answering I will state further that in every State in this Union with constitutions similar to the Constitution of the United States the law is the same, as interpreted by the Supreme Court of the United States, which provides that, a quorum being present, a majority of those that vote legislate; and that law is as great and high as the law to which the gentleman refers. I was speaking only by way of illustration of the case of the gentleman from Georgia to show that if a correct principle would require non-action in one case it would in the other.

There is not an honest laboring man, in my opinion, there is not a man of culture throughout the length and breadth of this country, but knows in his heart, when free from passion or partisan bias, that our construction of the Constitution is right and that it is absolutely necessary to be asserted and defended or the Republic ceases to be a government of the majority and becomes a government of a minority, a mere aristocracy. I will never stand here when this question is presented and a precedent is to be made helping to do that thing. If the people want to revolutionize our form of government, let them do it after they directly have discussed and taken action as the Constitution provides.

Now, sir, I come to speak of another rule proposed. Clause 2 of Rule XXII provides in substance that a quorum in the Committee of the Whole shall consist of 100 members.

The reasons for making the quorum 100 in the Committee of the Whole are so tersely and clearly given in the report of the Committee on Rules that I read the same, as follows:

> The Constitution provides, article I, section 5, clause 1, that "a majority of each House shall constitute a quorum."

> Neither House of Congress has ever had a rule fixing the number of a quorum in the Committee of the Whole, but from the First Congress to the present the practice has been to require the same number as in the House. The quorum of the House of Commons (consisting of 670 members) is 40. The Committee of the Whole, like a standing or select committee, has merely advisory powers and jurisdiction. Its action concludes nothing, and must be reported to the House, which approves or rejects, as it pleases. The same principle is true with respect to a quorum of standing and select committees. The House has never adopted a rule on this subject, and it has been a common practice for such committee, in arranging its days of meeting, order of business, etc., to fix the number of its quorum, which is less than a majority of its whole number. So far, therefore, as the constitutional or legal question is concerned, it has never been denied or questioned that it was entirely competent for the House to select any number it might please as a quorum of the Committee of the Whole. The only question involved is one purely of legislative expediency and propriety.
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> The reason that the issue has never heretofore been presented is due entirely to the fact that until recent years members have not sat in their seats in the House and refused to vote when their names were called.
>
> The House, for convenience, commits temporarily its jurisdiction to standing and select committees. It never parts with or permanently surrenders it. That jurisdiction so committed is returned to the House with the bill or proposition, and is again referred by the House for convenience to a Committee of the Whole. That the action of that committee is purely preliminary and advisory is demonstrated by the facts that no proposition pending therein can be laid upon the table, that the previous question can not be ordered therein, that a motion to reconsider can not be made, that the yeas and nays can not be taken, and, finally, that it can not adjourn.
>
> The action of the Committee of the Whole being, therefore, purely advisory and concluding nothing, it is clear that this provision can not be in contravention of the Constitution—which is silent on the subject—and is in harmony with the well-recognized principles and practice of the English Parliament, the original sources of our parliamentary rules and practice and of modern constitutional governments.

I pause merely long enough to say that many men have heretofore advocated this. That great parliamentarian, once a member of this House and afterward Vice-President, noted everywhere for his intelligence and his conservatism—William A. Wheeler—favored a provision similar to this. It was favored by many great commoners from time to time. Mr. Garfield introduced a resolution like this. The gentleman from Iowa, Mr. Kasson, and the gentleman from Kentucky [Mr. McCreary] and another gentleman from Kentucky, not in this Congress, Mr. Willis, and other gentlemen from time to time have advocated this provision.

After sixteen years of service in this cause, I am satisfied that at the sessions of the Committee of the Whole there are not present one-half of the time one hundred members. I have stood by this desk hour after hour in charge of appropriation and

other bills, begging gentlemen not to make the point of "no quorum." I have time and again accepted amendments and bought the poor privilege of going on with the consideration of bills by accepting amendments upon condition that gentlemen would abstain from making the point of "no quorum." What does the Committee of the Whole do? It considers matters committed to it by the House, just as the Appropriations Committee or as the Ways and Means Committee considers matters committed to it. The Committee of the Whole consists of all the members of the House, if they want to be present, as they ought to be, and after that committee considers the business then it reports it back with a recommendation, and then, for the first time, the House acts and accepts or rejects the recommendation of the Committee of the Whole.

ROGER Q. MILLS [TEX.].—The code of rules which the majority of the committee have reported to the House for its adoption is a new departure in parliamentary law. It is a proposition to reverse the legislative engine and to run back on the track upon which we have been running forward for a whole century. It is a code based upon a newly discovered idea, that in this country minorities have no rights, and that majorities are all-powerful, that they speak by inspiration, that their utterances are infallible and their actions impeccable. It is the resurrection of the old, exploded idea of centuries ago that the king is the divinely appointed agent of the Almighty, and of course "the king can do no wrong."

It is not, Mr. Speaker, the theory upon which our fathers built this great temple of free government. It is not the theory upon which our Government has been administered for a century. The great object of our Government, as proclaimed in the Declaration of Independence, is to secure the inalienable rights of the citizen.

Upon this broad declaration has been erected the great family of American constitutions—this, the Federal Constitution, the central one of the whole, and those of the States, conforming to this great principle, that our governments are instituted to secure the rights of the citizen.

How are these rights to be secured? Certainly not by subjecting them all to the caprice and whim of a majority. Oh, no; our fathers never meant to do anything of that sort. Why, sir, they knew that power when vested either in a million of people or in one man, without any limit upon its exercise, is a tyrant. Hence our Government is a government of checks and balances. It is a government of limitations, delegations, and prohibitions.

Within the jurisdiction of the majority the majority is supreme. When it speaks within its rightful limits there is no power beyond it; there is no appeal from its decision; its judgment is final and conclusive.

Yes, Mr. Speaker, majorities within their limits as defined by the Constitution are supreme. But there are some powers that our fathers thought it dangerous for majorities to have, and they said that majorities should not have them. They put majorities under the ban of suspicion. They surrounded them with limitations. They directed the vigilant and watchful eye of the citizen on all their movements. A majority can raise and support an army, but it cannot raise and support a church. It can create a court, but it cannot create an establishment of religion. In that the minority is superior to the majority.

A majority can create a navy, but it cannot create a military commission to try any citizen in time of peace. A majority can close our ports, but it cannot close our mouths. Free speech is one of the rights which are safely secured within the bolts and bars of the Constitution; it is far beyond the reach of the strong arm of the majority. A majority may suppress an insurrection, but it cannot suppress the freedom of the press. The press, though it be in a small minority, is still more powerful than the majority. A majority may prevent the assembling of a hostile army, but it cannot prevent the peaceable assembly of the people to petition the Government for a redress of their grievances. A majority may make a rule or a law, but it cannot suspend the habeas corpus unless in time of war, when the public safety is endangered. A majority can levy taxes on imports, but it cannot levy taxes on exports. A minority of a thousand or of ten thousand can send out of the country and all over the world what they please, and a majority of sixty millions cannot prevent it. A majority cannot pass bills of attainder or *ex post facto* laws.

Why is this? Among the people from whom we came majorities did all these things. In England the Parliament is the seat of supreme power. It can do what it wills, and no minority can obstruct or prevent it. It can crown and uncrown the king at pleasure. It can make and unmake the British constitution. It has not only passed bills of attainder and *ex post facto* laws, but it has declared what is orthodoxy and prescribed the religious belief of the people. It has butchered the people, broken them on wheels, burned them at stakes, and dyed the land with English blood to compel the minority to think, speak, feel, and act as the majority wished them to do.

Unfortunately for England and for humanity she had no written constitution as our fathers gave to us to protect us; yes, to "secure" us in the enjoyment of the inalienable rights with which we were endowed by the Creator. To avoid these great crimes for which unrestricted majorities in the English Parliament are responsible, our fathers established this Government to secure—remember the word "secure"—to themselves and their posterity the rights with which nature and nature's God endowed them. They said in many things majorities should be supreme and in many others that minorities should be supreme. In all matters of religion the minority is absolutely supreme over themselves and absolutely beyond the reach of political government as long as they do no injury to others.

We see again in the Constitution an interdiction against the power of the majority over the personal right of the citizen. It is prohibited from making any law to try him for an infamous crime except on the indictment of a grand jury. It cannot deprive him of trial by jury. It cannot deny him the compulsory power of the Government to bring his witnesses to testify in his behalf. It cannot deny him the right to be confronted with his accusers face to face. In all these cases the power of the majority is declared by the Constitution to be dangerous to the liberty of the citizen. Here the citizen, though the humblest in the land, can sit within the fortress of the Constitution, and, sheltered by its power, bid defiance to the will of legislative majorities.

But, Mr. Speaker, it is not only in our national Constitution we see these limitations thrown around majorities. It is so in every State constitution in the Union. What is it for? It is to protect the minority; that is what it is for. It is a check to the madness of the majority, or its caprice, or its wantonness, to use the word employed by Mr. Jefferson. It is to take away from it that power which all history shows it has so grossly abused.

The Constitution of the United States prescribes the rules for the government of the great body of the people of the United States. The constitution of each State prescribes the rules for the government of the people of each State. The Constitution of the United States confers the powers on this House to prescribe the rules for its government.

The rules prescribed under the power conferred by the Constitution of the United States are for the protection of the minority, and they have done it from the foundation of the Government. That is one of the objects of making rules. It is not alone to facilitate business. Of course rules are intended to se-

cure the orderly procedure of the business of this body, but at the same time they are intended to cause the House to halt, to pause, to reflect, and in some instances, where it may become necessary, to go back and inquire of the sober second thought of the people again. It is on the sober second thought of the people our Government rests. The people themselves may become mad. They may become wanton with power, and the very security of our free institution rests on the fact that the sober second thought, in the language of one of our illustrious forefathers, will bring them back to a sense of their duty to their fellow citizens and themselves, and thus preserve the blessings of free government for themselves and their posterity.

My friend on the other side felicitates himself upon the wonderful triumph that he and his party gained in the struggle of the last six or eight days, and said that a minority has been setting itself up against the will of the majority, and that the majority of the House on that side had said that they would unseat J. M. Jackson, of West Virginia, and they did unseat him, that they could do it, and they would do it, and they did do it, and he congratulates himself and the majority of the House upon the splendid victory achieved in the struggle thus ended.

Mr. Speaker, what we have done on this side of the House was simply to call the attention of the people of the United States to the fact that the majority in this House had broken the bounds assigned to it by the Constitution of the United States, and that it was ravening like a wolf in the fold at night, that it was coming into the House in defiance of the constitutional mandate to make rules for the government of its procedure, rules for the protection of the minority as well as rules for the expression of the will of the majority in the prosecution of the business before the House.

Mr. Speaker, we have appealed to the sober second thought of the people with the claim that the majority shall first make rules for the conduct of the business of the House, and, having done that, then try the case presented upon its merits. If, in that event, the contestant was entitled to his seat, award it to him; but if, on the other hand, the contestee was admitted to have the right to the seat, let him hold it. But instead of that they said they intended to empty the seat, that they had the power and the manhood to do it, and that they would do it. And so, Mr. Speaker, they did. But I once heard of a story that is applicable here, a story of a little bull that had the hardihood to get in front of a locomotive running at sixty miles an hour and boldly challenged its advance. He did not stay very

long, it is true. After the train passed there was nothing left of the belligerent little bull but his horns and hoofs; and some one standing by and watching the result of the contest said, "Little fellow, I admire your courage, but damn your judgment." [Laughter.]

I call the attention of the House to the words of Mr. Jefferson in his manual of parliamentary law. This manual is the first code of procedure adopted by Congress, and from the beginning it has been the general parliamentary law of the House until rules are adopted by each succeeding House. This code was prepared by Mr. Jefferson when, as Vice-President, he was presiding over the Senate. That body made some rules, but they referred to the decision of their presiding officer without debate or appeal all questions of order arising under their own rules or where their rules had made no provision. The tribute to his ability and impartiality was something like that paid by our friends on the other side to the ex-Speaker [John G. Carlisle], who sits by my side. Such a manifestation of the esteem of a legislative body was a high compliment, and one which was highly appreciated both by Mr. Jefferson and Mr. Carlisle. In seeking for information to enable him to prepare his manual where did he go? He had to go somewhere. But he did not go to the State legislatures nor to the Continental Congress. Both of these had obtained their information from the British Parliament. It was then the greatest legislative assembly in Christendom.

Here was the correct source of parliamentary law; here was the great body which for five hundred years had been in existence. It is true it had been guilty of the grossest excesses in its early history; it had beheaded kings and filled the land with the blood of their subjects; but it was at that time the fountain of parliamentary law. It had been presided over by a long line of the ablest men who ever presided over any legislative assembly in the world. And this was the body to which Mr. Jefferson went to ascertain what was the general parliamentary law. Mr. Jefferson says:

> Mr. Onslow, the ablest among the speakers of the House of Commons, used to say it was a maxim he had often heard when he was a young man, from old and experienced members, that "nothing tended more to throw power into the hands of the administration and those who acted with the majority of the House of Commons than a neglect of or departure from the rules of proceedings—

The very thing you gentlemen have been doing for two months—

> that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were in many instances a shelter and protection to the minority against the attempts of power."

That is what Speaker Onslow says. What does Mr. Jefferson say in regard to that?

> So far the maxim is certainly true, and is founded in good sense, that, as it is always in the power of the majority, by their numbers, to stop any improper measure proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check and which the wantonness of power is but too often apt to suggest to large and successful majorities.

This, Mr. Speaker, is what we have been contending for. We have been contending for rules—rules which provide the mode of procedure in the orderly dispatch of the business of the House, rules which have been provided for the protection and preservation of the rights of the minority, whether that minority be 1 or 160. We have asked for a code like that of our fathers. We have asked for the old institutions of our fathers. We have stood here and remonstrated with the majority on that side of the House against sweeping that code out of existence, a code which we have had for a century, a code under which our nation has grown from 3,000,000 to 65,000,000 of people, under which we have grown to be the most prosperous, the most powerful, and most intelligent people on the earth.

But it is now proposed to tear down all the barriers interposed by our fathers for the protection of the rights of the citizen and permit the majority to make rules to pass bills in violation of the Constitution, to pass them practically without opposition, without consideration, without mature deliberation.

Pass these rules and there remains no limitation on the power of the majority. Pass the rules as you have reported them, tear down the barriers, and enthrone arbitrary power.

It is true that a little filibustering has occasionally occurred. But are all these great barriers that were intended for the preservation of the inalienable rights of the citizens to be removed? Are the obstructions interposed for the protection of the treasury to be removed out of the way? Our friends are so alarmed at the scandal of filibustering that they forget the part they have

played in its performance. They forget who introduced it into congressional legislation.

When did it start here and who started it? Mr. Speaker, it is the legitimate offspring of the Republican party. The two motions which your committee have reported to eliminate from our rules—the motion to adjourn and the motion to fix a day to which the House shall adjourn—have been in our code for a hundred years. They came from the British Parliament. They are in Jefferson's Manual. They have been adopted by the House of Representatives and the Senate, and are hoary with age; and yet these two motions were never used to obstruct legislation until 1854, when a Republican minority in the House of Representatives alternated them 128 times to prevent the passage of the Kansas-Nebraska bill. But it did not ruin the country by their obstruction; they appealed from the House to the public judgment whether that bill ought to pass. They called upon the legislative assembly to pause, to deliberate, to reexamine again while they made an appeal to the sober second thought of the people.

There is no reason why these motions should be used for obstructing legislation. The fact is they are never used except on most extraordinary occasions and when some extraordinary measure is being proposed to be enacted into law. And when that occurs it is not an unmixed evil to delay the legislation till the public mind can be consulted and the public judgment had.

It is sometimes used to prevent one man from getting into Congress or to prevent another from being turned out; but in all these cases where it has been used in my experience (and I am one of the oldest members of the House; only a few others have been here longer than I have, and only three or four as long as I have) I have never seen filibustering tactics resorted to in the House except when one side or the other thought the majority was being guilty of a flagrant wrong.

The Speaker, elsewhere, has referred to the fact that filibustering was never known in election contests before 1882. But there had never been any occasion for it before that time. The Republicans had control of the Government in all its branches prior to that time and since 1861. They had created returning boards for the Southern States that certified their candidates into the House, whether they were elected or not. The minority could not filibuster against their admission when they were already in.

My predecessor was elected to the Forty-second Congress by five or six thousand majority, but the certificate was given to

his opponent and he took the seat the voters had given to another. When my friend from Illinois [Mr. Cannon] and myself came into the Forty-third Congress, two Republican members sat here through the whole term of two long years, until the last night of that term, and after the sun had gone down and it was dark and the lamps were lighted the Republican Committee on Elections called up and had adopted their unanimous report that neither one of them had been elected. That was the action of a majority that we are now told can do no wrong. We have been told by the Speaker in another place that there were scandals in filibustering in 1882. Was there no scandal in this?

In 1882, when parliamentary obstruction was first resorted to in election cases, the Republicans again had control of the House; but the returning boards had passed into history and the Representatives elected by the people were given the certificates of their election, and on those certificates they had been admitted to the House, and the majority again tried, though by a different method, to disfranchise the constituencies by unseating the elected members and seating those not elected, and that provoked the minority to use parliamentary tactics to defend the right of electors to choose their own Representatives.

In 1882 a Republican Congress turned out one Democratic member who had a majority of 8,036 votes, another who had a majority of 5,272 votes, and reported in favor of turning out another who had a majority of 8,468 votes, and the report would have been adopted, but the Congress expired before the report could be adopted and the defeated contestant sworn in. It was to prevent these flagrant wrongs that filibustering first made its appearance in election cases.

But to come down to more recent times. In the last House of Representatives we saw the perpetration of this same "scandal" by the Republican minority. The very mention of filibustering nauseates their stomachs now, but it was a labor of love to them then. They are now wrestling with penitential agonies over our sins, but they feel no compunctious visitations of conscience over their own. Who was it that from day to day refused to permit the House to consider the report of the committee in the contested election case of Sullivan against Felton? Who was it that resorted to dilatory motions every time the committee called up that case? Who was it that prevented the House till the last moment of the term from acting on that report? It was the very gentlemen who are now denouncing dilatory motions as scandalous. And, Mr. Speaker, you and the ma-

jority on the floor to-day, who, after the elections in the fall of 1888 had given you this House, began your crusade against the rules because they permitted dilatory motions, yet in February and March of 1889 were using dilatory motions to keep in one of your members and are now condemning dilatory motions, to enable you to unseat our members in the present House.

There is another feature of the proposed code to which I want to call the attention of the House and the country. It is proposed to invest the Speaker with power to contradict the record provided by the Constitution. The Constitution declares that in a certain contingency a recorded vote shall be had and at all times a majority shall be required to constitute a quorum. It is now proposed that the Speaker may add to, vary, or contradict that record, and that against the uniform ruling of all the Speakers that have ever presided over the House from the beginning of the Government. The record of this House is like the record of a court, it imports absolute verity. No man can attack the record of a court in a collateral inquiry. No man can say its records are not true or that the record does not contain all the facts, and supplement it by the statement of a bystander.

The judge cannot do it, when it is collaterally called in question. The clerk cannot do it, and no party can. The record is conclusive. The Constitution has provided that a record of the yeas and nays shall be made in certain cases, and the record shall decide whether a quorum has voted and which side has the majority. In the face of this plain provision, the Speaker decides, and the majority sustain him, that he can look out over the assembly and write down as present anybody that he pleases, whether he is present or not. He is to be the judge, not the record, not even the House. The record is made by the answer of the member under the supervision of the whole body, taken down by the clerk, read to the House, vouched for as accurate and then approved. But all this is abrogated and the voice of one man is substituted in its stead, and he is authorized to make the Journal say what he wants it to say, whether that be correct or not.

If it were in the power of the House to confer this authority it should not be conferred on any man. What we contend for is this unbroken line of decision by all the Speakers of the House. The rule proposed is condemned by the public opinion of the country. Instead of expediting legislation, the country is erecting checks and barriers against it in every direction. In all the later constitutions adopted by the States it is declared in unequivocal and unmistakable terms that bills shall be passed

only by an affirmative vote of the majority of all members elected to the legislature, and the vote taken by yeas and nays.

Now, Mr. Speaker, why has the change been made? Here is the evidence of a great reform in public sentiment. We never see a change of this kind without there has been a mischief which the law is intended to remedy. In the interpretation of a law a court will always look to the old law, the mischief, and the remedy.

The old law was that State legislatures had railroaded legislation to the public injury. The old law had permitted the perpetration of numerous and great wrongs, and the old law was changed to prevent the continuance of that evil, and the constitutions of these States which have been adopted in recent years have adopted a check on railroading legislation. They have, for the protection of the people and in the interest of honest and wise legislation, required a yea-and-nay vote and the affirmative vote of a majority of all members elected to pass a bill.

This has been the rule in Congress, where the yea-and-nay vote is called, without interruption, from the beginning, and now, when the public have become disgusted with the wrongs occurring in State legislatures and have changed State constitutions to make representative bodies conform to the rule held in Congress, we are abandoning the rule of our fathers and taking up the discarded and condemned code of the older State legislatures, this very condemned and reprobated rule which Speaker James G. Blaine said had led to the greatest legislative frauds ever committed.

Mr. Coburn, of Indiana, in the Forty-third Congress, wanted the majority to do the very thing that the gentleman from Illinois [Mr. Cannon] wants them to do now. He wanted the majority to rule, and rule right or wrong. He wanted them to exhibit "their manhood" and show what they could do, and he pointed out substantially the same way to the Speaker now pointed out by the Speaker and his Committee on Rules. But what said Speaker Blaine, one of the most distinguished parliamentarians now living? He said:

> There can be no record like that of the yeas and nays, and from that there is no appeal. The moment you clothe your Speaker with power to go behind your roll-call and assume that there is a quorum in the hall, why, gentlemen, you stand on the very brink of a volcano.
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> The very principle enunciated by the gentleman from Indiana has been the foundation probably for the greatest legislative frauds ever committed. Where a quorum in the judgment of the Chair has been declared to be present in the House against the result of a roll-call, these proceedings in the different legislatures have brought scandal on their names.

I am no prophet, nor am I a prophet's son, but I venture to predict that if you adopt the old, reprobated, and discarded rules that have produced frauds and scandals in State legislation you will see the same cause producing the same effect in national legislation. "An evil tree cannot bring forth good fruit." Break down the barriers, silence the voice of the minority, crush out all opposition, expedite and accelerate the speed of all bills as they move through the House, and you will wish before the Fifty-first Congress expires that you had permitted the minority to challenge your measures, to put you on guard, and cause you to give more thought and more careful examination to all proposed legislation.

You will wish you had kept the House abreast of the public opinion of the day. You will wish, instead of going to bad precedents in State legislatures, you had kept in the beaten path of congressional precedents. Even before the adoption of rules the general parliamentary law was well established that we should keep in the line marked out by the rules of preceding Houses. Mr. Blaine, on this point, said in the Senate, in the Forty-sixth Congress:

> What has been held by the gentlemen who have occupied the [Speaker's] chair has been that, in the absence of an existing House adopting rules, instead of falling back on what has been loosely termed general parliamentary law—and I never knew any yet who was able to determine what that was—the House fell back on the rules of the nearest analogous body pending any discussion on new rules, and the nearest analogous body was the preceding House. That has been uniformly held by persons holding the chair of the House.

Now, if that has been uniformly held by all the Speakers of the House from Speaker Muhlenberg to Speaker Carlisle, if it had been the unbroken current of decision of the greatest parliamentary body on earth, why did Speaker Reed go to Tennessee to inquire what was general parliamentary law?

BENTON MCMILLIN [Tenn.].—And to a decision already overruled.

MR. MILLS.—And to a decision twice overruled, as I am informed by the public press. He could have found decisions to the contrary in the other States. He could have found a decision in the State of Illinois, made by a Republican speaker, that he could not go behind a roll call.

But that was not the decision the Speaker wanted. He had determined to silence the minority. He had determined that Democrats should be railroaded out of the House. He had de-

termined that certain measures should be expedited through the House. He was not looking for correct decisions. He was looking for something to throw in the faces of the minority when they complained of his usurpation. He was hunting for something, for anything, to help him in the position he had resolved to take. Now, if the Speaker of the House can make the Journal as he pleases, if he can make the quorum as he says he can and as he has done, why did he not continue to make the quorum on the vote to vacate Jackson's seat?

There has not been a constitutional quorum in the House since the day of its organization last December till the vote was taken on unseating Mr. Jackson and seating Mr. Smith. Yet on that vote the Speaker was careful to vote himself and the majority were careful to have the constitutional quorum present. Why was this? It was a confession that the decision of the Speaker in counting a quorum outside of the record could not stand a judicial examination. On that question Mr. Jackson could have gone to the courts; on the other rulings he could not.

You delayed the vote until you brought here your sick men, in order to make a constitutional quorum of your own number. Why, sir, that was a confession that your decision was wrong. Having confessed the wrong, as you have done by your vote, you ought to have renounced and abandoned it and taken up the right. But, instead of that, you are going on again in the same course where we have no way to review your decision, where the question cannot be taken to the courts. When the occasion arises again when you want to unseat some member who has been duly elected, you will again take care that the decision shall not be in such a shape as to be taken to the courts; you will have here your 166 members. You will not risk an appeal to the courts of the country in such a way as to secure a review of the decision of the Speaker.

Mr. Speaker, my friend from Illinois [Mr. Cannon] says that he is in favor of removing all impediments out of the way; that it is the policy of his party to "expedite legislation," to expedite the execution of the will of the majority, to railroad your measures through the House. That, Mr. Speaker, is not in accordance with the views of our fathers. If you will look at your constitutions you will see in every line and between the lines delay, debate, consider, pause. Why do the constitutions of nearly all the States require a bill to be read on three several days? That is the provision in nearly all the States. In some of them the constitution refuses to let a bill be passed at all by

unanimous consent until it has been read on three several days. That is not expedition; that is not railroading.

The people want deliberation and calm investigation of all questions. They do not want a great library of laws passed. Our fathers built this Government upon the theory that the people who are least governed are best governed; that the fewer the laws the better; that the larger the amount of liberty allowed to the citizen the better it is for him. They believed the Creator knew best how man should be governed. He knew better than any man can know how the happiness of the human race could be best promoted. Hence they thought that laws to protect people in the enjoyment of life, liberty, and the pursuit of happiness were enough. We believe with our fathers that we do not want many laws and we do not want them rapidly made. One of the greatest authors that ever wrote in the English language, second only, in my judgment, to Shakespeare, I mean Henry Thomas Buckle, who wrote the "History of English Civilization," was so disgusted with the constant interference of government with the rights of the citizen that he laid it down as a rule that there is but one wise act that any legislative assembly can pass, and that is an act to repeal a former law.

It was not the idea of our republican fathers that we wanted a government to be passing laws every hour of the day, interfering constantly with the liberties of the people. We want to have as little law as possible, as little intermeddling as possible with the affairs of the people. We want to protect and preserve the natural rights of the citizen; and, in order to do this, these checks and balances have been provided in the constitutions of all the States, as well as in the Federal Constitution, and in the rules of proceedings of all legislative bodies, the object of which, as I have said, is to compel legislative assemblies to go slow, to deliberate, to debate, to reflect, to pause, to examine the pending question in all its aspects, to let party passion and party madness die, to let judgment resume its sway. These are the things that wise legislation demands; and this is all we have asked.

In challenging the ruling of the Speaker, in challenging the will of the majority as it has been placed before us, we have only appealed to the intelligent judgment of the country. We have only said that we want rules in this House which will protect the people against rash, ill-advised, and unwise legislation. We want mature consideration given to every question. We want the right defended. We want the wrong prevented. And where measures are dictated by partisan considerations and

filled with injustice we want the right to check them and to require the majority party to pass them by their own votes. We are not charged with the responsibility of legislation. The majority party have been charged by the people with that duty.

We are in the opposition to that party and to its measures. We claim the right to discharge the duties placed on us by our constituents in the way that seems to us the most effective. We say you should pass your own measures by your own votes. You have no right to compel us to assist you in accomplishing that to which we are opposed. Why should we be compelled to aid you in making a quorum? If, in our judgment, that is the proper course for us to pursue in discharge of the trust confided to us, you should not compel us to act against our interests and the interests of our people.

You have the majority. Keep them in the House and attend to your own business, and do not put any part of it on our shoulders. You show that you can have a majority when it is absolutely necessary, why can not you have it all the time?

We only want the safeguards our fathers have thrown around the rights of the people in the Constitution. We simply pause here to emphasize to the country the wrong you are doing. We refuse to vote. We stop and invoke the public judgment on the conduct of the majority. From their judgment we appeal to the judgment of the people of the country, and by that judgment we are perfectly willing to abide. [Applause.]

William S. Holman [Ind.] spoke on "filibustering."

This general purpose and method of obtaining delay in legislation is nothing new, sir. It is as old as the Constitution of the United States. It will be found in all legislative bodies where there are manhood and independence. It will be found on the other side of the ocean, whence we derived, in the main, in the beginning our system of parliamentary rules, even in constitutional monarchies. It will be found in every stage of the history of the Anglo-Saxon race, except where arbitrary rule has suppressed it by superior power, and it will continue as long as there are virtue and manly sentiment among representatives of the people and the majority is either arbitrary, profligate, or corrupt.

The statement made that, until recent years, the minority of the House of Representatives patiently submitted, and that without resorting to every means in their power to defeat un-

just and vicious measures of legislation of the majority, is a libel on our fathers and a falsification of history. Just think of the men who, by counsel or by arms, aided in securing liberty to the American people submitting to a rule in legislation by which less than one-sixth of the members of the House of Representatives (51 out of 330, as now proposed) could cut off debate in the Committee of the Whole, and a bare majority in the House cut off all debate in the House, thus forcing a measure, no matter how important, through without consideration or debate.

What would John Adams or Thomas Jefferson or Robert Morris or John Rutledge have said of such a rule which ignored in your legislation the judgment of a minority, which might, as in the case of the minority in this House, represent a majority of the American people?

What would those great champions of liberty say of such a rule? They would say, judging from the record of their great lives, that such a rule in legislation was worthy only of a petty tyrant, for even a despot would despise the false pretence the rule involves; for, if 51 men can close debate and report the bill to the House, all men know that moving the previous question in the House cuts off all further consideration, and the subservient majority at once passes the bill. So the people of this country will understand that the millions of dollars drawn annually from their labor by remorseless taxation is at the mercy of a "rump" committee of 100 of their House of Representatives of 330 members, and that the minority of this House can only, at the pleasure of that committeee, obtain even the poor privilege of protesting against the injustice done to their constituents.

Now, gentlemen, let us consider the character of dilatory motions and the expedients for time in legislation of which gentlemen of the majority now, for the first time in our history, complain. I select instances which have occurred within the last thirty years which I can call to mind. In 1864 Elihu B. Washburne, of Illinois, one of the ablest and most valuable men that ever sat on the floor of this House, a man who was worthy of the highest gift of the American people, made use of every parliamentary stratagem ever known to this House to prevent the passage of the extraordinary measure which gave the mortgage of the Union Pacific Railroad system priority to that of the Government, which made the Government the guarantor of bonds to the amount of more than $128,000,000, nearly twice the sum necessary to complete the system. Is there a gentleman

on the other side of the House or on this side of the House who does not regret that Mr. Washburne failed in that honorable effort to prevent the passage of that measure? Every expedient was resorted to by him to defeat it. It passed at midnight. If he had succeeded in its defeat, which all men know now would not have delayed the completion of the Pacific railroads one hour, the temptation to fraud which that legislation suggested could never have occurred, and two venerable men, long honored in this House, would not have left this hall with bowed heads, with dishonor resting upon them, leaving this hall overwhelmed with the consciousness that the judgment of this House, condemning their connection with the employment of the vast resources thus furnished by the Government to influence the actions of members of Congress, was just, to seek solitude and the grave.

Several years later, I think in the Forty-second Congress, the Hon. George F. Hoar, then in the House and now the distinguished Senator from Massachusetts, with gentlemen from both sides of the House, for a whole night and more resisted legislation that proposed to commit Congress to the policy of paying for all property destroyed in the States in insurrection during the late war, and the contest defeated the measure—a measure which now would not, I think, receive a single, solitary vote in this House. It involved, as you see, gentlemen, hundreds of millions of dollars. Yet Senator Hoar and his associates would now be condemned as "obstructing proper legislation." When the "Pacific Mail subsidy" was pending in this House—a half a million a year, I believe, for ten years—when this hall was actually crowded with lobbyists, when Samuel J. Randall stood up and declared to the Speaker of the House in a loud, ringing voice that reached every nook in this great chamber that the very atmosphere was loaded with bribery, had he succeeded in his brave and manly effort to defeat that wicked and vicious measure of legislation, this House would not have been humiliated within a year after that contest by a report from a Republican committee that $750,000 had been used by the Pacific Mail Steamship Company to bribe members of Congress to secure the passage of that bill; a member would not have left this hall with the brand of infamy upon his brow; another would not have fled to Canada for the purpose of escaping punishment; an officer of your House would not have been hunted down as a felon.

Show me an instance, sir, where what is known as filibustering movements for the purpose of delaying and defeating un-

just and improper legislation have ever operated injuriously to the people of the United States. Further on, in the Forty-eighth, Forty-ninth, and Fiftieth Congresses, a measure growing out of that same bill which Mr. Washburne failed to defeat—the Pacific railroads came in here and demanded that the debt they owe to the people of the United States of over $113,000,000 shall be postponed at a nominal rate of interest for fifty years. Now I ask any member of this House, no matter what may be his views on the general subject, if he failed to admire the position of the gentleman from Kansas [John A. Anderson], on the other side of the House, in his honorable and manly effort during three Congresses to defeat the passage of that measure? One hundred and thirteen million dollars of the people's money sought to be virtually given to these Pacific corporations, for, if ever you extend at 3 per cent. for fifty years that debt, the people of the country will realize nothing for the extraordinary advances they have made to those corporations, out of which Mr. Gould, Mr. Huntington, and others have amassed their imperial fortunes.

Where is Mr. Anderson now? What has become of my friend and coworker? He has heretofore been so manly, courageous, determined, and resolute that I and others have, with confidence, followed his movements. I fear that, like the proverbial Arab, he has "folded his tent and silently stolen away." [Laughter and applause.] Does he abandon his constituents and permit these great corporations to steal from the people of the United States at their pleasure? I hope I am mistaken, and that, notwithstanding the new rules for "easy legislation," my friend will stand by the people. But can he under the new rules?

In the Forty-third Congress, when this House was presided over by one of the best parliamentarians who ever honored the Speaker's chair, and certainly the ablest man of whom the great party now controlling the Government can boast—permit me to say one of the greatest men of our age, whom history may pronounce the greatest[1]—when Samuel J. Randall and his associates here, day after day and night after night, stood up and, by parliamentary methods, recognized for one hundred years, postponed the passage of what was known as the "force bill"—a bill that proposed to ignore the States and place the elections of members of Congress under the control of the Federal Government—when the Democrats, under the lead of Samuel J. Randall, defeated that revolutionary measure (for such was the

[1] James G. Blaine is referred to.

purpose and effect of those almost countless motions which were made) did a measure go down that ought to have become a law? It was the greatest parliamentary contest of our period. The Forty-seventh Congress came with a Republican House, a Republican Senate, and a Republican President, yet no man in either House of Congress proposed to revive that measure. The public judgment was against it. Yet the majority was for it in the Forty-third Congress. Its defeat was the crowning glory of the great life of Samuel J. Randall, and will be associated with his memory, in honor, as long as the records of Congress shall endure. [Loud applause on the Democratic side.]

When Senator Fessenden, in a small minority, resisted by every means in his power (and this parliamentary resistance belongs to the same class of resistance to Congressional action of which the other side of the House complain) the measure that would have driven the then President of the United States from his honored office, setting a precedent the effect of which no man could foresee, presaging vicissitude and instability to our Government; when that great Senator, the greatest of our time, unless Stephen A. Douglas should be excepted, threw parliamentary obstacles in the way of inconsiderate action, will men on the other side say now that he did an improper thing? Yet that was of the same character of resistance, the parliamentary procedure recognized for a hundred years, which has been deemed proper for securing the "sober second thought" of Congress, as well as of the people, the source of congressional power.

Again, sir, calling to mind an incident in the Forty-second Congress bearing on this question. A most unexpected and questionable measure came to the House from the Senate, the more extraordinary for it was ascertained that if it passed the House it was to be followed by a succession of bills of the same character: "A bill to revive the lapsed grant of land to the St. Croix and Bayfield Railroad Company in Wisconsin," a tract of land of great value. The revival of the grant would give an imperial possession to a corporation of wealthy gentlemen. If it passed other similar bills were to follow.

Mr. Schenck, of Ohio, I think, controlled the bill and sought to put it on its passage without a moment's debate. Mr. Cox, of New York, of ever-honored memory, Mr. Van Wyck, then of New York, and others resisted its passage; lands worth millions of dollars should go to the corporation or to the settlers. It was the most animated contest I have ever seen on this floor. At first the members who opposed the bill could scarcely command

the number necessary to call the yeas and nays, but they grew stronger, and, after two days of fierce contest, the opponents of the bill gained control of it, and I had the honor to move a substitute to the bill declaring the land open to homestead settlers only—homesteads instead of corporate monopoly of public land. The Senate, of course, refused to accept our substitute, and all men know of the extraordinary decision rendered afterward by the Supreme Court affecting this question. But the value of this precedent in this House must convince all honorable and fair-minded men that, if the rights of the people are to be maintained, this arbitrary and despotic rule that strikes down and ignores the rights of the minority and the rights of the people ought to be resisted to the last extremity. I am limited to half an hour, but, if I had the time, I could point out a multitude of instances where, during the last twenty-five years and before that time, inconsiderate, corrupt, and fraudulent measures have been defeated by the persistent efforts of the minority, the minority which is ignored and rendered powerless by the infamous rules which are to be adopted by the House.

Now, sir, I challenge gentlemen on the other side of the House to point to a single instance in all our history where delays, no matter how brought about, no matter by what means, whether in the Congress under the Articles of Confederation or in Congresses under our Constitution, where men sometimes abandoned their seats for the purpose of postponing measures, down to the present time—I defy any gentleman on this floor to point to a single instance where public interests have suffered by resistance on the part of a minority to the passage of a measure. There have been many instances, undoubtedly, where delays have, in the current business of the House, been occasioned by improper and unjustifiable motions; but shall such instances, which did no harm, justify rules that ignore the minority and leave the majority without any restraint whatever? It is only the lobby that could demand such a state of the rules.

This is not properly a party question, for it must be borne in mind that gentlemen on the other side have joined in these obstructive proceedings; the minority has not been composed exclusively of one party. I have seldom known a filibustering movement touching a matter of current legislation when the minority was not composed of gentlemen on both sides of the House. Upon the single question of elections, filibustering has occurred from time to time on both sides of the House. It is always a temporary matter and always disposed of. These contests never affect the current business of legislation. But in cur-

rent legislation gentlemen must remember that resistance to a legislative measure is seldom confined to one side of the House, but embraces gentlemen on both sides. During the last thirty years methods of delay have been as frequently resorted to by gentlemen on the other side of the House, and no public injury has ever resulted from such delay. If it secured an appeal to the people, who could complain?

Why should gentlemen on the other side who, in manfully standing by their constituents, have exhibited some of the manhood displayed by the Republican party when it first came into power in this House—why should they meekly submit to a system of rules that dwarfs them and renders it hardly creditable that a gentleman should be a member of this House if he has the spirit of his ancestors and desires to act like a man? [Applause.] This submission to power of gentlemen on the other side of the House is most extraordinary.

There never has been a time in my experience in Congress, not excepting the extraordinary period when that Pacific Mail Steamship Company subsidy passed through, when a greater number of schemes of plunder were seeking access to your treasury than now. Three hundred and fifty million dollars, not for the present moment, but to be fixed and settled for early expenditure for ships of war and fortifications, and that, too, in time of profound peace; millions for subsidies, millions for irrigation, by which a few men are to be made rich at the expense of the laboring masses of our people, and cartloads of old Southern war claims that have been examined and rejected by the proper department of Government—these measures are all crowding upon us. The public bills alone now pending involve in the aggregate a sum exceeding the public debt. Go into your corridors. Have you ever seen so many syndicates and organized lobbies here before? Have you ever seen such manifest preparations for an onslaught on your public treasury as now? Have you ever known of as many schemes and projects to draw money from the treasury as are to be found among the bills already introduced?

These new rules of procedure meet the unanimous approval of the syndicates and lobbies. These well-dressed and courteous gentlemen who live off the labor of other men and acquire fortunes by acts of Congress naturally despise the wretched old rules of the House which for a hundred years have been employed, at least in some degree, to protect the public treasury and maintain the purity and honesty of the Government. These new rules will leave the public treasury absolutely without pro-

tection so far as this House is concerned, which is made by the Constitution its especial guardian. They manacle the watchman and arm the lobby with crow-bars!

Mr. Speaker, I hope that the gentleman from Illinois [Mr. Cannon], who I see scents even now the perils of the hour, when he comes forward with his appropriation bills, will be able to maintain some check upon the expenditures even under rules which will invite profligate extravagance. It may be that under the pressure of the coming elections some degree of moderation in appropriations will, at least during this session, be displayed. I am sure he will have the cordial support of this side of the House. But, sir, so surely as this code of rules is adopted, so surely as you vest, as contemplated by these rules, the whole power of the House in the Speaker and chairmen of committees, the growth and profligacy of expenditures of this Government will, at an early period, alarm all honest and patriotic men, and the record you are making will be condemned as unworthy of the representatives of the American people. Great estates are being created by our system of taxation and methods of public expenditures, on the one hand and impoverished families, on the other, fast enough even under the present order of things, and why, in the name of justice, should you enlarge facilities for such results?

Gentlemen, you need not talk about revising your revenue system, tariff, or the internal taxation if you adopt these rules. I venture to say your revenues at an early period will have to be enlarged to meet the growing demands on your treasury. The taxation that is creating a fearful gulf betwen the wealth and poverty of our people will not be reduced, but enlarged.

No man can misunderstand—I think no gentleman does misunderstand—exactly what this change of rules means. It means that the Speaker, instead of being, as for the past one hundred years, the servant of the House, shall be its master; that the Speaker and the chairmen of committees shall be a petty oligarchy, with absolute control of the business of the House. It means the striking down of the manhood and proper influence and control, in legislation, of every other member of the House on your side, gentlemen, as well as ours. It means more than all that: it means a great navy, an enlarged army, a great zoölogical park, and other embellishments in this city, and all else that creates a splendid government and gives a sense of security to the owners of overgrown and imperial estates who have no faith in the people and long for a stronger government.

It means that the wealthy gentlemen, men of imperial fortunes, who have been made millionaires by acts of Congress and now own the Pacific railroad system, shall receive a further gift of over one hundred and thirteen million dollars from the United States; for the extension of their debt to the Government for fifty years means that and nothing less. It means millions of dollars in subsidies to the capitalists of Europe and America engaged in your carrying trade. It means all this and more, a splendid government and an impoverished people!

Will I be told that the Senate may intervene! When has the Senate in the last twenty-five years interposed any objection to any profligacy of the House?

It gives every scheme of expenditure an assurance of obtaining success without giving the minority an opportunity to appeal to the people in order to secure a sober second thought. [Applause.]

Permit me to say to you gentlemen who are framing this despotic code of rules that manacle the minority that the next House of Representatives will wipe out these arbitrary rules you are ingrafting upon an honored code approved by the experience and wisdom of a century, with the same spirit that animated our fathers when they struck the Alien and Sedition laws from the statute-books of the United States. [Great applause.]

William McAdoo [N. J.] opposed the rules.

In the brief time allotted I would like to make a short comparison between the methods of obstruction in this House and the Parliament which our fathers largely had in view in framing this Government.

It would be supposed that there would be more advantage given to the individual member on this floor and that his rights in this body would be more assured and that his influence would be more felt than under the monarchical system. But such is not the case. Why, sir, under the old rules, arraigned and indicted before the country as obstructive of public business, there was less power to obstruct it than under the rules of the British House of Commons. The mode of obstruction in that body is as follows: Every member of the British House of Commons has the absolute right to be recognized the moment he rises. The speaker of that assemblage has no privilege to ignore the claim for the floor of any individual member who rises to obtain it.

He must recognize the man who rises first, he may be of the ministerial party or he may be of the bitterest in opposition, but he must be recognized in the order in which he rises. When two members arise simultaneously in that body the question is put to the House which of them shall be recognized first. That places the individual member with the inherent constitutional right to be heard in a free assembly. No wall-eyed speaker for one side of the house; no winkers or blinders such as are put on horses for this side or that. The speaker looks with the eyes of impartial fairness. He is obliged to recognize a member as a constitutional right, and when a member of that body once obtains the floor he is privileged to hold it as long as he discusses the subject to which he addresses himself. The humblest and newest member is not a mere effigy to fill a seat and ejaculate at intervals "Ay" and "No," like a patent doll.

Well, this right, they claimed, was abused in the Commons. Mr. Parnell and his followers, judging that very extreme, coercive measures were to be applied against the dearest rights and liberties of their people and their outraged nationality, organized an opposition.

Mr. Gladstone, the greatest and best of men, then in the wrong, as he now admits, was then Prime Minister of England, and he proposed to stop this form of obstruction which was greater and larger in every degree than that exercised by members of this House under the former rules. When this determined and patriotic obstruction threatened the "supply" or appropriation bills for England, he proposed what was called "procedure." He notified the House of Commons on the 20th of February, 1882, that he would move for this change of "procedure." That was on the 20th of February. Now mark the difference between the deliberation in this House and that. The whole English-speaking people in England and her colonies were stirred to their depths by the proposition to restrict the rights of members of Parliament. The great English democracy was moved as never before. For ten long months that question was debated at frequent intervals in the House of Commons. You propose by these rules a more radical change of procedure in this House than that which is called "clôture" in the House of Commons. But it took the English nation ten months in a thoroughly deliberative assembly to determine that matter, and you have said that these rules shall be discussed and the minority silenced in this assembly in less than forty-eight hours. And yet this is a republic, and England is a limited monarchy. Let debating societies hereafter argue whether there would have

been more liberty under your predecessors, the Federalists, or under the old system.

Now, what was that procedure, that clôture? That clôture, bad and unfair, was in nowise as restrictive, was not in anywise as despotic and tyrannous as the proposed rules which you bring into this House. You have given to the Speaker of this House the right to judge the conscience of every Representative and to say to him when he makes a motion, "That is not made in good faith." He impugns his personal honor as well as restricts his representative rights. In the House of Commons there is no such power given in a monarchial government to the Speaker. He is elected, not by a party, but he is held to be as fair as a judge on the bench. He makes no political suggestions. He generally rules and holds the balances as fair as the Chief-Justice of your Supreme Court, and the only right of clôture given him was this: That when a member has discussed a great public question for an inordinate length of time the Speaker says that he must restrict himself to it, and finally "names him" when he has exhausted the patience of the House. One-third of the House must sustain this ruling, that is, 200 members. That rule was adopted only aften ten months of deliberation.

It is said that there has been some abuse of the old rules. There has never been an instance of mere personal and factitious filibustering under the old rules by the eminent gentleman at whose seat I stand, who now lies on a bed of sickness, the distinguished statesman from Pennsylvania [Mr. Randall], or by the distinguished and "Grand Old Man" and veteran from Indiana [Mr. Holman]. Whenever they applied the constitutionally obstructive features of the old rules they were, I may say, by an overwhelming majority of the popular vote at the next election, ratified, indorsed, encouraged, and lauded by the masses of our people, and to-day there are no men more beloved and confided in by millions of American freemen than these guardians of the treasury and of popular rights. They have stood for liberty, they have been the shield of honesty against fraud, and their names are written in the hearts of their countrymen. Like the burglars that ply by night, muzzle the honest watch-dogs, as befits you.

Now, Mr. Speaker, we hear a great deal about reform of the rules. I will tell you where, in my opinion, true reform lies. Adopt this code of rules. You, sir, can go back to your constituency; you can make a canvass upon a bill pending or to be brought into this House; you can pledge them on every

stump that you will oppose that bill when you come back into the next House; you can go back in the next House, if continued as it is now [turning to the Democratic side]—confidentially, it will not be; you can go back to the next House, and you can sit here from day to day, manacled, bound, fettered, gagged, and mummified by these rules, and you will never get an opportunity to even vote on the bill, let alone discuss it. What course will that bill pursue? It will be introduced on bill day and put in the private box, under the proposed rules, in charge of the Clerk, taken by the Speaker to his room, if he chooses, in his satchel, and distributed by him as he sees fit, with the poor privilege of being here in time the next morning to move to have it recommitted to another committee or make a useless noise about it. It goes, under our system, to the little secret imperial congresses that you have created here called committees.

It is digested and debated and disposed of with closed doors. The theosophy of the East is not more mysterious and exclusive. The star chamber and the executive meetings of the Senate are not more secretive. If you are not a member of that committee you do not know what action is to be taken upon it. It is brought in here by the chairman of the committee, who will, if these rules are adopted, become endowed with great power, and with the help of the Speaker under this proposed code it can be hurried through in the Committee of the Whole with a quorum of a hundred and the previous question ordered on the passage of the bill, and you can go back to the constituency to whom you pledged undying opposition to that bill, and before them and your Maker truthfully declare that you never had an opportunity to even look at it. This is proclaimed here and elsewhere as reform, and its chief advocates in the light of opposition compare themselves to the martyrs and confessors of the early ages.

How restrictive even the old rules appeared to that distinguished and impartial foreign observer, Professor Bryce, whose great work supersedes that of De Tocqueville, let me quote:

> Still true is it that Congressmen generally complain less of the procedure under which they live, and which seems to an English observer tyrannical, than do members of the English House of Commons of the less rigid methods of their own ancient and famous body. I know no better instance of the self-control and good humor of Americans than the way in which the minority in the House generally submit to the despotism of the majority—

So that, my friends, shows that we did not coin the word "despotism" as used in that connection—

> consoling themselves with the reflection that it is all according to the rules of the game, and that their turn will come in due course.

Coming down to Mr. Bryce:

> To use the power of closing debate as stringently at Westminster as it is used at Washington would revolutionize the life of the House of Commons. But the House of Representatives is an assembly of a very different nature. Like the House of Commons it is a legislating, if hardly to be deemed a governing body. But it is not a debating body. It rules through and by its committees, in which discussion is unchecked by any closing power; and the whole House does little more than register by its votes the conclusions which the committees submit.

How will you really reform this House? By restoring the individual rights of each member. Break down the imperialism of the committees. Do what they do in other free representative assemblages, bring each bill into the grand committee, the Committee of the Whole House. Let the bill be digested, not by thirteen men behind closed doors, with pass-words, signs, and sword-bearers in a committee-room; let it be digested, considered, deliberated upon in the light of day before the country in the whole House, each member having the right to voice his sentiments, to offer amendments, and finally to cast his vote, by yea or nay, on the record, for or against it.

Now, Mr. Speaker, in conclusion, we hear a great deal about law and order. This side of the House have been charged in the public prints with being disorderly. I would not have much respect for the manhood of one who was the willing and "orderly" victim of a highwayman. [Laughter.] Mr. Speaker, the most monstrous atrocities that have ever fallen upon helpless man have been committed under the names of law, order, and necessity. The noblest, greatest, and purest of men have fallen victims to this at times unholy triumvirate. Under these names the helpless and the innocent have often called to heaven for justice. The most cruel injustices have been perpetrated in the name of "law." Liberty has been outraged time and time again under the cry of "order," and "necessity," says the great genius of blind Milton, "is the devil's plea for tyranny." This is well illustrated by a most memorable career in the English-speaking world.

In 1648 there was born in the small town of Acton, Denbighshire, England, of somewhat obscure but respectable parentage,

a man-child, who, as he grew up to be boy and man, displayed talents of a high order. He was the soul of good company. He was a wit, and in later years the court-room was frequently enlivened with guffaws of servile followers at his jests made even at the expense of his victims. He chose his political side with the cool calculation of a mathematician solving a problem. He assailed the government until he was bribed with a place on the bench, and from that place on the bench, literally on the bodies of his victims, under the guise of "law and order," he rose to the very pinnacle of state until he became the proud possessor of the Great Seal of England. He sent hundreds to the gibbet in one circuit following Monmouth's rebellion, and thousands in chains as slaves to the tropical plantations of the West Indies.

Under the name of "law and order" he browbeat witnesses, bullied counsel, and took from them every privilege and right which had belonged to them for a thousand years. He swam a sea of blood to gratify hellish ambition. His very smile was the blight of death. In the county of Dorsetshire, satiated with blood, "great alarm," says his biographer, "was excited, and not without reason, by his being seen to laugh in church, both during the prayer and sermon, which preceded the commencement of business in the hall—his smile being construed into a sign that he was about 'to breathe death' like a destroying angel and to sanguine his very ermine in blood." At last, when the weak and pusillanimous king whom he had served fled from England, the first impulse of the great masses of the people, as they rose, was to wreak vengeance upon this tyrannical Lord Chief-Justice and Lord Keeper of the Great Seal. He fled, disguised in the coarse habiliments of a sailor, to a collier ship, and was glad from there to seek refuge, pursued by the Furies, in the Tower, where he died a miserable death from his outraged countrymen.

The name of Jeffreys throughout the whole civilized world is synonymous to-day with tyranny and outrages upon liberty and constitutional right committed, under the name of "law and order," by him who presided over judicial tribunals. His pleasing quips, his jests that "set the table on a roar," his flashing repartee, his apparent courage, his savage audacity, his courtly demeanor, his great intellect, are forgotten, for they were but the mask that hid the man from public observation. He had great intellectual gifts; he had a powerful brain, but his intellect was perverted, his head was directed by no heart and checked by no conscience.

So, Mr. Speaker, let the majority pursue the course they have begun. Let this code become a part of the law of the land, and, while the man who occupies that chair some day in the very distant future, let us hope, may not be able to shed the blood of his countrymen, he can let loose a whole band of spoliators and brigands upon the public treasury. [Applause on the Democratic side.] He can break down the liberties of his countrymen.

Under the impulses of partisanship he can, with cold, calculating design, array one section against another. He can take from the people the liberty of free elections. He can pay back the mortgages that secured the power of his party. What is the meaning of these rules? You obtained power in this land in 1888 by a mere scratch. You are mortgaged; you pledged the public treasury; you promised every clique and class and interest in this land which helped you into power that you would pass legislation for their benefit, however nefarious, dishonest, or unconstitutional this might be, and you are smoothing the way to keep your promises because these interests threaten foreclosure of their mortgage.

We mark with sad confidence the course of your arranged extravagance, for, alas! you are helpless. The greedy and soulless speculators in our politics—the Mephistophelean "boodle" raisers, the base Shylocks in whose hands you are, will allow of no retreat on your part. They paid for the goods and you must deliver them. They will foreclose their mortgage unless you can suppress the minority, unless you can pass these rules, as you will, and then follow them up by paying back the "blocks of five" and the bills of twenty, as my friend from Missouri, William H. Hatch, has said, with which you carried the last presidential election.[1] [Applause on the Democratic side.]

But, Mr. Speaker, when you have paid them back, when you have paid back the banded interests which defeated the popular will and the popular candidate and outraged the liberties of our people, you will find yourself face to face with men whom you can neither bribe nor intimidate. The honest freemen, the unbought and unpurchasable millions of this land, will go to the polls at the next election and the succeeding election; they will change the majority of this House from that side to this, and they will repeal with great enthusiasm and soulful

[1] It was claimed by the Democrats that correspondence between Republican politicians had been discovered in which mention was made of buying voters in "blocks of five," at twenty dollars a block.

hurrahs the infamous code which you are now about to adopt. [Applause on the Democratic side.]

Elijah A. Morse [Mass.] supported the new rules.

Mr. Speaker, what means this large array of business men who are members of the Fifty-first Congress, many of them all unused to legislative halls? It means that the business men of the country are demanding business legislation and that the "do-nothing policy" of Congress for the last ten years shall change. And how shall you change it without amending the rules that bind the body hand and foot?

The business men of the country want a bankrupt law. We want, at least, radical amendments to the interstate commerce law. We want greatly needed public buildings in centers of population and business. We want life-saving stations, light-houses, and needed improvements to rivers and harbors, to keep pace with this great and growing country. We want laws regulating and restricting immigration. We want a wise revision of the tariff on protection lines.

The Union soldiers want the soldiers' dependent-pension bill, a bill that decrees that no soldier shall die in the poor-house, vetoed by Grover Cleveland.

Yes, we want a navy and coast defences that will command confidence at home and respect abroad. The country has been demanding this legislation for ten years, and the only way to reach it is to cut the chains that bind this body, as is proposed by these new rules, and make it a republican body, where the majority, who are responsible for its acts, can do business.

I claim as a Representative of the plain people to say that they do not understand this business, they do not understand by what hocus-pocus, by what trick of legerdemain the minority have been able to defeat the majority in Congress for the last twenty years. They have not read this old book of rules [shows Book of Rules, Fiftieth Congress], as big as the Bible, and, I grant, hoary with age and precedents, and which should have written in large letters on its cover, for a title, "How not to do it."

I say the plain people all over the country do not understand the process by which the minority of this body is able to defeat the majority, so as to prevent all business, and we are content to go before the people on this issue. [Loud applause on the Republican side.]

Edward P. Allen [Mich.].—Mr. Speaker, the Fifty-first

Congress met in orderly manner, under the Constitution and the laws, on the first Monday in December last, with no rules adopted by this body. Proceedings were conducted under what is known as parliamentary law, a system of rules which prevails in all popular assemblies until supplemented by others. The business of the House proceeded regularly and with no interruption until a question arose of the highest moment to the House, ranking in importance any other that can be considered by this body, to wit, the right of a member to his seat here. To prevent consideration of that question tactics known as "dilatory" were at once adopted by the Democratic members.

These dilatory tactics were adopted, not to further public business, not to prevent raids upon the treasury, such as gentlemen on the other side have been glibly talking about, not for the purpose of thwarting the consummation of some great wrong, but solely to prevent the consideration even of the question whether Mr. Jackson had a right to a seat upon this floor. Those dilatory motions were also, in their nature, revolutionary, because if, by such tactics, one man can be kept in a seat which is challenged, then a dozen or a hundred men can be kept in their seats in the same way, and it would be impossible ever to investigate, upon its merits, any question of this nature. How did the minority proceed? They had answered roll-calls regularly and promptly; they had been in their seats participating in the business of the House, but when the question was raised of considering the contested election-case of Smith against Jackson dilatory practices at once began, and they were promptly overruled by the Speaker, the mouthpiece of this House, the organ of the House, the man who stands for us and in our stead to make deliverances here. [Applause.]

These motions were overruled expressly upon the ground that they were dilatory and nothing else. The next step was what? Why, when questions were raised in their regular order the gentlemen upon the other side remained in their seats and kept silent. It was like the silence in heaven after the seventh seal was broken, as recorded by John of Patmos, and continued for about the same length of time, half an hour. [Laughter and applause.] Then it was broken, and broken in a way that no man present will ever forget. Why, sir, when those gentlemen who insisted that they were not present because they did not answer to their names arose *en masse* (when the Speaker announced that they were in their seats) and, with one voice, with a hundred voices, with the voices of mighty winds, as it were, rushed simultaneously upon the Speaker, no man, I say,

who heard them will ever forget. [Renewed laughter.] They were here then. When opportunity offered to put a rail through the spokes of the wagon-wheel to stop it every man of them took hold of the rail. When opportunity offered to stop the business of this House they were all here, they were all here together, rushing down the aisles as if about to take the Speaker bodily from the chair where this House had placed him. Who can ever forget my friend from Indiana [William D. Bynum] as, with clenched fists and "form like old Goliath tall," he moved down the aisle with arms akimbo like a Dutch windmill, threatening dire disaster to the gentleman who occupied the chair? [Laughter.] Who did not stand with bated breath as the silver-tongued gentleman from Kentucky [William C. P. Breckinridge], with solemn mien and measured words, announced to the country and the world that this side of the House and the Speaker were "corrupt"? Who will ever forget my friend from Arkansas [John H. Rogers] as he stood transfixed with amazement and speechless as his eyes beheld the sun of liberty go down forever! [Laughter.]

But, Mr. Speaker, "the winds blew, the floods came" in vain; and, when the airy storm passed by this House, the country saw in that chair a "Reed" that was not shaken by wind. [Laughter and applause on the Republican side.] Why, sir, that yell has not been duplicated within twenty-five years. [Renewed applause.] Instantly came to my mind the words which Walter Scott puts into the mouth of the Last Minstrel upon a noted occasion, when

> At once there rose so wild a yell
> Within that lone and narrow dell,
> It seemed as if the fiends that fell
> Had pealed the battle-cry of hell!

[Laughter and applause.]

Well, Mr. Speaker, that passed by. The Speaker of this House found that these gentlemen were here and he told them so and told the country so.

But, sir, we are told that this is a dangerous precedent; we are told that we are overriding precedents. Do not gentlemen know that precedents sometimes become so cruel that they must be cut down and destroyed? Patrick Henry destroyed precedents when, in the Virginia house of burgesses, he dared to use language that was treasonable; but when he used it he broke the spell that bound the people about him, and from that time onward liberty received a new impetus. [Applause.] John Quincy

Adams broke precedents when, in this House, with the Clerk, a creature of the House, refusing to do certain things, he arose in his seat and said: "Gentlemen, I will put the question myself"; and he did it, bringing order out of confusion and wiping out a "precedent" forever.

Sir, the people of this country have grown impatient under the operation of rules that have been builded up in this House of Representatives. For years they have been complaining that this House, instead of attending to its duties, has simply been obstructing the business of the country, and doing it under forms of law. The people became uneasy, and not only uneasy, but impatient, and they determined that there should be a change. It is not true, sir, that this is a new question. It was foreshadowed years ago that the time would come when these rules must be changed so that the House could do its business properly. That question was discussed throughout the whole North in the last campaign, and the House of Representatives was denounced because of its obstructiveness and because of its determination, hedged about by rules, to thwart the will of the American people. [Applause on the Republican side.]

The country understands to-day that when the rules are changed and the chains are broken it means that the majority of the Representatives in this House elected by the American people shall take the responsibility of legislation and be held accountable for that legislation. And, when they return to their constituents, if they have done unwisely, others will be substituted in their places. But what the people desire and propose to have is work done. [Applause.]

Why, sir, all who were here in the last Congress saw the most important bill strangled, not by a committee, not by this House, but by the gentleman who occupied the chair at that time. When we remember these things, to accuse the present occupant of the chair of "tyranny" is mockery. Had it not been for the "tyranny" of one man, had it not been for the power that the rules gave him here, the State of Michigan to-day would have half a million dollars in her treasury that belongs to her, money that she took freely from her people in order to put down rebellion, money which she gave by virtue of a law which expressly provided that other States should contribute their share. But, instead of so doing, the States that neglected to pay their tax, claiming that the money now in the treasury belongs to all the people, refuse either to give us back what we contributed or to pay their own proper proportion. [Applause.]

Mr. Speaker, if gentlemen can sit in their seats silent and

refuse to vote or take any part in the proceedings, they might as well be entirely out of the House. But, sir, "the world moves." Thirty years ago gentlemen on that side, instead of sitting silently in their seats, would have walked out of the hall. The reason they do not now is because public sentiment would smite them for it. They were afraid to undertake to repeat that experiment; and, therefore, they staid in their seats and drew their salaries, at the same time claiming that they were absent—present in the body, but absent in the spirit. And I want to say further to gentlemen on the other side that, as public opinion prevented you from leaving the hall, so, within five years from this date, public opinion will so utterly condemn the man who undertakes to obstruct the public business here that the pernicious "precedent" will have passed away forever.

Gentlemen may say that this refusal to take part in the business of the House is parliamentary; they may say that they are simply exercising their rights when they sit silently here and refuse to act. But history will say that it is silent secession; that you are not doing your duty as your oath of office commands you to do; that there is no possible way by which a Representative of the American people, sworn to do his duty as a Representative, can by obstructive movements lawfully defeat the will of the people as represented by a majority of this House.

Heretofore the rules have been so constructed that one, two, or three men could control the action of this House. That time has gone by forever. [Applause.] The American people will no longer submit to one-man power. It is not submitting to one-man power to-day. What the Speaker has done has been in strict accordance with parliamentary law, has been in strict accordance with the demand of a majority of the Representatives of the American people.

It is useless to throw epithets at him. It were more manly to throw them at us, because, as you have learned from past experience, epithets do not scare him and wind does not affect him. [Laughter.] He is prepared to take the responsibility of his high place and go forward in the discharge of his duty. And the rainbow in this whole horizon that I see is this: That, when you take "the sober second thought" you will come and lay tributes of praise at the feet of the man whom you have maligned because of the fact that he has known his duty and, knowing it, has dared to do it. [Applause on the Republican side.]

On February 12 Amos J. Cummings [N. Y.] spoke against the rules.

Mr. Speaker, the 5th day of January, 1642, was a memorable day for the cause of both national and parliamentary freedom. On that day Charles I, King of England, appeared at the door of the House of Commons with an armed force. He entered the House with his nephew, Charles, the Prince Palatine of the Rhine. His brows were knit and his eyes flashed as he strode up the aisle. He glanced at the place where the patriot Pym was wont to sit and then walked directly to the chair occupied by the speaker. Speaker Lenthal sat with the mace before him. The King commanded him to sit still. But, as the monarch strode toward the desk, Speaker Lenthal rose with the other members of the House. As the King approached, Lenthal left the chair and dropped upon his knees. His Majesty ascended the steps leading to the speaker's desk.

The representatives stood with their heads uncovered in stern, respectful silence. In angry tones the king explained the object of his visit. On the previous day he had sent to the House commanding the arrest of Pym, Hampden, Strode, Hasselrig, and Hollis. The Commons did not respond. The five patriots remained free and the House determined to protect them. On this day the King himself came to arrest them. They were not in their seats. They had heard of his approach and at the urgent solicitation of their friends in the House, had withdrawn. Charles angrily asked the speaker where they were. Instead of meanly replying: "I saw Jack Hampden go into the cloakroom a few minutes ago and Dan Hollis is down in the restaurant," Speaker Lenthal resolutely replied: "May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place but as the House is pleased to command me, whose servant I am here." [Applause on the Democratic side.]

The King replied: "My eyes are as good as another's. I will use them."

After a searching survey he said: "I see the birds have flown." Thereupon he turned and, with a shuffling apology, marched out of the chamber. From that day down to the opening session of this Congress no person occupying the Speaker's chair in either the House of Commons or the House of Representatives has ever presumed to use his eyes except as directed in advance by the House. [Renewed applause.]

Wherever, in minor legislative bodies, the presiding officer

has assumed to use his eyes, it has always been after rules for the government of the body had been adopted. The rulings here, which preceded the report of the Committee on Rules, are not based upon the memorable ruling of Speaker Lenthal. Instead of uttering the voice of this House as its speaker, that functionary evokes that voice from silent members and then uses those silent members to stamp the subterfuge as genuine. No subsequent party sanction can make this ruling aught but an act of tyranny. From this ruling no appeal is permitted. A thousand quorums made up in the same way can not change its complexion. Every vote so taken only stamps it with deeper damnation. The Speaker himself makes the quorum, independent of the call of the House, and the minority is made the instrument of his tyranny.

Instead of acting as the Speaker of the House and declaring the voice it utters he evokes that voice with his eyes and utters what he has not heard, in defiance of parliamentary law. Instead of giving the House an opportunity to express its will, he takes upon himself to declare his own will as the will of the House, and makes his ruling good despite the fact that a yea and nay vote shows that it is sustained by a minority.

This is the ruling that it is proposed to sanction by this new code of rules. It is a ruling involving a clause of the Constitution. If constitutional, it needs no incorporation in the new rules. If unconstitutional, such an incorporation can not make it constitutional.

It has been said that it takes a score of lies to support one lie. It evidently takes nearly as many unparliamentary rulings to support one unparliamentary ruling. Wandering from the beaten track, the present Speaker seems to be lost in a wilderness. He orders tellers one day and refuses them the next, thus robbing the House of its undoubted right to revise his count.

The Speaker well said at the outset of his usurpation of authority that the American people are an eminently parliamentary people. They hold school meetings at nearly every cross-road and church meetings in nearly every house of God. They hold political primaries in nearly every block of every great city and assemble in mass-meetings to discuss nearly every question of public interest. In the smallest hamlet of the most obscure county of the least populated Territory you will find some one who has some knowledge of parliamentary rules. The simplest of these rules are stamped upon his memory. He has learned and he knows that a motion to adjourn is always in

order; he has learned and he knows that an appeal from the decision of the chair is always in order. Yet, under this new dispensation, the Speaker refuses to entertain either a motion to adjourn or an appeal from a decision. He has done this daily and almost hourly.

He has assumed to question the motives of members in making a motion, independent of the opinion of the members of the House, for he refuses to allow an appeal. It is an assumption violative of the rights of all our constituencies.

Look at it. The Representative of the First Congressional district of Maine has taken it upon himself to determine the motives of the Representatives from the Third District of Georgia and elsewhere in making the simplest of parliamentary motions. If he has the right, why has he not the right to determine the motives of the gentleman from Georgia in introducing a bill or in presenting a report? And, if the Representative of the First Maine District has a right to determine the motives of the gentleman from Georgia in the exercise of any of his public duties, why has not the gentleman from Georgia the right to determine the motives of the gentleman from Maine in the exercise of any of his functions? It is such outrageous rulings as these that are to be perpetuated in this Congress by the adoption of these proposed rules.

But I will specify no further as to the butchery of the simplest parliamentary rules. Everything pales when we look upon the butchery of the individual rights of a member. He is bucked and gagged and wound in the web of committee privileges until you can hardly tell the color of his clothes. Possibly he has already learned that recognition is not based upon the rights of individual members, but upon favor. He will now learn that he has no rights at all, that all his rights and privileges are to be usurped by committees dominated by partisan majorities. Even the poor privilege of demanding the reading of a bill upon its introduction is refused. If he wants to know anything about reports of committees he must watch the Calendars. All the old avenues for information are closed. Committee rule, backed by all the pride of committee, is to be made paramount, and, were it not for the recording of his vote, the individual member might almost as well go back to his constituents, for he could serve them nearly as well at home as in this House under the proposed rules.

I appeal to thoughtful members not to remove the old buoys and tear down the light-houses that have made parliamentary navigation safe in the American Congress for a hundred years.

Stick to the broad channel. Cut-offs are dangerous. The old ship of state is sound and in good condition. Keep her so. Remorseless wreckers have their eyes upon her, and the men of her crew who throw her into their clutches will be held to a strict accountability by the passengers. [Loud applause on the Democratic side.]

Asher G. Caruth [Ky.] opposed the rules.

The Constitution says that the Congress shall legislate, and intends that the members who constitute the law-making body shall have their voice in its legislation. But practice has done away with this idea and the Speaker becomes the law-maker of the Congress. He ought to be denominated "General Legislator." [Laughter.] He has been known at this session of the House as "General Parliamentary Law." [Renewed laughter.] Now, if it was the intention of our fathers who framed the Constitution to place such arbitrary power in the hands of one man, why go to the trouble to have a House of Representatives at all? Why not elect a Speaker by a direct vote of the country and get rid of the necessity of paying salaries, mileage, and stationery accounts altogether and cover "the contingent fund of the House" into the national treasury instead of paying it out for extra help, printing, and the thousand and one things for which it is annually expended.

At first I thought that General Parliamentary Law might do well in command of the House. I thought I knew the general. I had been introduced to him at divers times, at various places—debating societies, conventions, and the like, by a man named Cushing, who was supposed to know him well. [Laughter.] I thought that the principle was that first come first served, and "recognition" a mere matter of promptness and voice. I was mistaken. General Parliamentary Law was a tyrant, a god; his will was supreme, and he would not see a Democrat on the floor or hear his "Mr. Speaker" when he so willed it, although he was evidently there and his voice was ringing through the House as loud as the tones of a calliope. [Laughter and applause.]

I thought it was some singular defect of vision which enabled the Speaker to see and note a Democrat when he was seated in his chair on the floor of the House with his mouth shut and be unable to see him when he stood on his feet and was calling attention to himself at the height of his voice. [Laughter and applause.] It looked to me as if he ought to be treated with

Mulberry Seller's[1] eye-water. [Laughter.] But I feared that he had the disease so bad and was so far gone that he would have to be dosed "externally, internally, and eternally." I have seen this General Parliamentary Law, acting in accordance with this usage, recognize a Republican before he came into view above his chair and before the first syllable of "Mr. Speaker" had left his lips.

It puts me in mind of the lieutenant-governor of a Western State who, during the session of the Senate, addressing the doorkeeper, said: "Send out and hunt up Senator Johnson—he is somewhere about the capitol—and tell him that he has been recognized and has the floor." [Great laughter.] Never in any debating society, never in any convention, never in any deliberative body that I had ever attended has it been said that it was out of order to move an "adjournment" or to "appeal from the decision of the chair." Yet General Parliamentary Law, when he took charge of this House, proclaimed this to be the rule. The general was omnipotent, but differed from omnipotence in one respect: he was not the same yesterday, to-day, and forever. [Great laughter and applause on the Democratic side.]

General Parliamentary Law gave me personal offence, too, for he voted me against my will and miscalled my name, violating the rules of pronunciation recognized in my family for over a hundred years with as little compunction of conscience as he did the rules of deliberation in this House, which had been established for a century [laughter and applause on the Democratic side], and would not recognize me when I arose to a question of privilege, although I addressed him in my loudest and clearest tones.

At the end of the episode I felt like Bret Harte's man at the society who was hit in the abdomen.

> He kind of smiled a sickly smile and curled upon the floor,
> And the subsequent proceedings interested him no more.

[Laughter and applause.]

I became anxious to get rid of him or to have him define himself in some definite way. So I was a hearty friend of the resolution introduced by the gentleman from New York [Mr. Cummings] providing for the publication of 2,000 copies of the rules of general parliamentary law which were governing

[1] A character in "The Gilded Age," by Mark Twain and Charles Dudley Warner.

the House. He did not press the motion because it was known that the only thing which could be printed was a photograph of the present Speaker, and there was not a good negative of him in Washington. So I became anxious to have this arbitrary, tyrannical general superseded.

The new rules are called rules of proceedings, but they should be denominated "Rules to magnify the Speaker, glorify the committees, and repress the members of Congress." As a member of Congress who wags the tail end of the Committee of Expenditures in the Agricultural Department, and wrestles with the furious, impatient, and greedy Blair bill confined in the Committee on Education, I want to protest against the adoption of these rules. I do not want to magnify the Speaker; God knows he is big enough now, and great enough, under the old rules; but these rules will add to his weight, and size, and importance, and, when they are adopted, seated on his throne of power, he can well exclaim:

> I am Sir Oracle,
> And when I ope my lips let no dog bark!

[Applause.]

No; I do not want to magnify the Speaker. I do not want to glorify the committees of the House; but least of all do I desire to repress the individual member of Congress. He is little enough here in Washington. He may have been somebody at home; but he is less than nobody here, unless he has been "indorsed." I pity the new member. He is not recognized by the Speaker in the appointment of committees. He can not be a chairman. He can not get the floor, nor would he be likely to know what to do with it if he did get it.

But the people at home think he is somebody, and they are scanning the newspapers to see what he has done toward immortalizing himself, and expect him to do this before he has found out how to tell a Capitol car from one bound for the Baltimore & Ohio depot, or has fixed in his mind the northeast or the southwest portions of this beautiful and mystifying city, and before he has a chance or half a chance some ambitious individual who wants the seat he has hardly warmed by his presence pronounces him a "stick" and "a complete failure." Under the old rules he might, on Monday, rise in his place, under the call of States, and present his bill in the sight of the reporters and in view of the ladies in the gallery. But, alas! even this is denied him under the proposed rules.

He, too, being faithful in his attendance at his committee meetings, might be selected to report some pet measure, and then the people would see it telegraphed over the country that he had made this report, and "the boys" in his district, gathering at the country stores or waiting their turn at mill or barber-shop, might talk over the distinction which had been conferred upon him and unite in the opinion that he is "the best Representative the district ever had"; but, under these proposed rules he does not stand up in the face of the House and the country; he claps his hands for a page and has his report shoved in a box.

Do not these rules indeed repress him? And is it not practically treading on a man when he is down? What is a new member to do? There is nothing left for him but to tread his weary way from department to department, write letters, or scatter "seeds" with a lavish hand over his district in the hope that they will come forth and bear a rich harvest of votes at the fall election. But he can "participate," says the gentleman from Ohio [Benjamin Butterworth], by drawing his twelve or thirteen dollars a day. But, alas! as we know to our sorrow, he cannot always do that, for some renegade Republican from the gentleman's State may creep into our confidence, worm his way into office, and run off with our pay.

So I am opposed to repressing the individual member. I am opposed to the policy which is tending to make him "small by degrees and beautifully less." I am in favor of laws which give all constituencies, through their Representatives, equal advantages on this floor, rules which recognize the rights of this large minority, and which will not inaugurate in the American Congress—

> . . . the good (?) old rule,
> . . . the simple plan,
> That they should take who have the power,
> And they should keep who can.

[Laughter and applause.]

David B. Henderson [Ia.].—Mr. Speaker, this country in the last few weeks has witnessed scenes unequaled in its history. The Speaker of this House, backed by every Republican member on this floor, has been making a stand for the rights and liberties of the people. That battle brought opposition from the Democratic side exceeding in monstrous proportions, in respect to brutality, anything that ever occurred in the national Capitol. Only one picture stands out stronger in our legis-

lative history, and that was when a Democratic club laid the immortal Sumner on the floor of the United States Senate. This battle against reform has been made like the rioting of a mob, presenting a disgusting and disgraceful scene to 65,000,000 people.

Epithets unbecoming manhood have been hurled from that side of the chamber at the presiding officer of the House of Representatives. "Tyrant," "usurper," "corrupt," "backed by a mob," were the speeches to which the country was treated. Language that would have expelled the user of it from the floor of this or any other legislative body has been cast to the country and flashed over the wires. We could not afford to call the gentlemen using it to account. To do so would involve a trial consuming weeks and weeks. This you well understood. We were here for business, and we are here still for business. [Applause on the Republican side.]

The presiding officer, rising to the situation like our granite mountains, not afraid of hissing, storms, frowning clouds, or any other assault, met the occasion, and calmly and grandly did the duty of the hour. As I passed by that central door, after one of those exciting scenes, I heard a gentleman on that side of the chamber say to another, "Did you hear the rebel yell?" [Laughter.] Gentlemen, understand here and now that the Northern "doughface" is an animal of the past. Understand that this country has passed through a fiery furnace that has eliminated the Northern "doughface." [Applause on the Republican side.]

You undertook and intend to control this country whether you are in the majority or in the minority. You can not do it, gentlemen. [Applause on the Republican side.] We mean business; and it is to do business calmly, earnestly, bravely, and patriotically that we are here. Assault after assault from great and small of you has been hurled against the Speaker. You were mighty chary of such burning and biting speeches when he held a seat on this floor, armed with his fearless eloquence, instead of being tied up as the presiding officer. [Applause on the Republican side.]

Hosts of you have served by him and with him as Speaker or as Representative from two to twelve years. You did not, inside or outside of this Chamber, dare to insult him during that period. Is your present course chivalrous? Is this brave? Is this an exhibition of what we have been told about Southern chivalry, for men to stand here and in front of that desk and hurl epithets at a gentleman who is no longer

on this floor? If he had been, you would not have dared do it. [Applause on the Republican side.]

Now, gentlemen, what is the real issue underlying this struggle?

It is this: Shall the election methods in certain States of this Union now boasted of by men high in recognized power be brought into this House of Representatives and be here protected and enjoyed?

Election cases and proposed election laws disturb you. Gentlemen, understand this here and now: If there is a member on this floor entitled to his seat, this side of the House will stand by him as the old Imperial Guard did around the First Napoleon, to defend him in his seat; but, if there is a man on this floor who holds his seat by black-hearted fraud or red-handed murder, we will unseat him if we have the power. [Loud applause on the Republican side.]

Election laws; yes, God knows we need them. The gentleman from Kentucky [Mr. Caruth], who just preceded me, said, with a splendid burst of eloquence, "we want a show for our 'white alley.'" The Republican party wants a show for its "black alley" [laughter and loud applause], and, under the Constitution, we intend to have it. These are the underlying questions of this mighty struggle. He who wants to make it the occasion for wit or for sarcasm may do so. Standing here, I feel myself in the presence of a mighty problem appealing to the patriotism of each Representative. Standing here with that conviction, I shall relax no effort that will make it impossible for the minority to throttle the expressed wishes of the majority in this country. The Constitution is my warrant, and I shall fight for the rules reported to this House. [Loud applause on the Republican side.]

Leonidas C. Houk [Tenn.] supported the rules.

My idea of coming here was that I, as a Representative, was to engage in trying to do the business of the country. It seems, though, that our Democratic friends have the exactly opposite idea about this matter. Your speeches [pointing to the Democrats], your conduct, and the whole course of your action since this controversy began show that you want a set of rules adopted that will enable you not to do business. [Laughter.] When you get back to your constituents and ask for a reëlection are you going to say: "My fellow-citizens, you ought to return me to Congress; I demand and am entitled to a reëlection because I

have refused to do your business myself and done all in my power to prevent others from doing it for you?" No, no; you dare not talk that way to the people. You dare not say to them that you represent the "grandest party on earth"; that "our statesmanship has demonstrated to the people how not to do their business." [Laughter and applause.]

Gentlemen, there is no use in dodging this matter. You are either here to do business or not here to do business. Which did you come here for? [Laughter and applause.]

If you are right now, why in the name of all the gods at once did you not adopt this policy in 1861 and burst this Government into splinters by refusing to vote and by running backward—by imitating the crawfish? [Laughter and applause.] If you are correct now, you could have destroyed the Union then by a "dumb" rule; by sitting in your seats and refusing to vote, as you now claim to have a right to do under the Constitution. You had the power to destroy the Union in this way without firing a gun or shedding a drop of blood.

Now, there is another thing. There is a great affection and veneration for the old rules, especially that rule which allows you to play "crawfish" and not vote and not be counted. [Laughter.] Why, God bless your sweet souls, you have been miseducated on this subject. [Great laughter.] You have. You have been educated and seem to believe that it is improper to count those present and refusing to vote in order to make a quorum, and that, because there was no rule authorizing it to be done, it has become a sacred right to thus refuse to do business. But you never stopped to think why that system of rules was built up, and why the distinguished gentleman from Pennsylvania [Mr. Randall], who is now confined to his bed by illness and cannot be here, built it up. You never stopped to think why it was that he has been leading you along and building up a process of violating parliamentary principles under the old rules when you could not be counted.

Why, God bless your innocent souls [laughter], he did it, and the leaders of the party did it for the purpose of preventing the Democratic party from ruining the country [renewed laughter and applause], and they were right [applause], for that party is incapable of governing wisely or well in any branch of the Government. It can tear down, but it does not know how to build up; it can destroy, but it cannot create or restore. [Applause.]

I am amused at the great solicitude which you manifest. You are terribly alarmed about the country in general and the Re-

publican party in particular, for fear we will commit some sort of *hari kari* and ruin ourselves. Why, God bless you, gentlemen, why do not you let us ruin ourselves? [Laughter] Why, Mr. Speaker, in all seriousness, if the Republican members of this House are capable of the atrocities that you on that side of the House ascribe to us, then every one of us ought to be in the penitentiary instead of being here on this floor. [Laughter on the Democratic side.]

I was amused again at the gentleman from Illinois [William M. Springer] who entertained us to-night.

A MEMBER on the Democratic side.—God bless your soul!

MR. HOUK.—No, the Lord will not hear a prayer from that side of the House. [Laughter.] The gentleman from Illinois [Mr. Springer] inveighed against the rulings of the Speaker, and especially against that particular ruling which has created all this antagonism and excitement, and pointed to the conduct of the Republican party in the Fiftieth Congress in taking advantage of the old rules and filibustering to prevent the party then dominant in the House from reaching the proper jury in a contested election case.

I thank thee, Jew, for teaching me that word.

The very illustration which the gentleman has used is one of the strongest, most forcible, and most logical reasons which could be presented on this floor why the ruling of the Speaker is right and why this rule should be adopted for the guidance of this House in the performance of its duties in representing and legislating for the American people. The gentleman's argument is this: "You Republicans took advantage of the ruling which then existed and prevented us from getting a case before the proper jury, and now you are proposing to adopt a rule by which you can reach the jury under all circumstances at any time, and I am against that. You did wrong before, and now, when you propose to do right, I will do wrong." That is his argument. He denounces us for refusing to vote and thus preventing the trial of a contested-election case, and yet he and his party resort to the same bad habit for the same purpose, and claim that we are tyrants if we do not make it lawful for them to continue this wicked practice. "Consistency, thou art a jewel." Indeed the gentleman from Illinois is "a jewel." He deals in pearls and gems of sarcasm, from whose withering touch I am bound to believe the Speaker fled and placed the present occupant in the chair. [Laughter.]

But, gentlemen, you may possess your souls in peace. We are not going to hurt you. We are going to adopt this code of rules and make you behave yourselves, and, when you do not vote, we are going to count you to constitute a quorum unless you run away. [Laughter.] We are going to do it. [Renewed laughter.] We will do it as certain as the world stands. I did not vote for Reed in the caucus for Speaker, but I am in the habit of apologizing to him twice a day ever since I have seen how he has borne himself in the chair. [Great laughter and applause.]

And I am inclined to think our honored and worthy Speaker may yet survive, even though he has the frowns and is compelled to endure the disfavor of all the Democratic statesmen who have hitherto sought and obtained fame and a name by a dilatory use of the motion to adjourn [laughter], and who desire to preserve the right to make this motion hereafter as they have in the past, that their statesmanship may resound down through the corridors of time. [Laughter and applause.] Let me say to our Democratic friends, you may speak, you may use epithets, you may do what you will, but the country has intrusted the Republican party with the administration of the Government and with the control of legislation in this House of Representatives, as well as in the other end of the Capitol, and has put a Republican President in the White House, and we are going to run it for the time being, regardless of what you may think, say, or do in reference to our action. [Applause.]

There is no use of attempting to dodge this question. We intend to do the people's business, and we are going to do it our way, and not yours. [Renewed laughter.] The Republican party has not only taken care of itself, but its genius and patriotism and statesmanship have proved capable of taking care of the country in the past, and, by the help of Reed, we are taking care of it in the present, and, by the grace of God and the good-will of the American people, we propose to take care of it in the future. [Applause.] And what, then, is all this noise and confusion about? [Laughter.] What is it all about? It is all because the majority will not consent that the minority may not do the business for which they were elected. Well, gentlemen, you may just fold your arms and not do a thing if you do not want to, but we over on this side propose to work. [Laughter.]

Mr. Speaker, every court, so far as I have been able to investigate, where the direct question upon which Speaker Reed has been ruling here for several days has come before it, has

unanimously sustained the principle upon which that ruling of the Speaker rests. The Supreme Court of Tennessee had this direct question before it at a recent term at Knoxville, and that Democratic court gave a unanimous decision sustaining the principle maintained by the Speaker in his rulings here.

The court held that a majority of a quorum must be present in order to make the action of the parliamentary body legal, its acts valid. Among the authorities quoted and approved is this: "So if a board of village trustees consists of five members, and all or four are present, two can do no valid act.

"But if three only were present they would constitute a quorum. Then the votes of two, being a majority of the quorum, would be valid. Certainly so, where the three are all competent to act." (2 Dill, Mun. Corp., section 217.)

The only possible way to avoid this law, as thus laid down by the Democratic Supreme Court of Tennessee, is for our Democratic friends who have all along been present here in their seats to insist that they are not "competent to act." That may be what they have been trying to prove by their conduct—that they are not competent to act! [Laughter].

BENJAMIN F. SHIVELY [Ind.].—Mr. Speaker, I believe that it will be generally admitted that the gentleman who just resumed his seat [Mr. Houk] presented the case of the majority report in the most prudent, logical, sober, and dispassionate manner thus far observed by that side of the House. [Laughter.]

The contention that this code is designed to enable the majority to control the public business is without foundation. The majority should control the public business within its legal limits, and it can do so now. This code is expressly intended to enable the minority, however small, with the assistance of the Speaker, to rush measures through the House. The old constitutional rule which compels the party which insists on controlling the public business to have its majority in the House is stricken down. A new rule is submitted in its place, under which a mere minority of 3, or even 1, as admitted by gentlemen on the other side, could, with the assistance of the Chair, carry bills through this House taking millions of dollars out of the public treasury. In brief, to provide that a minority of the Representatives elected by the people may control the public business is the very purpose and essence of the proposed code, and all the hysterical protestations of gentlemen to the contrary have not changed the fact.

It may not be amiss to recall the fact, Mr. Speaker, that

some of the obnoxious features in the proposed code were fully discussed in former Congresses. Mr. Blaine, when Speaker of the House, repudiated the proposition that the Speaker should count a quorum, as conducive to fraud and scandal, and predicted that the recognition and exercise of such a power would place the House "on a volcano." Garfield and Hawley and Conger and the present Speaker of this House, when in the Forty-sixth Congress, denounced the proposition that the Chair should "see" a quorum. The present occupant of the chair then denounced the proposition not only as vicious in parliamentary policy, but clearly unconstitutional, and in that view he was sustained by an overwhelming majority on both sides of the House. What was then denounced as vicious is now eulogized as virtuous. What was then pronounced clearly unconstitutional by our present Speaker is now held by him to be clearly constitutional. What was then characterized by him as a "valuable privilege" is now stigmatized as a "vicious practice." What was then denounced as unwise, reactionary, and revolutionary is now applauded as wise, parliamentary, and legal.

Indeed, sir, how irresistible must be the influence about this Capitol that can work such a complete change of opinion and such inexplicable inconsistencies in human conduct. But the public can hardly be deceived as to the secret power at work. The creatures of Government favor demand, among other things, that the time for the payment of the debt due the Government from the Pacific railroads shall be extended seventy years, the confirmation to the subsidized railroads of the title to their unearned land grants, additional legislation for favored banks, the refunding and perpetuation of the national debt for several generations, and these things can be accomplished only by Congress stealing a march on the public opinion.

The American people are to be chained still more securely to the chariot wheels of monopoly, and the old rules must be thrust aside as hampering and impeding that process. Under the old rules, parliamentary motions seldom, if ever, embarrassed good legislation; in many distinct instances they arrested doubtful legislation, and they certainly never facilitated the progress of bad legislation. To correct this tendency and effect is the patriotic and philanthropic purpose of the proposed code!

The rage of contending interests for priority at the public treasury is on. The clamor of the lobby rings out high above the voice of the people. Ninety-nine out of every hundred

pledges so lavishly made to the soldier turn to ashes, while the gigantic combinations of steamship and other subsidy bandits storm this House and train their artillery on the exchequer of the Government. The subsidy and the fictitious claim offer large percentages, while the honest claim must wait tardy recognition of its merit. The beneficiaries of privilege sentinel the Capitol of the nation; the farmer and laborer, to whom so much was promised in the last campaign, are forgotten, and nothing is to flourish but the industry of raising and consuming taxes.

Mr. Speaker, this occasion will stand memorable in the parliamentary history of the country. Even the occupant of the chair admits in his report that some of the provisions in this code are "extraordinary," while we all know that they are radical and revolutionary. The authority of great names is disregarded. The precedents of a century are trampled under foot. The purse-strings of the nation are flung to the wind. The way is blazed, broad and plain and direct, for the lobby into the public treasury. That there are gentlemen on the other side of the House who are doubtful of the propriety of many of the innovations in these rules and have misgivings as to their effects there can be no question.

But no such speech on either side of the House will change a single vote. The word has been spoken. The decree has gone forth. The power that could suggest such a code of rules will find means for enforcing its adoption. Recognition and subserviency go hand in hand. Things may grow worse before they grow better. At all events, we are soon to see evidenced how comparatively short is the time which may elapse between the birth and the maturity of folly. [Applause on the Democratic side.]

William D. Kelley [Pa.] supported the rules.

Mr. Speaker, the only doubt that I ever had in regard to the policy and propriety of the proceeding now in issue was when the Speaker of the House referred to a Democratic precedent to show that it was right. I then began to have some doubt. But I was soon relieved of the doubt by the suggestion coming from the other side that David B. Hill[1] is not entirely orthodox in his democracy; that relieved me very much.

Now, sir, I know that the Speaker of this House is a very modest man; but, if he will permit me, I will suggest that, if, in

[1] As Lieutenant-Governor of New York, Mr. Hill adopted in the State Senate the practice now sought to be made the rule of Congress.

the course of human events, it comes to pass that the Republican party of this great country should put the name of Thomas B. Reed at the head of their ticket for President in 1892, and, if it should come to pass also that the Democratic party in their wisdom should put at the head of their ticket the name of David B. Hill as their Presidential candidate, I apprehend and I predict here that our Democratic friends who have been so strenuously and so violently opposing this measure will canvass the United States all over, claiming that David B. Hill is the man entitled to the credit for this great advance that has done so much, and by that time will have done so much, for liberty, and so much good for American legislation. [Applause on the Republican side.]

On February 14, 1890, the rules were adopted by a vote of 161 to 144.

CHAPTER XII

Popular Election of President and Senators

The Jefferson-Burr Contest for the Presidency—William H. Crawford [Ga.] Nominated by a Caucus of Congressmen—Opposition to the Caucus System—Andrew Jackson [Tenn.] Receives Plurality of Electoral Votes—House of Representatives Elects John Quincy Adams [Mass.]—Was This a Violation of the Popular Will? Affirmative, George McDuffie [S. C.]; Negative, Louis McLane [Del.]—Sen. Thomas H. Benton [Mo.] on the Evils of the Convention System—Redfield Proctor [Vt.] Introduces in Senate Constitutional Amendment to Limit Each President to One Term of Six Years; Committed—William M. Stewart [Nev.] Introduces in Senate Constitutional Amendment Forbidding the President to Succeed Himself; Committed—William A. Peffer [Kan.] and John H. Mitchell [Ore.] Introduce in Senate Constitutional Amendments for Popular Election of President; Committed—Similar Resolutions in the House—David Turpie [Ind.] and Sen. Mitchell Introduce in the Senate Constitutional Amendments to Elect Senators by the People; Committed—Gen. John M. Palmer [Ill.] Introduces Similar Amendment in the Senate—Debate: In Favor, Gen. Palmer, Sen. Mitchell, Henry M. Teller [Col.]; Opposed, William E. Chandler [N. H.]—Resolutions of Same Purport Are Introduced in the House and Committed; Henry St. G. Tucker [Va.], of the Committee, Makes Majority Report Favoring Compulsory Popular Election of Senators; Allen R. Bushnell [Wis.] Makes Minority Report Favoring Option of Such Election—Majority Resolution Passed—Speech of Senator George F. Hoar [Mass.] against the Popular Election of Senators—William E. Borah [Ida.] Introduces in Senate Amendment to the Constitution for Popular Election of Senators—Debate: Varying Views by Sen. Borah, Isidor Rayner [Md.], Thomas H. Carter [Mont.], Norris Brown [Neb.], George Sutherland [Utah], Augustus O. Bacon [Ga.], Chauncey M. Depew [N. Y.], Joseph W. Bailey [Tex.], Henry Cabot Lodge [Mass.], Joseph L. Bristow [Kan.], Elihu Root [N. Y.]; Amendment Enacted.

THAT the Constitution cast serious obstacles in the way of a choice for President of a man who was clearly the favorite of the people was early and strikingly shown in the election of 1800. The revolt of

the country against the undemocratic acts of the Federalists, particularly the Alien and Sedition laws, had unmistakably showed that a Republican would be elected in the contest, and all indications pointed to Thomas Jefferson, who, with James Madison, had led the fight against these laws, as the logical choice for the nation's Executive. However, Aaron Burr, of New York, the shrewdest political manipulator that had yet appeared in our history, who had made himself what would now be called the "boss" of his party [the Republican] in his State, determined to secure the position for himself.

According to the Constitution, at that time the Electoral College voted for two persons, without designating which was their choice for President and which for Vice-President. The person receiving the more votes got the higher office, and the other man the lower. Burr's power in his party was such that he received as many votes in the College as did Jefferson. This, by the rule of the Constitution, cast the election in the House of Representatives, where, in such a decision, each State has one vote, decided by the majority of its Representatives.

Here was Burr's opportunity. The Federalists hated Jefferson more bitterly than any other Republican because of his leadership in the successful fight against their policies, and, besides, were anxious to save as much as they could from the wreck in the way of political positions. Burr therefore, by making a bargain with the Federalist politicians that their party would be recognized in the dispensation of the offices, secured their cooperation in an attempt to have the House vote for him for President. To do this, control of nine States out of the sixteen then in the Union was necessary. The votes of eight States were secured by the Federalist Representatives voting for Burr. In two other States, Vermont and Maryland, the Burr-Federalist coalition was able to divide the vote equally with the Jefferson Republicans.

The balloting continued from February 11 to 17, 1801, amid the intense excitement of the country, many Republicans believing that it was the intention of the

Federalists to prevent a decision until after March 4, when they would make John Marshall (who had recently been appointed Chief-Justice) the chief magistrate. However, Jefferson was finally chosen by a vote of ten States out of the sixteen. It was James A. Bayard, Sr., of Delaware, the Federalist leader in the House, who, having received assurances from Jefferson that he would support certain "strong" national policies, such as the maintenance of public credit and the navy, and would not remove minor office holders for political reasons, decided the contest by inducing the divided States to vote for the man who was overwhelmingly the choice of the country.

It was to prevent the recurrence of such "deadlocks" that the Twelfth Amendment to the Constitution was adopted in 1904 [see Vol. 1, pages 423, 426].

Nomination of the President by Caucus

For a quarter of a century after the first election of Jefferson the Republican Senators and Representatives selected the party's candidate for President in caucus. From the beginning of the practice objection had been made to it as defeating the intention of the Constitution in establishing the Electoral College, and as making the President practically, if not theoretically, the choice of Congress. However, since Jefferson's successors, Madison and Monroe, were also unmistakable favorites of the people no issue was made of the question until the election of John Quincy Adams.

Monroe's Administrations, especially the second, when he was elected President by 228 electoral votes to 1 (which was cast for John Quincy Adams by an elector who wished to have the distinction of a unanimous choice remain with President Washington), were distinguished by political harmony, the opposition Federalist party becoming extinct. The period was aptly known as the "era of good feelings." At the close of Monroe's second administration all the candidates for the succeeding presidency were classed as members of the same party, the Republican. These were William H. Crawford

[Ga.], General Andrew Jackson [Tenn.], John Quincy Adams [Mass.], Henry Clay [Ky.], and John C. Calhoun [S. C.]. From the number of contestants and the fact that none was of the preëminence that had characterized previous Presidents—all men of the Revolutionary era—the contest was called the "scrub-race for the presidency."

It was known that a majority of Congress were pledged to Mr. Crawford. Accordingly the supporters of the other candidates refused to enter the presidential caucus, and thereby, says Senator Thomas H. Benton, "broke down both the system and the candidate." Only one-third (68) of the Congressmen met in the caucus and nominated Crawford. In a debate on the subject, in the Senate on March 18-19, 1824, Rufus King [N. Y.] and Robert Y. Hayne [S. C.] denounced the Congressional caucus as a legislative usurpation of the rights of the people.

The decision of the caucus in favor of Mr. Crawford had little effect upon the Electoral College, the vote of which stood: For President, Jackson 99, Adams 84, Crawford 41, Clay 37; for Vice-President, Calhoun (who had withdrawn from the presidential race) 182, the remaining votes being mostly complimentary. Calhoun was thus elected. The analysis of his vote, 114 votes from free States and 68 from slave, shows that the sectional feeling engendered by the Missouri affair had been thoroughly allayed by the Compromise.

No presidential candidate having received a majority of all the votes cast, the election was thrown into the House of Representatives. The House, following the constitutional rule, proceeded to ballot for the three candidates who stood highest. Clay, thus excluded, turned his influence in favor of Adams, who received the votes of thirteen States (seven voting for Jackson and four for Crawford), and thereby was elected.

Before the vote was taken in the House there was considerable debate over the doctrine advanced by George McDuffie [S. C.] of "plurality preference," namely, that the House was morally bound to select the candidate (Jackson) for whom the people had shown a

preference by a plurality vote. Louis McLane [Del.] replied to this view as follows:

The Real Will of the People

Louis McLane

The theory of our Government is that all power is in the people and derived from the people—but they never act themselves, excepting in their electoral franchise. They act through the different organs and functionaries of the Government, appointed by the Constitution and the laws, and they have no proper right to act in any other way. These functionaries are always responsible for a wise and faithful discharge of their various duties, but cannot be instructed in their exercise. The Congress are authorized to pass laws; and the judicial power to execute them—the people give the power to both, but they cannot properly instruct either.

The gentleman from South Carolina argues that the will of the people is the paramount law, according to what he was pleased to term the philosophy of the Constitution—to this the Representative is bound to yield his judgment and conscience; and shame, and disgrace, and infamy are denounced as the portion of him who shall venture to obey his own sense of right in opposition to this will! Before he could recognize a power so absolute, Mr. McL. said, he was disposed to examine its source and character. He would make no lofty professions of regard for the will of the people, according to the phrase of the day. Nothing was more easy, however—nothing more common—it was the ordinary theme of all political declamation. It is the common price of power, and paid most liberally by those who most covet it. We scarcely read of a tyrant, the first page in whose history is not filled with hallelujahs to the people's will. Sir, said he, ambition seeks not to be governed, but to govern; to govern the people; and it flatters the people to put more power over them. But, it is the wild tumultuous will that is thus courted; that which springs from sudden excitements, irregular ebullitions, stirred up by practical causes, and confined to particular districts. Of this false image of the people's will he was no worshipper: while, for the real will of the people, he sincerely felt a profound reverence. I mean, said he, the will of a *majority* of the people, *constitutionally* expressed, in the mode prescribed by the laws. It is this will which is the great moral and political power on which the Government reposes.

It is this will which comes in the panoply of the Constitution, and should be a law to all. He would recognize no other will of the people than that so made manifest; everything else was but its counterfeit. For this constitutional will we manifest our respect by cherishing and sustaining the institutions of its creation.

The gentleman from South Carolina says the election of the President by the people is the best mode which human wisdom can devise. I may admit the position, but what follows? The Constitution supposes it the best and, therefore, resorts to it in the first instance; but it also supposes it may fail in its object. It requires a majority of the people in favor of some one candidate to make an election; it supposes this majority unattainable and, in such an event, which has now happened, directs a new mode of election and by a different power. I ask gentlemen to look into the Constitution and see what restrictions are imposed upon the exercise of this power. There is none but the number to which the choice is limited. Within this number it is in vain to shackle our discretion.

The Constitution meant, and for wise purposes, that the direct agency of the people in this election should cease after the result of the electoral votes, and that, in the new and further election, the federative principle of the Government should operate—rejecting all influence from numbers and the weight of population. It became absolutely necessary to resort to such a principle, to promote and ensure an election by disregarding the causes which had prevented it in the electoral colleges. It designed to remove us from that very influence which had defeated the will of the majority. By giving each State a vote, without regard to its population, the electoral combinations or disagreements are broken up and a new principle established. But the doctrine contended for by the gentleman from South Carolina brings the force of the population in the worst and most irregular form to operate on the election here and disappoint the great object of the change.

After 1824, in place of the caucus, the party convention plan was adopted, in which delegates were chosen by the people to nominate the party candidates for the Electoral College and instruct them, in case of their election, to vote for particular men for President and Vice-President. Of the new system Senator Benton thus remarked (in his "Debates of Congress"):

"The substitute worked well while its letter and its spirit were observed; but degeneration ensued. Instead of delegates, fresh from the people, knowing their will and doing it, the conventions became gorged with officeholders and officeseekers, generally appointed by intrigue and fraud, and wholly intent upon doing their own will for their own benefit; and also largely composed of delegates from States which could give no vote for the person nominated, but who could control the nomination, and, of course, control the election, so far as the party was concerned. These abuses became so glaring and flagrant in the course of the first twenty years of the convention system that one of the most instrumental in putting down the Congress caucus system (Mr. Calhoun) made a public protestation against it—declaring it to be *"an hundred times"* worse than the old caucus system! tending directly to corruption, to the centralization of Government; and the annihilation of the elective power of the people; and, therefore, he refused to suffer his name to go before the Democratic convention of that period (1844). In justification of his opinion of conventions, Mr. Calhoun published his reasons at large in an address to the people of South Carolina, and, strong as those reasons were at that time, it must be admitted that they have grown stronger with the sitting of every convention which has since sat.

Presidential Primaries

In recent years the presidential convention has been essentially changed in character, though not in form, by the delegates in a number of States being selected at popular primary elections, with instructions to vote for particular candidates. The Democratic and Progressive platforms in 1912 declared for this principle.

With the climax of strength achieved by the People's Party in the early eighteen-nineties there came to the front among the more progressive statesmen of all parties one of the chief propositions of the new movement: the popular election of the President and Senators.

Only One Term for President

Introductory to these measures was the proposition that the President should hold office for only one term. This had been advocated in his inaugural address

(March 5, 1877) by President Hayes, who recommended that the single term be for six years.

On February 18, 1892, Redfield Proctor [Vt.] introduced in the Senate a joint resolution providing that the Constitution of the United States be so amended that the President shall hold his office for one term of six years and shall not be eligible for reëlection. It was tabled.

On March 11 William M. Stewart [Nev.] introduced in the Senate a joint resolution proposing an amendment to the Constitution forbidding the reëlection of a President until after the expiration of at least four years, the article to take effect March 4, 1897.

Senator Stewart spoke in favor of the resolution.

The measure is not in the language of many joint resolutions of like character which have been introduced and which provide for lengthening the term. That, I think, would be objectionable, because the stake would be too strong and might produce revolution at some time. There have been contingencies in the history of the Government where there have been irregularities of which great complaint was made, where the people have willingly submitted in consequence of the fact that the term was only four years. I think it would be unwise to extend the term for a longer period, because elections are not an unmitigated evil; they are necessary for educational purposes and should come as often as once in four years.

The civil service organization is for the purpose of preventing political influence operating upon appointments. If it be important that the clerks and minor officers should be removed from political influence in their appointment, it is of much more importance that the executive head, who exercises the power and patronage of the whole Government, should be relieved from all temptation to use the power in his hands to reëlect himself to that office.

This measure is no criticism upon any particular administration. If a reform of this kind is to take place, it must take place during somebody's administration. It is not a sufficient answer that, heretofore, all Presidents have refrained from using the power in their hands to secure a reëlection, because the power of the President is increasing with the growth of the country, and there is a disposition to increase that power; our legislation is all tending in that direction. We passed a bill the other day—the pure food bill—which adds enormously to the

power and patronage of the Executive, and bills of that character are pressing upon us constantly. The growth of the executive office is enormous in power and patronage, and no person should be placed in a position where the temptation would be to use that power for electioneering purposes. The White House should be entirely free from a political campaign. It should not be the head center, the storm center, so to speak, of contests that come every four years. If this temptation is removed we shall have the entire time and services of the Executive devoted to the discharge of his duties. His duties are growing more and more important, and his attention should not be distracted from the public service by a political campaign.

It will be further observed that, in this proposed amendment, I have relieved it of all personal application, so that it shall not affect any possible present aspirant. It is not proposed that it shall go into effect until 1897, so that none of the present aspirants will be affected by it. It does not deny to a private citizen, although he may have been President, the right to aspire to that high office, and I do not see why he should be denied that right. If he goes out among his fellow-citizens and takes the same chances that others do, it is no detriment to the cause of civil service reform to have him as a candidate. The only way to benefit the civil service is to remove from the administration of the Government the temptation to use the power and patronage of the Government for electioneering purposes.

I believe there is a general desire that an amendment of this kind should pass.

I think that the amendment should properly go to the Committee on Civil Service and Retrenchment, and I make that motion.

The motion was agreed to. The resolution was not reported.

Popular Election of the President

On January 18, 1892, William A. Peffer [Kan.] introduced in the Senate a joint resolution to amend the Constitution so as to elect the President and Vice-President by a direct vote of the people; it was referred to the Committee on Privileges and Elections, which did not report it.

On June 22 John H. Mitchell [Ore.] introduced in the

Senate a joint resolution proposing an Amendment to the Constitution of the United States providing for the election of electors of President and Vice-President of the United States by direct vote of the people of the several States. It was referred to the Committee on the Judiciary, which did not report it.

David A. DeArmond [Mo.] introduced a similar resolution in the House, which slumbered in committee.

Popular Election of Senators

Senate, December 10, 1891–April 12, 1892

On December 10, 1891, David Turpie [Ind.] introduced in the Senate a joint resolution proposing an Amendment to the Constitution of the United States, providing for the election of United States Senators by a direct vote of the people of the several States. It was tabled for the present.

Senator Mitchell offered, on the same day, a joint resolution to the same effect. It was committed.

On December 17 Senator Turpie supported his resolution. He read a resolution of the Indiana State legislature in support of the popular election of Senators.

The question by whom Senators should be chosen does not seem to have been much considered by the framers of the Constitution or by the constituencies to whom it was submitted for adoption.

That they should be chosen by the legislatures of the several States was determined almost of course. Indeed, the State legislatures during the war for independence and for some time afterward were the favored and trusted depositories of a variety of delegated powers. It is not strange, therefore, that the part given them in the election of members of this body should have attracted little notice, elicited no dissent. The alternative of a choice by the people or the legislature of the States appears not even to have been presented.

The Fathers, however, did not omit to provide for the contingency that a matter then regarded as of minor moment might become, as this has in our age, of great concern. So such things were left by their provident wisdom to the disposal of future advisement and after amendment.

This is called a government of the people, republican in form, and very justly may it be so called in comparison with many others, especially those in vogue at the time of its establishment. Such a government ought to be one wherein the people should control and more immediately direct the management of public affairs. We are constantly repeating the maxim that the people are the real source of all authority, yet in the actual drift of events there is a tendency to slip away from this source—to deny and to disown it.

The distribution of powers was justly regarded by the framers of our fundamental law as one of the chief safeguards of liberty, and it is within the purview of their polity and by virtue thereof that tendencies to centralism or absolutism may, by this means, be checked and thwarted. A redistribution of power; that is what this amendment proposes. It relates to a readjustment of power as at present apportioned. There is a certain element in our system which to-day is demanding a larger share of power, as is evidenced by the action of the learned and honorable Senator from Wisconsin [William F. Vilas] in introducing the resolutions of his legislature this morning in favor of the popular election of Senators. They are demanding a larger share, and I may be permitted to say they deserve it. This decentralization is always competent by the voluntary suffrage of the people of the States, under the forms of law.

In accordance with this policy of distribution we have been provided with three departments of the Government, the legislative, executive, and judicial.

Of these three under the present form which is controlled by the people? Surely not the judiciary. This whole province of power touches but once its putative source and origin, at the time of appointment, and then only in the most indirect manner. Thereafter it is forever independent of, and, indeed, irresponsible to, the people as such.

Just as certainly it is not the executive. The head of this department is chosen by electors, who are themselves chosen by the people; but, when elected, and after his induction, the President and the chiefs of the great administrative sections appointed by him are not at all subjects of popular regulation or direction.

There remains, then, only the legislative, whereof the people have control of but one branch, the House of Representatives. It will be thus seen that in this triple distribution of powers now existing no division thereof is allotted to the people.

The amendment submitted by the general assembly of the

State of Indiana, if approved, would grant to them wholly and directly the control of the legislative department.

Ought not at least one department to be so ordered and bestowed?

It was said in the discussion, very elaborate, which attended the issue of the rejection or approval of our present Constitution that Senators in Congress were the representatives of the States, of the sovereignty of the States. No change is intended in this relation. The Senator would yet continue to be the representative in a special manner of his State. The only modification proposed is that of the electoral body which chooses the Senator. This would consist of the whole number of voters in the State, who would vote for United States Senators in the same manner as they now vote for governor and other officers.

The States as such would lose nothing of dignity, sovereignty, or power. That centripetal force indigenous to all forms of government, so alien to the spirit of a free democracy, has always been greatly favored by modes of communication such as those now existing between the Senate and the people, modes somewhat devious, indistinct, indefinite. To make the path of this communication straight, to make it a public highway, an open course, unbroken and uninterrupted from the polls to the Senate chamber, is to inflict a grievous wound upon centralism, and will help to drive monopoly from its noxious lair. To grant to the whole body of electors in a State this Senatorial franchise must induce and awaken an interest much enlarged, a sense of responsibility very much heightened in the heart and mind of every citizen.

Aggrandizement of the units in a free State is not that of the Federal head, but creates and subserves the condition of distinct, independent, personal thought, feeling, and action, the unassailable bulwarks of home rule and local sovereignty. The added influence, importance, and power of each individual voter at his home must diminish the means as it would lessen the opportunity for Federal aggression.

Very keen distrust has been sometimes expressed as to the action of legislative bodies in the choice of Senators. This is only one of the forms which the popular protest against the present method most frequently assumes. Consider how full, clear, and thorough would be the remedy for the mischief of such suspicion under the new mode of election. It is true added importance would be given to that class of conferences called State conventions, and their action might be obnoxious to as grave charges as that of the legislature. But the selection made

by such conventions would not be final; it would only be primary, tentative; it would be subject to review and reversal at his leisure by every voter in the State. For that reason, no doubt, their action would be the more carefully guarded against the imputation of wrong, and yet, if found impure, might fail of acceptance.

Even upon the passage of this amendment the legislatures of the States will yet retain great functions in our Federal polity, the very greatest, far superior to those of Congress or any of the departments. The States may, at any time, upon a vote sufficiently unanimous of an adequate number, three-fourths thereof, resume any part of the powers granted to the executive, judicial, or legislative divisions, or without formal resumption the people may thus directly exercise through their legislatures the definitive functions of constitutional change and reformation. An enactment of the people through the States, in the form of a constitutional amendment, is in the nature of a decree legislative and judicial, unaffected by precedents, paramount to every other. Take the instance of the adoption of the recent amendments upon the subject of slavery. How fundamentally iconoclastic are these enactments! What a mass of ordinary statutes, State and national; what an innumerable series of judgments and decisions were overruled, repealed, and annuled thereby! Of rights vested, of rights corporate, long established, and recognized both by courts and lawgivers, relating to this subject, not a vestige remains.

There is a restriction upon the high prerogative of the people to make in this mode the law of the land; but that restriction is made for the benefit of the States, and it relates to the composition of this body.

Not even a constitutional amendment can deprive any State of its equal suffrage in the Senate without the consent of that State.

To correct the illegitimate tendencies in our system adverse to free institutions, to avoid the necessity of too frequent resort to extraordinary legislative action, the best method is now by this measure suggested, an increase of direct popular representation in the national legislature.

This would cause the character of the people to be transposed more perfectly into the modes of government. This would cause the needs, wants, aims, and aspirations of the masses of men in our free communities to be more faithfully reflected, more clearly imaged forth in the laws of the country and their administration.

Congress, in the two branches thereof, would be thus brought closer to the people, and this immediate proximity would have the most wholesome effects not only upon the legislative but upon every other bureau and department of the public service.

Such a change would purify the air in the slumbrous cavern dwelt in of old by those stalagmites, the perpetual placemen of routine; it would leaven the whole lump of official autocracy; it would cut away the entail of false prestige and unfounded pretensions; it would greatly lessen the evil of illicit departmental interference with congressional legislation, an evil which has increased, which is increasing, and which ought to be extinguished.

Under the beneficent environment of this new senatorial franchise even those classes most averse to popular influences would by degrees recognize the ultimate political truth. All legislative grants and franchises, as well as public offices, are public trusts. Those who hold them are not owners or proprietors; they are only trustees; they are merely tenants, tenants at will, at the will of the people.

And thus it may be known of all men that the founders of this Republic did give to the purely democratic element an indisputable ascendency; that they granted to this popular tribunal a jurisdiction from which there can be no appeal; that, in fullest faith, in confidence unshaken, they have committed the destinies of their country to the arbitrament of the conscience and the judgment of a free people. What is said above relates to rights granted; it has no relation to natural rights, sometimes called inherent—rights belonging to the citizen as a man, a person, or human, common to all. These rights, as they are not conferred, neither can they be taken away by any legislation.

Under the provisions of this amendment there would be an actual approach—a contact; not a partial sympathy; not an oblique connection or relationship between the servant and those served.

The nearer a governmental agency is to the real source of power the greater will be its value, probity, and efficiency. Direct responsibility breeds honesty, and good faith sustains the wavering, encourages the timid, and, what is of fully as much consequence, it detects and defeats the unworthy, the incompetent, and the corrupt.

Members of this body are now chosen by political agents, acting for the people. Why should not the principals themselves make that choice? Were this amendment in effect to-

day the constituencies of the members of the two Houses of Congress would yet be quite different, if that be a condition worthy of attention. For more than fifty years, under the early practice, members of the House were chosen by the people of the whole State upon a single ticket, but this no longer obtains. Wherefore, were this amendment in force, the Senator would be chosen by and would represent the whole mass of voters; the Representative would, as he now does, in a special sense represent the people of the district or portion of the State from which he is sent, and wherein he usually resides.

Government for the people is a phrase easily flexed and much abused. Ivan the Terrible, the White Czar, first of the Romanoffs famous in history, claimed that his administration of affairs was a government for the people.

Government by the people is an expression more stable, standing for a practice and policy which have been greatly aggrandized since the era of 1776, both here and elsewhere.

At the time of the adoption of the Federal Constitution, in 1789, none of the States gave to their citizens the unqualified right to vote, and very few of them afforded the opportunity of its exercise as to any considerable number of official positions. Nearly every office in the States was filled by appointment either by the legislature or the chief executive. Even the voting for members of the legislature was not general, as may be well enough inferred from the clause concerning the election of members of the House of Representatives.

> The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the legislature.

At present all public offices, including the judicial, in the States, and even in the smaller subdivisions of counties and townships, have become for the most part elective. Manhood suffrage has everywhere become general, almost unqualified.

During the lapse of time since the surrender of Yorktown there have been a vast increase in the body of electors and a great enlargement of the use of the ballot made by these organic changes in the law of the States. So that, although this cause has been elsewhere well promoted, yet in the States of this Union the principle of popular sovereignty has made much greater advancement.

The whole mass of governments in the Old World and the whole family of commonwealths in this Republic have, within the last century, moved toward the people. This movement has been quiet, gradual, but continuous, persistent, not to be im-

peded; there has been no retrograde or recession; with no thought of return, without haste, without rest, it has gone always forward. The history of this movement, as has been said of another, was like that of the enchanted well in the Irish legend, which lay for centuries shrouded in darkness in the midst of a gorgeous city, till some careless hand left open the door that had inclosed it and the morning sunlight for the first time flashed upon its waters. Immediately it rose responsive to the beam; it burst the barriers that confined it, submerged the city that had surrounded it, and, in resistless waves, chanting music to heaven, rolled over the temples and over the palaces of the past.

Sir, there is nothing in the history of the people of these States which should induce us to check this movement, to distrust it, or to disallow its just influence in modification of the original terms of the Federal compact. The spirit of liberty which has led to the rise, progress, and consummation of the dominion of the ballot in the States should have somewhat of its free course in the nation.

Shall we, who have knowledge of these marvelous transformations, stand motionless upon the shore of the last century, taking no note of the tidal surge which has risen around us, which awaits, yet may not always await, our action?

The passage of this amendment would be in accord with the law of our growth; it would bestow upon the people a gift entirely worthy of their acceptance and of our proffer.

Sir, we are preparing for the exhibition of a splendid international pageant [the Columbus celebration] commemorative of the discovery and settlement of this continent. In the imperial commercial metropolis of the great lakes, that urban miracle of the century, we are to show from our own country, we are to behold from others, whatever is most excellent in nature, art, or industry. Many a medal will be cast, many a souvenir will be designed in honor of this event so notable. It would be most felicitous should we signalize it by the submission and adoption of this amendment, thus publishing to this grand ecumenical council of the world's commerce and exchanges that the great Republic of the West had given to its people direct control of the legislative department of the Government.

Such an act would be a monument of the age, worthy of its genius and fortunes; more enduring than the Eiffel tower, more imperishable than the column of Trajan or the arch of Titus, which have for centuries marked and adorned the site of the Eternal City. Herein the right, truly divine, of self-government,

the sovereign rule and dominion of the people, would be proclaimed, vindicated, justified, glorified in the eyes of all earth's inhabitants to the latest posterity.

Senator Turpie's resolution was referred to the Committee of Privileges and Elections.

On February 2, 1892, General John M. Palmer [Ill.] introduced a similar resolution. It came forward for discussion on February 18. Senator Palmer said that the people of Illinois called for such a constitutional amendment.

The election of a Senator by a popular vote, which, by common consent, should control members of the legislature, was not novel to the people of Illinois, for they were familiar with the history of the great contest of 1858, when Douglas and Lincoln were spontaneously chosen to represent opposing opinions upon subjects which, by their gravity and importance, interested and excited every intelligent voter in the State.

The State committee of the Democratic party of Illinois, in 1890, in connection with a call for a State convention, submitted to the electors attached to that party two propositions to be considered and determined by them in their primary conventions.

These propositions were, in substance, first, the propriety of a nomination by the proposed State convention of a candidate for Senator, to be voted for by the people at the next election, as directly as is possible under the provisions of the Constitution; and, secondly, the selection of a candidate for Senator if it should be determined that a candidate be nominated.

Mr. President, I am here to-day the Senator thus elected by the free people of the State of Illinois, and my duty to them and my own sincere and well-matured convictions alike require me to urge upon the Senate the submission to the legislatures of the several States of an amendment to the Constitution of the United States which will provide that Senators shall be elected by the direct vote of the people of the States.

It is not a sufficient answer to the popular dissatisfaction with the present mode of electing Senators to say that it is the method provided by the Constitution.

It is manifest that there prevailed in the convention which adopted the Constitution the most profound distrust of popular elections.

It was conceded, indeed, that an election, of one branch at least, of the proposed legislature by the people immediately was a clear principle of free government.

The organization of the Senate was, for more than one reason, a matter of difficulty; the small States demanded equal representation in the Senate, and this was, as we know, ultimately yielded.

But it is probable that the general purpose of the convention in the organization of the Senate and in the mode of electing Senators was expressed by John Dickinson, who said he wished "the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the English House of Lords as possible," and he thought "such characters more likely to be selected by the State legislature than by any other mode."

James Madison, sharing the same feeling, said: "The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom than the popular branch." And on another occasion he said he was "an advocate for refining popular appointments by successive filtrations," but thought it "might be pushed too far." He wished "the expedient to be resorted to only in the second branch of the legislature, and the executive and judiciary branches of the Government."

Considerations like these largely influenced the convention to confide the election of Senators to the legislatures of the States. Perhaps it will excite surprise to persons who are familiar with existing conditions to be reminded that another of the objects intended to be accomplished by confiding the election of Senators to State legislatures was that of protecting the commercial and moneyed interests. It was argued in the convention "that the commercial and moneyed interests would be more secure in the hands of the State legislatures than of the people at large. The former have more sense of character, and will be restrained by that from injustice." And then, to illustrate their incapacity, it was added, "The people are for paper money, when the legislatures are against it." In Massachusetts the county conventions had declared a wish for a "depreciating paper that would sink itself."

At that time the planting States, as they were termed, were the wealthiest, and their influence was dreaded by the commercial States of the East and North. What marvelous changes time has produced! The "commercial and moneyed interests" are now most potent. They have representation in every department of the Government.

I do not concede that the framers of the Constitution properly estimated the intelligence and capacity of the then people of the several States. Most of the members of the convention were themselves still under the influence of inherited aristocratic ideas, and were without experience of the successful workings of popular institutions.

The inefficiency of the Articles of Confederation led to the calling of the convention, and the object of the leading members of the convention was to provide a new government founded on popular rights, which should at the same time possess stability and strength. Having these objects in view in the formation of the new government, it is not surprising that the framers of the Constitution feared that to allow other people a large participation in the direct control of the Government would be to introduce into the system a new element of weakness.

In this apprehension, no doubt, the authors of the Constitution were mistaken, for experience has demonstrated that whenever any portion of the American people have been intrusted with political power they have been equal to its responsibility. They enter and occupy new Territories in multitudes, and at once improvise governments and establish order. The Americans of that day would, like their descendants, have been equal to their responsibilities and have added strength to the fabric of the Government, of the Constitution. They were brave, patriotic, and self-denying; they were not instructed in the learning of the schools, but they loved liberty and order, and were masters of the arts of self-help and self-care, which is the most useful, if not the noblest, education.

If, however, it was conceded that the framers of the Constitution properly estimated the intelligence of the people of that day, we cannot be blind to the changes produced by a century of progress.

It is not in material respects alone that the United States have within the century accomplished so much; for in 1787 liberal culture was the exception; in 1892 it is the rule. Now the schoolhouse dots every neighborhood; useful libraries are found in every village; institutions for higher culture are open to the humblest student, and the newspaper, with its many million sheets, reaches daily the most obscure settlements, and the telegraph and telephone have annihilated time and distance, and steam, a comparatively new force, is almost obsolete now that the lightning is made subject to the requirements of human necessities.

But few public men can be found who do not recognize the

intelligence of those who control the instruments of modern industry, and those who are engaged in what were once the sober and quiet pursuits of agriculture, quickened by the consciousness that the products of their acres are by the modern means of communication and transportation brought in competition with every productive acre on the globe, are asserting their right to participate in the direct control of the Government. It may be lamented, but it is true, that the peaceful contentment of farm life is no longer found anywhere, since the farmers are but the manufacturers of the raw material of commerce, and have become necessarily restless students of political and social economy.

From what I have said the conclusion is inevitable that none of the reasons which led the framers of the Constitution to deprive the people of the direct control of the executive department and of the Senate now exist.

Experience long ago demonstrated the uselessness of the electors as agents for the selection of President and Vice-President. Electors are now but counters for the enumeration of the votes of the States, the John Does and Richard Roes of our political system.

The propositions I repeat and seek to maintain are that the Constitution should be so amended that the election of Senators should be taken from the State legislatures and conferred upon the people, to be exercised by them directly.

Specific proof of the incapacity of the legislature to exercise electoral functions and of the capacity of the people to do so will be found on examination of the revised and amended constitutions of the older States and of the new States modeled after them.

It will be sufficient for my purposes, and tend to brevity, for me to refer to the constitutions of the State of Illinois.

Under the constitution of 1818 the legislature was omnipotent, and it is difficult to describe the extent to which it abused its powers. It established a visionary system of internal improvements and elected commissioners to execute the contemplated public works, with authority to sell the bonds of the State in domestic and foreign markets, by which means a public debt was created so enormous that when the people in 1847 called a convention to revise the constitution poverty and distress prevailed on every hand.

The convention of 1847 made many valuable changes in the existing constitutions. It prepared and submitted to the people a provision for the payment of the State debt, which the people, with that sturdy, rugged honesty and courage which has always

characterized the people of Illinois, adopted by their direct vote, and saved themselves and their posterity from the shame of repudiation.

The convention of 1847, however, did more, for it deprived the legislature of all electoral power; it provided for the election of governor and all the executive officers of the State and the justices of the supreme court and the judges of the inferior courts by the direct vote of the people, and further provided that no officer, whether created by the constitution or the laws, should thereafter be elected by the legislature.

Mr. President, if it was possible it would be wise to incorporate in the Constitution of the United States many of the reforms to be found in the improved constitution of Illinois and other States for the protection of popular rights.

It is true that it has been charged at different times that the votes of State legislatures have been controlled by Federal patronage, and instances have occurred where Federal appointments were given to members of the legislature very soon after they had voted for the successful candidate. If the Constitution is amended to permit the election of Senators by the direct vote of the people then the "gerrymander" will no longer influence the choice of Senators, but will in that respect, at least, pass into "innocuous desuetude."[1]

I will not assert, but I confess that I doubt whether the legislative districts in any State are so adjusted as to allow a fair and just expression of the popular will in the selection of representatives in either branch of the State legislature. I do not, by this, intend to assail the conduct of any political party, for, while States are "gerrymandered to serve the purposes of political parties," other causes have operated to produce unfair apportionment in State legislatures.

The elections for the choice of presidential electors; the election of members of the legislature, who elect Senators; the election for members of the House of Representatives in Congress are alike influenced and often controlled by the unfair arrangement of districts.

If the amendment to the Constitution which I propose is

[1] By "gerrymander" the Senator alluded to the practice, said to have been originated by Elbridge Gerry [Mass.], of the party in control of a State legislature reforming the congressional districts of the State, by concentrating the vote of the opposing party into a few districts, so as to give themselves as many Federal Representatives as possible. In time the term was broadened to include any unfair apportionment for political purposes. "Innocuous desuetude" was a phrase made current by President Cleveland's use of it in a message.

adopted the members of the Senate of the United States will be chosen by the direct vote of the free people of the several States, and will be, what it never yet has been, the popular branch of the Congress of the United States.

There is one additional consideration to which I call the attention of the Senate. In 1787 the property of the country was of small value; in 1892 its value cannot be expressed in terms which can be comprehended by the ordinary mind. In 1787 it was believed by many that the security of property would be endangered by the direct participation of the people in the election of Senators; now the rights and the liberties of the people are threatened by the overwhelming and all-pervading influence of property.

It is not necessary in order to make myself understood that I should assail or denounce those who control the enormous aggregates of either fixed or speculative property; it is enough to point to the irresistible logic of existing conditions, the property, or, to use more expressive words, the wealth invested in commerce, in manufactures, in the railways, the forests, the mines, and in the myriad forms of organized activity demands legislation for its protection or its benefit, and its political power, whether employed in the Congress of the United States or in the State legislature, rarely fails of success. Organized as it is, it is so related that it can direct its influence to the attainment of any desirable end.

Mr. President, the property to which I have alluded has now nothing to fear from the aggressive action of the people or from their direct influence upon the Government. All that they can gain by the amendment to the Constitution I have proposed will be enlarged powers of self-defence. Senators hereafter to be elected by the people by their direct votes will be their true and exact representatives, and will defend their homes and their property from unequal and excessive burdens. They will dignify the States, for the people are the States.

They will recognize their responsibility to the people who elect them, and they will find their reward in the approval of their fellow-citizens whom they have faithfully served.

On April 12, 1892, William E. Chandler [N. H.] opposed the resolution.

I regard the extension of the system of popular elections to the choice of Senators of the United States as certain to result in the taking possession of the Federal elections in the States by

Federal officials appointed by the National Government, and I call the attention of Senators to the fact that the amendment which is now proposed immediately extends the Federal power over popular elections in the States to an extent which the Constitution does not now permit.

The Constitution provides (section 4 of Article I) as follows:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The provision as to the election of Senators is:

> Section 3, Article I. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years, and each Senator shall have one vote.

If, then, this amendment, which the Senator from Illinois proposes, is adopted, and Senators are hereafter to be elected directly by the people, it follows immediately and conclusively that the powers given to Congress to make regulations are extended to the popular elections of Senators, and in my judgment just as soon as it comes to be seen that Representatives and Senators both are to be elected by the people there will be a demand for the enactment of a Federal election law which it will be impossible to resist.

If the joint resolution is reported to the committee or to the Senate in the form determined upon by the Senator from Oregon and the Senator from Indiana I shall move to amend the same by striking out the provision that the electors shall have the qualifications requisite for electors in the most numerous branch of the State legislature and by providing that they shall have "such qualifications as may be prescribed by Congress," to the end that it shall be within the power of Congress, when both its Senators and its Representatives are chosen by the people, to determine who shall be the electors in the several States and in order that the States may not be allowed to make such discriminations that the qualifications of the electors in one State shall be different from the qualifications of the electors in another.

Moreover, Mr. President, there is another reason why the adoption of this amendment will result in the passage of a Federal election law, and that is that increasing the number of popular elections will not stop with committing to such elections the choice of Senators. It is almost certain that this amendment, if adopted, will be followed by provisions for the choice of

President and Vice-President by the people. I regard that result as inevitable.

Whenever the President and Vice-President are chosen by popular elections it will be entirely possible for one State, by enormously swelling its vote by fraudulent methods, or by other unfair means not absolutely fraudulent, wholly to overcome the exact and honest votes of other States. Assume that we make the change that I have proposed, that Congress shall fix the qualifications of the voters of the several States so that they may be the same in all the States, yet even then there is the possibility that the State of New York will swell its vote by improper and fraudulent methods 50,000 more or less and overcome the true votes of the other States.

I challenge the attention of the three Senators who advocate this measure to this prediction: I am confident that, first, the election of Senators by the people will be followed by the election of President and Vice-President by the people, and that, whenever those two changes are made, there will be of necessity a national election law, which will not only fix the qualifications of the electors of Representatives, Senators, and President and Vice-President in the several States, but will also take complete possession of the electoral machinery therein, and our Representatives, Senators, President, and Vice-President will be chosen at popular elections called by Federal officials, with the voting lists made up by Federal officials, and with the count and the declaration and certificate of election made by them.

Do the Senators who advocate this measure desire this result? I cannot believe that they do. At all events I shall certainly feel that, if after these two amendments of the Constitution are adopted a movement is made by those who believe in and have advocated a Federal election law, we shall be sustained by many Senators and many Representatives who have bitterly denounced such an election law.

SENATOR MITCHELL.—I cannot conceive how this amendment would give Congress any more power in regulating the election of Senators of the United States than it has now.

SENATOR CHANDLER.—Congress can now only regulate, as it does by the law of 1866, the proceedings which take place in the halls of the legislature; but when Senators are elected by the people *ipso facto* the power of Congress to regulate the whole process of choosing Senators is enlarged, and it will be just as competent for Congress to provide Federal officials to conduct the elections of Senators as it now is to provide such officials for the elections of Representatives in Congress

and to fix the time, place, and manner of holding such elections.

SENATOR MITCHELL.—In one case Congress is simply regulating the election of one set of electors, and in another case is regulating the election of another set of electors; but will it follow that they will have power to go into all this machinery to which the Senator has referred without some grant?

SENATOR CHANDLER.—Unquestionably it follows from the amendment, as the Senator reports it, that the Congress can proceed to pass a Federal election law applicable to the popular election of Senators just as now it has power to pass a Federal election law applicable to the election of Senators by the legislatures.

Mr. President, my second objection to the passage of this amendment at this time is that it is the very beginning of radical innovation. It will be absolutely the first fundamental change in the Federal Constitution concerning our frame of government. It may seem strange to Senators to hear the statement made that this will be the first change when the fifteen amendments to the Federal Constitution are recalled, but a brief consideration of those amendments will prove the truth of my assertion, that this will be the first change during a hundred years in the framework of the Federal Government.

Mr. President, I am conservative on this subject. I am inclined to canvass with care and prudence the first suggestion of a change and to challenge its advocates to prove their case beyond a doubt and beyond a peradventure. It is characteristic of the Anglo-Saxon race, so Mr. Macaulay says, that it changes its laws slowly; that it legislates with great caution.

The wisdom of the proposed constitutional amendment may be tested by Mr. Macaulay's propositions. He says: "Never remove an anomaly merely because it is an anomaly"; and for that reason we should hesitate to provide for any change of the election of President and Vice-President; "never innovate, except when some grievance is felt; never innovate, except so far as to get rid of the grievance"; and there has been no grievance shown by the Senators who have addressed the Senate on this subject. It has not been established that this country has suffered in the slightest degree from the method of choosing United States Senators by the legislatures of the various States.

Take the speeches of the three honorable Senators which I now hold in my hand, take the report which the Senators have drawn up for presentation to the Senate, and you may search them through and through without finding any demonstration whatever of any grievance, of any harm, or of any injury that

has happened to this country by reason of the existing system of choosing Senators.

Mr. President, do the Senators pretend that if there had been a system of popular elections of Senators this body of which we have the honor to be members would have contained more distinguished men than have reached it? Can there be found in the galaxy of great men belonging to any nation brighter stars than those which have illuminated the American firmament from the Senate of the United States? We will not speak of the members of the present Senate, who, I judge, will find no fault with the methods which brought them here. Take the Senate for a hundred years down to our time and look at the distinguished men of whom it has been composed, and declare if you can that if there had been a system of elections by the people there would have been greater men, better men, or nobler men as its members.

Mr. President, the grievance is not shown; the necessity for action is not demonstrated. There are wants of this people no doubt, there are improvements possibly that may be made in our Federal Constitution, but there has been absolutely no injury resulting from the present method of electing Senators.

There is one exception to the general criticisms which I have made of the Senators who advocate this amendment. When I say that they have indicated no injury, that they have pointed out no grievance, although you may search their speeches from one side to the other, there remains to be specified the exception that they do suggest that under the present system of elections rich men may improperly get into the Senate: and when they say this I take it for granted that they mean that wealthy men have so reached the Senatorial office heretofore, not that the Senators are merely apprehensive that if we do not change the Constitution these rich men will so reach the Senate; because, if we have gone on for a hundred years and no wealthy man has by objectionable means yet reached the Senate, it will be safe for us to continue in the ways of the fathers until some case has happened which proves that there is real danger to the country from the invasion of the Senate by wealthy men, so that we must change the Constitution in order to prevent them from getting here.

But, Mr. President, I do not believe that the people of the United States have hitherto suffered because rich men have forced their way into this body who would not have come here if Senators had been elected by the people, which is of course the issue now made. Have no millionaires been elected governors of States? Have there been more rich Senators elected

to this body than have been elected governors? The governors are chosen by the people. They are chosen precisely as the three Senators say the United States Senators should be chosen; and yet I do not think complaint has been made that millionaires have improperly taken possession of the governorships; and if they have so taken possession of the governorships they are just as likely and just as sure to take possession of Senatorships under a system of popular elections as they are under a system where the legislatures choose the Senators.

Rather than pass this amendment solely on the ground that rich men purchase their way into the Senate I would prefer to take steps to limit the wealth of our millionaires, and I have drawn up an amendment which I commend to the Senators and which I am willing to support, which I think would be, on the whole, a great deal better than to go through this form of sending out to the States an amendment of the Constitution which we admit we adopt simply because we are afraid plutocrats will buy up State legislatures and get into the Senate when they ought not to come here.

ARTICLE XVI

The excessive accumulation of wealth by individuals and corporations shall not be allowed. Congress may enforce this article by appropriate legislation, and shall prohibit the issue by corporations of stock certificates or bonds or other evidence of indebtedness unless the sums expressed therein have been paid into the treasuries of the corporations; and shall prohibit the payment of excessive dividends.

That is an amendment which is an amendment.

HENRY M. TELLER [Col.].—I should like to suggest to the Senator from New Hampshire that the general complaint is not that those people have got too much, but that the rest of us have got too little.

SENATOR CHANDLER.—There is an amendment that will remedy the whole evil.

SENATOR TELLER.—I do not think it reaches the point we are more particularly interested in.

SENATOR CHANDLER.—If Congress is allowed by law to prevent excessive accumulation of wealth in the hands of individuals or corporations it can provide that when an individual becomes too rich and we are afraid he will break into the Senate with his excessive riches they shall be taken away from him. The natural provision would be that the excess should be paid into the public treasury, but there would be no constitutional objection under such a law to dividing it among needy individuals like the Senator from Colorado.

SENATOR TELLER.—That would meet with our approval. [Laughter.]

SENATOR CHANDLER.—I believe this is the way to do it. I will support this amendment with pleasure. I believe that it is competent for a great nation, when it is in danger of being corrupted by enormous fortunes, to check the growing evil, and I think this is the best way to do it.

This amendment has this merit, to which I wish to call special attention, that it strikes at the root of these great fortunes by controlling the corporations through which alone the great fortunes have been accumulated.

Mr. President, you cannot point to any one of these vast fortunes without seeing that it has been secured by the aid of corporations and corporate powers, and I believe further that you cannot point to one of them that has not resulted from watered stock in corporations. Where is there an enormous fortune that has been accumulated by private individuals using only the means and powers which belong to private individuals for the purpose of accumulating wealth? With possibly one exception of a fortune from large landed property these great fortunes have arisen in this country through the aid of corporations; and corporations which ought to be an unadulterated blessing to a community have in many cases become a curse, because stock and bonds have been allowed to be issued which did not represent money paid into their treasuries.

Mr. President, my amendment will reach the difficulty, and if it is adopted and Congress legislates accordingly there will be no necessity of having the amendment to the Constitution proposed by the Senator from Illinois in order that our rich men may not force their way corruptly into the Senate.

There is, however, a history of this amendment which I will venture to state, which illustrates some of the difficulties that we shall find in getting it adopted. A few years ago a member of the House of Representatives, who came from a farming district, said to me that he wished to introduce some measures that would popularize him with his constituents, and he asked me if I could not draw up something for him. I told him I would think of it, and the next day I sent him this amendment, which I told him I thought would make him strong and popular with the farmers of his district.

I supposed he would at once introduce it, but I did not see that he did. I met him a week or two later, and I said, "Why did you not introduce that amendment? You told me that your district was wholly a farming district, and that you wished to

introduce measures which would strengthen you with the farmers, and I cannot conceive of anything that would be any more beneficial to you with your constituents than that amendment." He said: "That is so; it would help me with the farmers; but let me tell you a little obstacle in the way of my introducing it. Every time I run for reëlection there is a millionaire in my district who always gives me a couple of thousand dollars to help my canvass, and I am afraid it would hurt his feelings if I should introduce it." [Laughter.]

So the amendment has rested until this time, and now I offer it to my friend from Illinois as something on which I think we might all compromise upon this question. If the object of introducing these amendments to the Constitution and making these speeches is to satisfy the Farmers' Alliances—and I see they are passing resolutions for it, and I have no doubt that my friend from Oregon and my friend from Illinois and my friend from Indiana want to stand strong with the Farmers' Alliances—it is a great deal better to go the whole figure and just grapple directly with these rich men, take their excessive wealth away from them and make a good use of it, and not deal with them in a cowardly way by saying we mean at least to keep them out of the United States Senate by providing for senatorial elections by the people.

Now, Mr. President, another reason why I am not in favor of submitting this amendment to the States is that I do not conceive that it is necessary to do this in order to show that we do not distrust the people. That is the argument, the knock-down club with which Senators and others are to be met who do not want to vote for this amendment, who think it is a dangerous beginning of innovation, who think there is no need of it, the argument that we distrust the people when we refuse to adopt this amendment.

I do not think it indicates that we distrust the people by standing upon the Constitution of the fathers. Did they distrust the people? At the close of the Revolutionary war there was perfect unity of sentiment on one thing, irrespective of the question whether a government wholly republican in form should be adopted, or a government with an executive head for life. It was that the people should in fact rule America, and so the rich and the poor alike who had contributed of their substance and their labors to fight the battles of the Revolution became thoroughly democratic and there was no distrust of the people. All knew that in every government to any considerable extent republican sooner or later the people would have their

own way; that there would be no institution connected with the government which the people could not change if they wished to change it and continued persistently of the mind to change it.

But although the framers of the Constitution did not distrust the people, they did distrust the sudden temper of the people. They were afraid that waves of excitement might sweep over the country, and that for the moment, for the day, or for the month, or for the year, the people would grow hot with desire to proceed to some extremity. Therefore the wisest men whom the world has ever seen undertook to frame a constitution which should guard against mutability in legislation and sudden changes in the Government.

I am unable to see how we are to begin to tear down these barriers and then to stop. If it shows a distrust of the people to continue to elect Senators by the legislatures of the States, does it not show a distrust of the people to elect them for six years instead of two? Does it not show a distrust of the people to elect a President for four years by electors instead of electing a President directly by the people and for two years only? The system of electing judges by the people has been adopted in many of the States.

It is in the direction of popular government, and it has been found to work well, I am told by the residents of the States where the judges are so elected, and yet the judges of the Supreme Court of the United States and all other Federal judges are appointed and hold office for life. If an amendment were to be proposed for the election by the people of the Federal judges would it not be as good an argument to say to the opposer of such an amendment, "you distrust the people," as it is to say that it implies a distrust of the people to oppose the radical change which is now suggested in the proposition to elect United States Senators by the people?

I have prepared an amendment which proceeds in the direction in which the Senators propose that we shall go, and I cannot see how any Senator who advocates the election of Senators by the people can consistently oppose this amendment. It will be said to him that he distrusts the integrity and the good sense of the people of the United States.

ARTICLE XVII

The President, Vice-President, and heads of departments; the Senators in Congress; the justices of the courts, each within his own judicial circuit or district; and the postmasters and collectors of revenue, shall be elected every two years at the times and places and in the manner provided for electing Representatives. Congress shall make rules and regulations for such elections and for temporarily filling vacancies.

Mr. President, in that amendment is the voice of the people. There the people are enabled to govern for themselves. There the people are notified that if they have a President they do not want they can get rid of him at the end of two years. If they find that they have Senators whom they do not love, whether they are millionaires or are poverty-stricken Senators like the Senator from Colorado, they can get rid of them at the end of two years. I am unable to see how we can have popular government, real, true, and complete, that shall satisfy the arguments of the Senator from Oregon, the Senator from Indiana, and the Senator from Illinois which have been made on this floor, and that shall meet their desires as expressed in those arguments, and give us that kind of popular government which our great and virtuous and intelligent people are entitled to, unless we adopt the amendment.

In this business of popularizing the American Government and making it more beneficial to the American people who have lived under it, struggled for it, fought for it, and praised it for a hundred years exactly as it is, and have never discovered any grievance involved in it, and have never discovered any necessity for amending it, if it is best now to begin to amend the Constitution so as to make this Government of ours a more popular government than it has been, then let us elect every officer every two years and you will have the grandest popular government that the world ever saw. How long it will last I do not predict.

I am entirely certain that popular elections by conventions will not give us any better Senators than come here under the existing system. I find the idea expressed in a paragraph in the St. Louis *Globe-Democrat*, published in the Chicago *Inter-Ocean* of February 21, 1892:

A State convention can be bribed as readily as a legislature, and can be made to do the bidding of the boodlers. Indeed, the convention offers less difficulty than does the other body to this sort of work, for the members of the convention are in the public eye for a day or two only, and consequently are under less restraint than are the individual legislators whose service lasts a year or two.

Twenty joint resolutions were presented in the House to amend the Constitution in order to provide for the direct election of Senators by the people. Many of these were referred to the Committee on Election of President and Vice-President, the majority of which, on February 16, 1892, through Henry St. G. Tucker [Va.], reported a joint resolution requiring the popular election

of Senators. Allen R. Bushnell [Wis.] made a minority report giving each State the option of such election. It came up for discussion on July 12.

The debate was naturally repetitions of the arguments in the Senate, and will not be reported here.

The joint resolution was passed by the House. The Senate referred it to the Committee on Privileges and Elections.

It was reported on April 2, 1893, during the next session.

On April 3 George F. Hoar [Mass.] submitted the following resolutions in opposition:

Against the Popular Election of Senators

Senator Hoar

Resolved, That it is inexpedient that the resolution sent to the Senate by the House of Representatives during the last Congress, providing for an amendment of the Constitution securing the election of Senators by the people of the several States, be adopted.

Such a method of election would essentially change the character of the Senate as conceived by the convention that framed the Constitution and the people who adopted it.

It would transfer practically the selection of the members of this body from the legislatures, who are intrusted with all legislative powers of the States, to bodies having no other responsibilities, whose election cannot be regulated by law, whose members act by proxy, whose tenure of office is for a single day, whose votes and proceedings are not recorded, who act under no personal responsibility, whose mistakes, ordinarily, can only be corrected by the choice of Senators who do not represent the opinions concerning public measures and policies of the people who choose them.

It requires the substitution of pluralities for majorities in the election.

It will transfer the seat of political power in great States, now distributed evenly over their territory, to the great cities and masses of population.

It will create new temptations to fraud, corruption, and other illegal practices, and in close cases will give rise to numerous

election contests which must tend seriously to weaken the confidence of the people in the Senate.

It will absolve the larger States from the constitutional obligation which secures the equal representation of all the States in the Senate by providing that no State shall be deprived of that equality without its consent.

It implies, what the whole current of our history shows to be untrue, that the Senate has during the past century failed to meet the just expectations of the people, and that the State legislatures have proved themselves unfit to be the depositaries of the power of electing Senators.

The reasons which require this change, if acted upon and carried to their logical result, will lead to the election by the direct popular vote, and by popular majorities, of the President and of the judiciary, and will compel the placing of these elections under complete national control.

It will result in the overthrow of the whole scheme of the Senate and, in the end, of the whole scheme of the National Constitution as designed and established by the framers of the Constitution and the people who adopted it.

On April 6-7 Senator Hoar supported his resolutions.

Four important States have sent to us resolutions of their legislatures favoring such a change in the Constitution. Three Senators have advocated it in elaborate speeches. The House of Representatives, without a debate, has passed resolutions for submitting the change to the States. The careless and thoughtless dealing with this subject is shown by the proposal to take from Congress all power over the manner of electing Senators—a step which would go far, in my judgment, to change this country from a nation into a league or confederacy.

I am not sure whether it is the good fortune or the ill fortune of our American political system that our controversies so often relate to matters which are vital, not only to the well-being, but to the very existence of the Republic. The English take their constitution for granted. They can change anything in their state by a simple act of legislation. But it has been very rarely in their history that great constitutional changes have been brought about by the action of legislative bodies. They have never been brought about by the direct action of the people. Although our constitutions, State and national, are all in writing, there are constant attempts to make changes of the most

radical and vital character, and to bring them about suddenly and without deliberation or discussion by popular action.

If the Senate as at present constituted is to be defended it is to be defended here. If the great reasons which moved our fathers to establish this Chamber, which they hoped would last in unbroken succession until time shall be no more, to give its members a tenure of office more enduring than that of any other department of the Government save the judiciary alone, to remove it from the operation of the fleeting passions of the hour, to lay its foundation below the frost, and to remove the appointment of the men who are to compose it, as far as may be, from the temporary excitements which so often move the people to their own harm, are understood anywhere, those reasons must be understood by the men who fill these seats. If this great part of the structure of our body politic is to be maintained it must be maintained by the confidence of the American people in the character of their Senators and by the strength of argument which those Senators must themselves at least help to furnish.

This is clearly, Mr. President, a question of centuries, and not of years. In determining it we must appeal to our experience of a hundred years, and not merely to that of yesterday or the day before. A present impatience is not only no good reason for making a change, but its existence seems to me an especial reason for postponing it. If we listen only to present complaints we must make radical changes also in the manner of electing the President, in the constitution of the State legislature, in our judiciary, in the House of Representatives, in the management of our great corporations, of our railroads, our schools, our universities, the church, the law, and the private habits of the people. Complaint, impatience, uneasiness attend upon everything which depends upon human instrumentality for its administration. They are the sign of vigorous health, and if soberly and thoughtfully dealt with are the conditions of all life and growth.

We must judge the Senate, as I have said, by the experience of a century, and not by a few recent failures. Whatever there may be of existing evil may be corrected by the intelligence and good sense of the people, as other evils quite as great have been corrected in the past.

The sufferings of the people have been mostly from their apprehensions, never from any actual misgovernment. Even our civil war itself came through the people of one section of the country anticipating evils arising from the abolition of slavery, yet the very men who waged the war against the Government now think that abolition was an unmixed good. Our po-

litical history seems to be almost made up of popular movements which are the result of the fears of the people—of evils apprehended from legislation which in fact are never experienced.

The history of the United States for a hundred years has been the history of marvelous prosperity and growth, which reads, even in the pages of soberest historians, like an Oriental tale. Yet our political journals have been constantly filled with prediction of disaster and ruin. If anybody need confirmation of this statement let him read the political platforms of the party conventions of the minority. It is marvelous to see how safe, conservative, and beneficent has been our national legislation in spite of all the violence and all the extreme utterances of the journals and the platforms. This quality in our legislation is derived largely, though not wholly, from the character of the Senate under the existing method of choosing its members.

The dangers of the country are the dangers to the elective franchise—violence, fraudulent voting, fraudulent counting, intimidation, corruption, gerrymandering, and unseating of legislators with unquestioned title to their seats for the accomplishment of political objects by unscrupulous men, the use of weapons intended to protect our institutions to subvert them. These things—not mistakes in finance, or an erroneous fiscal policy, or unwise laws of succession, or even rash and violent projects of social extremists—are the things that menace the permanence of our institutions to-day.

Every generation since the dawning of civilization seems to have been gifted with its own peculiar capacity. The generation which accomplished the American Revolution had a genius for framing constitutions which no generation before or since has been able to equal or to approach. The features of the State constitutions framed in that day have been retained with little changes in substance, and have been copied since by every new State.

I do not of course claim that the people cannot now amend, or that they cannot now improve, our Constitution. That Constitution itself would be a failure if the experience of a hundred years under its operation found the people unfitted to improve it. But the descendants of the fathers of the Republic must bring to the problems before them the same wisdom and courage and virtue. They must dare to tell the people plain truths. They must possess the wisdom of deliberate action, and rise to the austere virtue of self-restraint.

Mr. President, wherever there can be found an expression of admiration for the American Constitution in the works of any

great writer or thinker at home or abroad it will be found that the admiration is based upon that part of its mechanism which secures the deliberate and indirect action of the popular will instead of its immediate, rapid, inconsiderate, and direct action. The parts of it which are everywhere the most praised and by which its framers sought especially to commend it to the confidence of the people were the constitution of the Senate and the constitution of the Supreme Court.

I think it can be established to their satisfaction that the proposed change in the method of electing Senators is in itself a change in principle and essence of the most vital character, and that its logic will lead to other changes equally vital and essential. And for that reason I have no apprehension of the success of this scheme when deliberately considered and discussed.

I am not afraid to say to the American people that it is dangerous to trust any great power of government to their direct or inconsiderate control. I am not afraid to tell them, not only that their sober second thought is better than their hasty action, but that a government which is exposed to the hasty action of a people is the worst and not the best government on earth. No matter how excellent may be the individual, the direct, immediate, hasty action of any mass of individuals on earth is the pathway to ruin, and not to safety. It is as true to-day as it was when James Madison, the great advocate of the rights of the people in his time, one of the foremost among the framers of our Constitution, first said it, "That, although every Athenian citizen might be a Socrates, every Athenian assembly would still be a mob."

Our fathers were profound students of history. They found that no republic, although there had been many examples of other republics, ever lasted long without a senate. The term senate implied to their minds, as to ours, a body of men of mature age and of a tenure of office which was removed from all temptation of being affected by temporary currents of public sentiment. The word senate is a misnomer when applied to any legislative body of whom these things are not true.

My friend from Oregon [John H. Mitchell] said the other day that the framers of the Constitution distrusted the people. He said that one of them who declared in the convention that legislation ought to be removed as far as possible from the immediate action of the people would be remanded to private life nowadays with a promptness that would be almost grotesque. Why, Mr. President, that Senator represents a State—one of

the new States of the Union—that has incorporated the doctrine of that utterance into every department and arrangement of her constitution more completely, I think, than any other State in the American Union. The Senator overlooks what the author of the utterance with which he finds fault had so profoundly studied—the difference between the immediate action of the people upon legislation and administration and the expression of the sober and deliberate will of the people through instrumentalities whose own sobriety and deliberation are thoroughly secured.

Does my friend really think that the authors of the opening sentences of the Declaration of Independence, who rested their cause on those sublime and eternal truths in their great controversy with the mother country, who placed those truths at the very foundation of their new Government, who pledged their lives and fortunes and sacred honor to maintain them, distrusted the people? They trusted the people when they made those great declarations of natural right. They trusted the people when they declared the equal right of every human being without exception of race or color or nationality or rank or fortune. But they trusted them also with as profound and implicit a trust when they submitted to them constitutions, both State and national, filled with restraints which alike secure minorities and individuals against injustice and oppression from majorities, and secure the whole people against their own hasty and inconsiderate action.

No, Mr. President, it is not because the framers of our Constitution distrusted the people; it is because they trusted the people that they confidently asked their adoption of a Constitution which compelled them to deliberation, to sober thought, to delegated power, to action through selected agencies and instrumentalities, to thinking twice before acting once. It was not Madison or Hamilton, it was the people of the United States who ordained and established the Constitution.

I have no respect for the notion that the people of the United States need to be flattered or cajoled, or that they are impatient of the necessary restraints of constitutional liberty. Truth, frankness, and courage are the avenues to their confidence. There is but one way to discover what will be popular in this country, and that is to discover what is right. There is but one road to the enjoyment of the confidence of the people, and that is to counsel them to wise, honest, and safe policies. The public man who appeals to temporary opinion or who flatters temporary passion will find his hold upon power as temporary and short-

lived as are the instrumentalities by which he seeks to obtain it.

It has been said in this discussion that the Constitution needed and received amendment as soon as it was adopted. This is true; but all the amendments were in the direction of placing checks on the power of the people and declaring that there were certain things the people should not be permitted to do. The great statesmen who framed the Constitution placed in it certain checks and safeguards against the popular will. The greater people to whom they submitted it perfected it by inserting other safeguards still.

I stated just now that the term senate implied to the apprehension of every studious man certain essential conditions; but the Senate of the United States, as established by our Constitution, implied something more than this.

First, our fathers wished to secure a dual legislative assembly. With the exception of Dr. Franklin and his associates in the Pennsylvania delegation, who are understood to have cast a formal vote out of deference to him, it was thought best to provide a dual representative assembly. Every act of the legislature was to be twice considered and have the approbation of two different, separate houses.

Second, these two houses were to have a different constituency. So every proposed law must run the gauntlet of two diverse interests and be judged from at least two points of view. Every State in the construction of its legislature has maintained these two principles. The American people, I suppose, are now agreed upon them with substantial unanimity.

Third, the Senate is expected to represent the equality of the States. This is the one principle which would never have been yielded by a majority of the States when the Constitution was made, and which has been made eternal as far as possible by the provision that it shall not be changed without the consent of every State.

Fourth, the Senate was to represent deliberation in the expression of the popular will by the length of the term of office of Senators and by its removal from the direct popular vote in the method of choice. It is this point at which the Senate is now attacked.

The constitution of the Senate secures the application of all these principles in the four great constitutional functions of the National Government—in legislation, in the making of treaties, in the appointment of the great executive officers, and in impeachment. The last of these powers has happily not often been resorted to in our history, but was regarded by the framers of

the Constitution as essential for the security of the whole. As James Monroe well said:

> The right of impeachment and of trial by the legislature is the mainspring of the great machine of government. It is the pivot on which it turns. If preserved in full vigor and exercised with perfect integrity, every branch will perform its duty.

Each of these the Senate shares with other departments of the Government, and to each of them it contributes the great and conservative principle which our fathers thought essential to secure to all generations and amid all popular temptations and excitements the Government they framed against the evils by which all former republics had perished.

The Constitution also carefully provides in the case of the Senate, as in the case of the House, that the manner of the election shall be prescribed by the authority of the nation for whom the persons selected are to legislate.

It will be seen, I think, very clearly that the change proposed destroys the essential character of the Senate in each of these particulars.

It substitutes a direct election by the people for an election by the legislature.

For a selection by public officers to whom the great public duty of State legislation is intrusted there is to be a selection and nomination by conventions composed of persons without other responsibility. This, in most cases, will be the mode in which the majority, practically, will make its choice.

For a selection by men who are themselves selected under strict legal provisions there is to be, therefore, practically a selection by men who are not chosen in pursuance of any law.

Instead of selection by men under oath of office there must be a choice by men upon whom no oath is imposed.

For a selection by men of whose action there is a record the choice is practically to be made by men of whom no record exists.

For a choice by men acting under personal responsibility the selection will be made by men who may act by proxy.

For a choice by a permanent body there must be a choice by a body lasting but a day.

For a choice in a manner prescribed by national authority there must be a choice in a manner prescribed in no authority whatever.

For a choice by a body acting by majorities there must be substituted, in the end, a choice by a plurality.

For a choice by a body representing all localities in a State where different local interests are fairly represented there must be a choice by sheer force of numbers, where the popular masses in great cities will have an undue and disproportionate weight.

Instead of representing different constituencies to secure the different interests in legislation the Senate and the House are to represent constituencies of the same kind, differing only in size.

From the change in the manner of election will surely and inevitably, in my judgment, follow the destruction of the equality of the States in the Senate. It is true the Constitution now provides that no State shall be deprived of its equal vote in the Senate without its consent. But this provision relates to a Senate to be constituted and selected in the old constitutional manner, and will never be long tolerated, in my judgment, by the large States under the proposed arrangement.

The State legislatures are the depositories of the sovereignty of the States. They are, in theory, and I believe in general in fact, composed of the picked and chosen men of the communities from which they come. The men who make up the State legislatures are chosen by their neighbors. They are chosen by men who know them, or can know them. There have been exceptions, but in general they have been honest, wise, faithful, and just. The pages of the statute books of the forty-four commonwealths are in general without a stain. They can be read by the patriot without a blush. I am not afraid to compare them with the two hundred and fifty parliaments through which, for eight hundred years, the freedom of England

> Has broadened slowly down,
> From precedent to precedent.

There have been many things we might well wish were otherwise. In the chambers where all men are equally represented what is worse, as well as what is best, of humanity will sometimes find its representative. The ambition, the love of power, the party spirit, the private greed, the popular passion, injustice, and tyranny will occasionally appear there as elsewhere. In what spot in human history are they not found? But I am willing to take the legislation of any American State which is a quarter of a century old and compare it with the legislation of any government possessing a legislature in any period of its history. Why, in the British House of Commons Disraeli said that long after the close of the American war, and within the

memory of men who heard him, a member of the government stood below the gangway at the final adjournment of the parliament and gave a £500 note to every member who had supported the administration.

You and I can well remember when bribery was a common and necessary method of getting a seat in the English House of Commons. But English constitutional liberty and English constitutional government have not proved a failure.

Do you propose to strip the State legislatures of any other function of their sovereignty? Can you not trust the men who make all the laws upon which the safety of property, the marriage relation, the security of the home, the administration of the schools, taxation, freedom of religion, the punishment of crime, and everything else which enters into the comfort and honor of private life are depending with the choice of Senators because my honorable friend from Illinois thinks that, in the experience of the people of that excellent State, the selection of Senators under existing conditions has been unsatisfactory?

What is the alternative, and what must be the alternative? What is the alternative proposed? What must be the necessary and only alternative that can be proposed for the exercise of this great function of local sovereignty? The State legislature is a failure, we are told, and is not fit to be trusted any longer. Who are to nominate our Senators? To whom is the practical selection to be intrusted? Whatever may be the theory, the practical choice of the Senator must be made by nominating conventions. Are not these bodies quite as likely to be susceptible to mistakes or to corrupt manipulation as a State legislature?

Cicero, in his oration for Lucius Flaccus, attributes the decay of Roman and the destruction of the Grecian liberty to the substitution of the turbulent popular assembly for the deliberative chamber in wielding the political power of the State. He has left his terrible picture of the popular assemblies of his time as a pregnant lesson for all mankind.

It may be said that governors and State officers and Representatives in Congress are selected in this way now. That is true. But have all nominations of governors and Representatives in Congress been on the whole more satisfactory to the people than the selection of Senators for one hundred years? I think that when any one of us wishes to arouse the State pride of the people he represents by enumerating the great men who have adorned their history, we find that the names of the men who have sat in these seats arise to our lips quite as naturally as the names of the governors or the Representatives

in Congress, however illustrious. The people, who by any constitutional method of choice will in any generation send to this Chamber an ignoble or unworthy Senator will, I will venture to say, be found to have at the same time no better timber in their executive chair or in the House of Representatives.

But it is said that the choice of a nominating convention is but the first step. Any mistake it may make will be corrected by the people. But, Mr. President, except in most extreme cases, the correction must be worse than the evil which is to be cured.

At what cost are the people to vote down the nomination made by the convention of the party which is in the majority because of their disapproval of a man who is its candidate for the Senate? Of course the plurality system will be applied to this as to every popular election. The people, then, must manifest their disapproval of an unworthy candidate regularly nominated only by transferring their support to the candidate of another party. It is not likely that any man who would get the nomination of his party convention will be so unpopular that substantially the whole membership of his party will refuse to support him. What will happen will be the choice of the candidate of another party.

Now, what does this mean? It means that the people of a State are to give their support to doctrines, measures, policies, political principles of which they disapprove solely because of their opinion as to the individual character of the man who represents them.

In other words, the correction of the mistake made by the political convention is only to be made at the cost of destroying the character of the country because of the character of the candidate.

Mr. President, the experience of our first century has, it seems to me, most amply vindicated the constitutional purpose which resulted in the Senate. It is not expedient to have two Houses both directly dependent on the popular will. I would not speak with disrespect of the House of Representatives. Every American who knows the history of his country must feel a just pride in that great assembly, which has been and will hereafter be the direct representative of the people's will. The names of its great leaders—of Clay, of John Quincy Adams, and of Thaddeus Stevens—rise to the lips when we would stir in the hearts of any American assembly the emotion of national pride or the love of constitutional liberty. But the constitution of that House has compelled it to resort to many devices and

to submit to many inconveniences. We should all be sorry if we were compelled to submit to them in the Senate. The freedom of debate in the House of Representatives is gone. What I sometimes think is even of more importance, the freedom of amendment is gone also.

Both these great essentials to wise and honest legislation exist only to a very limited extent, and then at the pleasure of the majority. It is here only that the freedom of debate is secure.

From all this has grown up the most pernicious of unconstitutional practices, that of filibustering, which was introduced originally to prevent hasty or arbitrary action by the majority, but is now used to prevent or overthrow the rule of the majority altogether. So that the course of legislation in that House to-day is this: A few great measures, to which the party in the majority is agreed, are carried through by special rules adapted for the purpose, the minority being deprived of all rights of reasonable debate or reasonable amendment.

All other measures, however important, however salutary, however much desired by the majority of the House and a majority of the people, are at the mercy of a small and resolute minority. This condition of things is unrepublican and undemocratic, and if continued long must result in the overthrow of republican government itself.

Another evil of like character and of equal magnitude has grown up from the necessities, or the fancied necessities, in the transaction of business in the House of Representatives.

The question whether an important measure shall be submitted to the House for consideration has to be determined, not by individual members, not by chosen committees, not by the majority of the House itself, nor even by its unanimous consent in many instances, but by the will of the presiding officer alone. He determines, at his sole volition, what members shall be recognized and what measures the House shall be asked to consider.

It is notorious that many measures of vast importance, many measures of relief demanded by justice and by the national good faith, abide session after session and Congress after Congress, having received the support of this body, and which would have received the unanimous consent of the other if they could be taken up, which never can be heard in that House because of the refusal of its presiding officer to submit them.

Now, Mr. President, habits like this in the conduct of legislation do not grow up and keep their place without some grave public reason, or at least some grave public necessity. It may

be that a body which represents, as does that House, a temporary and sometimes fleeting popular purpose requires such restraints and chains and fetters as these for the public safety. I think we may well pause before we give to this body a character which will require such obstacles to be placed in the path of its free action. The time may come—some of us thought that it was near at hand—when it may be necessary to introduce even here a rule for a limited and carefully guarded clôture in debate.

Every member of this body would regard that as a most painful necessity. If that time ever comes, it will be because rules established for the protection of freedom of action in the Senate have been abused to prevent and subvert it. But I hope and believe the time will never come when any question will be taken in this Senate in regard to which every Senator shall not have an opportunity to express fully and freely his opinion in debate, and in regard to which he shall not have the fullest opportunity to offer amendments as seem to him desirable.

I suppose there have been a few instances of corruption of State legislatures in the election of Senators. In a few cases such attempts have been exposed and failed in the legislatures themselves. In a few cases they have been detected here. In very few, indeed, they have probably been successful. I thought the Senate touched its low-water mark when a few years ago it refused to investigate one of them. It is a great mistake to suppose that nominating conventions will be much more easily dealt with, or that popular elections have been or will hereafter be any more exempt from such influences. Have popular elections in ancient republics, or in England, or here, been freer from corruption than elections through delegated and chosen assemblies? Mr. President, there will never, for any length of time, be venal legislatures without a corrupt people behind them.

Besides, there are, unhappily, other modes of destroying the freedom of elections, to which popular elections are exposed, from which legislative assemblies are free. The great prize of the office of Senator is, if this amendment be adopted, to be added to the temptations which, unless many a report in the other House be without foundation, have induced in very many instances in our history false counts, fraudulent naturalization, personation of voters, fraudulent residences, forged returns, intimidation, and mob violence. These attend elections in great cities and in States where race differences still add their bitterness to the struggle for political power.

There have been, it is estimated, more than three hundred and twenty contested election cases in the House of Representa-

tives. They have been the scandal and reproach of our political history. Excepting a very few creditable examples, they have been decided for partisan considerations, as like cases were decided in the British House of Commons until jurisdiction was transferred to the judges.

Until now the contested election cases in the Senate have in general depended upon constitutional or legal questions, or upon facts easily ascertained and established. But if this change be made, the Senate, in every close election, must undertake investigations which will range over an entire State. There will never be a close election without a contest here. Unless human nature shall change, the result of these contests will depend on partisan considerations, and will shake public confidence in the Senate to its very foundation.

Let no man deceive himself into the belief that if this change be made the Senate of the United States will long endure. Another legislative system will take the place of that which our fathers devised for us, and which for a hundred years has been the admiration of mankind. The method of election is indispensable to secure the peculiar quality of the body to be elected. The change will lead to an attempted overthrow of the equality of the Senate.

In twenty years the State of New York will have two million voters. Do you think they will long endure to submit to equality in legislation, in the making of treaties, in the appointment of great executive officers, in the power to punish and remove great offenders, in the making of war, and in the making of peace, with the 8,000 voters of dwindling Nevada, when the two States are simply two representative districts, whose only difference is that one is two hundred and fifty times as large as the other?

New York submits to this loyally to-day. She has pledged her eternal allegiance to the Constitution. She can not change it without the consent of every other State. It is so nominated in the bond, and is the price she pays for being the Empire State of an imperial nation. She can not escape it without a revolution. But open to her this door. Tell her that the Senate, as Hamilton and Jay conceived it, is gone. Tell her that it is no longer to be made up of chosen men, selected by chosen men, to be removed one degree from public impulse and passion, and representing the deliberate, sober, and instructed will of the people. She will tell you that her constitutional obligation has gone also, and that the equality of the States in the Senate may henceforth be abolished or modified like other provisions

of the instrument. "I never promised," she will tell you, "to submit to it forever, under your new arrangement." "*Non in hæc fœdera veni*," or, as my great predecessor[1] on this floor used to translate it, "I made no such bargain, and I stand no such nonsense."

How many instances there have been in our history in which an immediate popular vote would have led to disastrous consequences, but the sober second thought of the people has led to the path of safety. How many times great waves of delusion have swept over the land, whose force was broken by the sober discussions of deliberate assemblies. The great anti-Masonic movement of 1835, the Know-Nothing movement of 1854 and the years that followed, are but two out of many examples.

Neither Charles Sumner nor Salmon P. Chase could have been elected by a popular vote when they were first chosen. Mr. Sumner certainly would have gone down before the Know-Nothing movement, which he so bravely breasted, if the question of his reëlection had been submitted to a popular vote in Massachusetts in 1855. It is quite doubtful if Mr. Webster himself would have been chosen by a direct vote of the people of Massachusetts at any time after 1850.

This proposed amendment requires the voice of the State to be uttered by masses of its citizens, and removes political power to the great masses who are collected in our cities. Chicago is to cast the vote of Illinois, New York City of the State of New York. The farmer class, which now have their just weight, will be outweighed by the dwellers in the great towns where the two extremes meet—great wealth and great poverty—and combine to take possession of the affairs of the Government.

Second, plurality must take the place of the majority. The opportunity for third parties to have a just and reasonable weight will be destroyed.

Besides, there will be larger opportunities for fraud and crime in elections. These will be easy to commit and hard to be inquired into.

It is no affront to the American people to require that they shall be asked to secure that deliberation, that caution, that putting aside of hasty impulse and passion in their important affairs that every wise man practices in his own. This Republic is no mushroom growth. It is an oak which adds ring to ring through many a summer's heat and winter's cold. Its glorious gains come slowly that they may come surely. The deliberate

[1] Charles Sumner.

will of the people is, however, sure and certain of accomplishment. And our present constitutional forms and mechanisms have always proved abundantly sufficient for its accomplishment. And it is hardly too much to say that the great beginnings of popular movements for liberty have been in the Senate.

Mr. President, it is not true that the Senate, in the sober judgment of the American people, has failed to meet the just expectations of the generation who framed and adopted the Constitution. It has responded quite as speedily and quite as directly to the sober conclusion of the popular judgment and to the settled desires of the popular heart as has the other House or as has any State legislature.

It has originated far more than its proportion of the great measures in our legislative history, for the benefit of the people, which are found in our statute books.

It has resisted what is evil, but it has also initiated and accomplished what is good. This was never more true than in recent years. It is not too much to say—and I assert it without fear of successful contradiction—that—

If any private citizen want justice;

If any executive officer want to improve administration;

If any man desire new and wholesome laws;

If any man want the public mind awakened by discussion—he seeks and he finds what he desires in the Senate. Why, even the friends of this amendment to the Constitution come here for its first serious discussion.

It is said the recent elections of Senators in States lately admitted have been attended with some occurrences that tend to bring the present method of choosing them into disrepute. There has been no investigation into this matter. No man here can say how much truth there may be in these reports, in the charges or suspicions which appear in the columns of the newspapers. The fact that those elections have resulted in a way some of us do not like is of little importance.

The only questions are whether whatever evil may have attended them is likely to be permanent, and whether the same evils would not have existed if the choice had been by popular election, and have not existed to an equal degree in the choice of governors and Representatives in Congress.

Never before has there been proposed, so far as I know, a change which is to affect the great balance of political power which our fathers adjusted with so much care. I quite agree with the Senator from Oregon [Mr. Mitchell] that the principle of this change will lead to the choice of the President, the choice

of the Senators, and in the end to the choice of the judges by the mere brutal force of numbers. I do not agree with him in thinking such a change is desired by the American people. When it shall be accomplished, the American Constitution is gone.

It is said the Senate has not responded to the popular will. When has it failed to respond to the popular will when the popular will itself had become settled? The gentlemen who make this complaint are impatient. They must remember that the Senate has to act for the interests of a people of 65,000,000 and for a nation whose life is to be measured, not by years or by generations, but by centuries. Sessions of Congress, terms of Presidential office, generations of men count but as minutes, are but as the pulsation of an artery in this mighty national life. But whenever the American people has made up its mind, when its judgment is formed, when its will is determined, that will is sure to be carried into effect. Whether through Senates or over States, through courts or over courts, through Presidents or over Presidents, through constitutions or over constitutions, the irresistible current will make its way.

Mr. President, I have no patience with the spasms of dismay which seem now and then to affect some worthy philosophers, and the effects of which are occasionally seen in the Senate Chamber. One day there is a fear that a few speculators in cotton or corn will diminish the price to the seller and raise it to the buyer; and so we are asked to overthrow and sweep away all of the rights of the States by a single legislative act, and a majority of this body and the other House lose their heads and are taken off their feet. They think all our existing constitutional resources are powerless before a few speculators. So, because a few millionaires clink their money bags about our State legislative halls, it is proposed to overthrow the Constitution of our fathers and build up a pure democracy in its place.

The American people have dealt with dangers that were serious before. They have put down rebellion, they have abolished slavery, they have thrown off the yoke of foreign tyranny by strictly constitutional processes, and, with the weapons in their hands that have served them so well in the past, they have no occasion for apprehension of these new dangers.

Contempsi Catilinea gladios, non pertinescum tuos.[1]

[1] "I have despised the swords of Catiline's band; I shall not tremble at yours."

We have had one great civil war. But yet it is our glory, as it is the glory of the country from which our ancestors came, that we determine the differences which cause revolutions elsewhere by debate and not by arms. We reason them out, and do not fight them out. This Chamber has been the most conspicuous arena of these conflicts. Here the champions have encountered and measured their strength. There have been chieftains in the Senate Chamber whose names and memory the American people cherish with pride and gratitude, as they cherish the names and memory of the men who marshaled the forces at Saratoga, or Yorktown, or New Orleans, or Appomattox.

The great conquests which gave the Union and Constitution their empire over the reason and affection of our countrymen have been achieved here. Here Webster hurled the weighty projectiles of his irresistible argument. Here the voice of Clay taught his countrymen North and South the great lesson of reconciliation. Here Calhoun was borne in his dying hours, his great heart overcoming the weakness and infirmities of his sinking body, sitting, as his colleague said, like "a wounded eagle, with his eyes turned to the heavens to which he had soared, but into which his wings could never carry him again." Here the blood of Sumner was shed—the baptismal water of our newer liberty. Here Seward summoned his countrymen to that irrepressible conflict from whose issue the vanquished gained even more than the victors. Victories in arms are common to all ages and to all nations. We do not excel, and it may be we do not equal, other people in these things. But the greatest victories of constitutional liberty since the world began are those whose battle ground has been the American Senate and whose champions have been the Senators who for a hundred years, while they have resisted the popular passions of the hour, have led, represented, guided, obeyed, and made effective the deliberate will of a free people.

The joint resolution was not acted upon by the Senate.

The advocates of the popular election of Senators were, however, not discouraged by the failure to secure the constitutional amendment; they set to work to achieve their purpose in another manner (by State action), with the result that in a number of States a senatorial primary is held, the legislatures accepting the

choice of the people as morally, if not legally, binding them to elect the persons thus designated.

On January 11, 1911, William E. Borah [Idaho], from the Committee on Judiciary, introduced in the Senate a joint resolution proposing an amendment to the Constitution, providing that Senators be elected by the people of the several States.

The subject came up for discussion on January 19.

Election of Senators by Direct Vote

Senate, January 19-February 28, 1911

Senator Borah spoke as follows:

Mr. President, will the mere change of the mode of selecting United States Senators effect or bring about any fundamental or incidental change in the scheme or plan of government as submitted to us by those who framed it? Will it not rather precisely bring about that which they desired, but which, owing to changed conditions, can not under the present system be realized?

Our fathers understood the science of government as no other single group of men has ever understood it. It is altogether probable that, if the plan upon which they built fails, with it will pass the hope of a democratic-republican form of government. But it will not fail if, studying closely the changed conditions brought about by our marvelous industrial progress and great economic changes, we make only such changes and modifications in government as will prevent those industrial conditions and economic changes from themselves working in subtle and silent ways modifications and changes in our institutions. We do not want to find ourselves in the attitude of a people who are satisfied with the shell of a government from which all real power has departed. We want the substance at all times, and not the shadow. We want the real power and the real responsibility to remain precisely where the fathers placed it, with the people.

We agree fully, too, with the proposition that the sober second thought is always safest in the important affairs of government. When matters of such vast moment depend upon human conduct, it is well indeed to have such checks and balances as will insure reflection and mature consideration before final action. This is simply transferring a wise rule

of human conduct to affairs of government. In this the fathers showed great wisdom. No one would in this respect work a change. But, while the fathers wanted to have reflection and consideration, time for investigation and for passion to subside, while they wanted the sober second thought of the people, there could be no doubt but they wanted action when finally taken to be the action of the people and not the action of special influences or unfriendly forces. While they wanted the people to be induced to reflect and consider, they wanted a form of government which would insure the faithful recording of the result after the people had reflected and considered. It was never their intention to leave room for some sinister influence or power to interpose between the people's deliberate judgment and its achievement and realization. If by reason of conditions which they could not foresee that interposition is now possible, then it devolves upon those who have the great burden of preserving these institutions in their original integrity to modify our Constitution, if we can do so, so as to prevent these things from happening.

No complaint can be had at this time as to haste or lack of consideration in regard to this amendment. James Wilson of Pennsylvania presented and urged the matter in the constitutional convention itself. As early as 1826 a resolution was submitted to Congress looking to this change in the manner of electing Senators. It has been before Congress session after session for eighty-five years. It has met the approval of the first branch of Congress many times. It has received serious discussion here upon different occasions by some of the ablest men who have occupied seats in this Chamber. At least thirty-two States have declared in favor of the amendment or the principle. It has been the subject for years of discussion by editors and publicists. Literature on the subject is very extensive. And now after nearly a century of discussion and consideration the sober second thought of the people upon which the fathers so implicitly relied is greatly in its favor. If government of the people, by the people, and for the people has any bearing this record ought to be made now and the judgment of the people here entered in accordance with this earnest and long standing demand.

It is argued by the opponents of the resolution that by changing the mode or manner of electing Senators we will change the nature of the organization of our Government and of the relation of the States to the Federal Government and of the relation of the Senators to the States. What possible

structure of our Government will be affected by the fact that a Senator appears in this body as a result of the direct vote of the people rather than by the vote of an agent selected by the people to cast that vote? Is it reasonable to assert that by changing the mode of selecting a State officer you change his attitude toward the State, assuming that a correct attitude is one of faithful representation? There are at least a dozen Senators upon this floor who as a practical fact were elected by the direct vote of the people. The people selected them and elected them. The legislature but recorded the decree already rendered. Do they stand in any different relation to their States; are they less regardful of its interests or hampered more in representing it than those who were elected by the legislatures? If the rights of these States are invaded, are their Senators less sensitive to that fact? Does the current of political power flow any better by flowing in a roundabout way through a legislature than when it flows directly from the source of power to one who is to exercise that power?

The constitutional recognition of sovereignty remaining in the State is recognized in the principle of equal representation and not in the manner of selecting that representation. The national and Federal principle is still preserved, combined and unimpaired, by the equal representation in the Senate and the proportional representation in the House. In like manner the check of one body upon the other is preserved. The object of having two branches of Congress or of any legislative body is to have the representation made by the different constituencies, different interests. Thus we still have, in the language of Mr. Story—

> The Senate represents the voice not of a district, but of a State; not of one State, but all; not of the chosen pursuits of a predominant population in one State, but all the pursuits of all the States.

Would the distinguished Senators from the great State of Texas in any different degree represent the broad and diversified interests of that entire State—the trading and shipping interests upon one side and the vast stock-raising interests upon the other? Would not the Senators from the State of Massachusetts still represent not only the manufacturing interests, but the agricultural interests? It would still be true, also, that no law could be passed without a majority of the people and then a majority of the States. The supposed quickness of action under impulse and passion that was sought to be avoided is still avoided. The long service of six years still begets the profound

sense of responsibility and guards against unwarranted yielding to passing political gales, which it is so often urged the fathers had in view. None of these fundamental principles are changed by changing the mode of electing. Rather does the change guard against the possibility, and in these times the probability, of securing those who do not represent the State, but interests or particular forces.

It does not destroy the check intended to guard against influence exerted through the passion or prejudice of an hour, while it does tend to guard against sudden changes superinduced by causes more sinister and destructive to democracy, more disintegrating and demoralizing than political upheaval or turmoils. Influences far more to be feared than the hasty and inconsiderate action which the fathers feared are to be dealt with by our present civilization. If our fathers were wise to guard against the one, will not their children display something of the same wisdom if in preserving the one they guard against the other?

One of the most conclusive arguments in favor of taking the election of Senators away from the State legislatures is that these lawmaking bodies may be relieved of an exceptional and unnatural and incongruous duty. Not only is it aside from any duty or function naturally attaching to legislative bodies, but it works to the great and almost constant embarrassment of such a body in its important and natural work. It has demoralized State legislatures more than any one single matter with which they have had to deal. The members of the legislature should be elected upon the sole question of their fitness for the duties of State legislation. After they are elected they should be permitted to perform that important work with an eye single to the moral and industrial interests of the State, disentangled of the purely political task of performing the duties of an elector. Our States are coming to be almost as important in the field of legislation, if they do what they should do, as was Congress in the beginning of the Government. When measured by their varied interests and population, their moral and industrial growth, individual States are now equal to the thirteen States when Congress first assembled. Unfortunately, and to the disturbance of everyone who reflects deeply upon the question, many of the duties of the States are being shifted and subtly attached to the National Government. If there is a gospel of political salvation which ought to be preached in these days with the fire and zeal of Peter the Hermit, it is that of arousing the States to action in these matters of vast and purely

local concern. They ought to claim the right to do that which under the Constitution it was expected they would do.

And then, having the right allowed them, they ought to perform their duty with energy and pride, with intelligence and courage, and with the support of every man who loves our form of government. Just in proportion as you withdraw from the people the responsibility of caring for and the zeal in guarding matters of local concern, just in proportion as you take from them the right and relieve them of the duty of looking after those matters peculiarly belonging to local communities, just in that proportion you unfit the citizen for the duties of citizenship, shut the door of the great school of experience in his face, and deprive him of his training. When you do so you are undermining the pillars of the Federal Union. The man who would see the States stealthily shorn of their responsibility, as that power is defined, responsibility as placed by the great terms of the charter, is either grossly uninformed as to the history of the rise and reign of the people and the underlying principles of representative government or he is in his nature and make-up an enemy of the Federal form of government. There can be no such thing as a great Federal Union without great and powerful States upon which that Union may rest. There can be no such thing as a free and powerful people without a virile, independent, and self-governing citizenship. The only school in God's world for such training is local self-government. It was the great principle upon which our Government was founded. It is just as essential to-day as it was a hundred years ago. It was a great and fundamental truth stated by De Tocqueville when he said:

> I maintain that the most powerful and perhaps the only means of interesting men in the welfare of their country which we still possess is to make them partakers in the government.

Equally impressive is the statement of one of the most profound students of our system of government, James Bryce, to the effect:

> To the people we go sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend.

Mr. President, we need not fear to put a little decentralizing influence into our legislatures or our Government. It will not by any means neutralize the centralizing influence which from day to day we plant. We need not fear nor apologize for going

back occasionally and connecting up the sources of political power directly with the people. Immediate, direct, constant contact will not hurt us. It will prove wholesome even if it is somewhat ancient and out of style. It will by no means recompense the people for the rights of sovereignty stolen away under the constant asseveration of public welfare. We have traveled a rapid pace since the Civil War. The dynasty of the bureau was born shortly thereafter. It has grown to wonderful proportions. It is now arrogant and imperious, hungry and insatiable for power. It may be possible that there is a worse form of government than a bureaucratic form of government, but if there is it has yet to be born, for it has never appeared upon the face of the earth.

I might cite a great many instances in which the rights of the citizens have been frittered away before these bureaucratic powers. But it is not my purpose at this time to do other than call attention to the matter. We can afford, very well afford, to reach back as an offset to such movements and get close to the people. Those who feel disturbed because of the democratic tendencies of to-day, of the disposition to liberalize in some directions, will find plenty of consolation in the more rapid and universal march in the other direction. If we are to maintain somewhat the equilibrium between the Federal and the National Government, we must make up in certain directions for the Federal Government what we are doing in other directions for the benefit of the National Government.

In the last twenty years there have been a great many prolonged contests in State legislatures which illustrate one of the great evils of the present system. The entire session of the legislature was occupied in the electing of a Senator, to the exclusion of everything else for which they were called together. In some instances special sessions were called at great expense. In some fourteen instances States have gone without full representation here because of deadlocks in the legislature. In other instances bribery and corruption have been charged and corruption and scandal have attached to the session. It is not alone that direct and open bribery sometimes prevails, but that which is equally as bad more often prevails—bills and measures are traded up or killed, the public interest is sacrificed or actually bartered away, patronage and office enter into the deal and the whole affair becomes a disgrace and is of itself sufficient condemnation of the present system.

Mr. President, the legislature is the arena, narrow and confined, wherein selfish and corrupt influences can successfully

operate. The members are few. The chance for combination and approach is always at hand. Why keep that arena for this work? Why give selfish and corrupt influences such strategic advantage? Why not send the fight to the open forum upon which beats the fierce light of public opinion? Why not leave it where it will be settled upon merit, where candidates may appeal to the honor and patriotism of the masses and not be compelled to fight the combinations and trickery of a caucus, where the candidates must also take the people into their confidence before the election certificate is issued? Why compel men to pass through the season of humiliation and shame through which the sitting member of Illinois [William Lorimer][1] is passing if he is guiltless? Why make it possible for men thus to come here if guilty? It is a system vicious and out of date, prepared for a different age and under different conditions than that in which we live. The times demand a different system, a different mechanism for selecting the members of this great body.

The framers of the Constitution had no conception of the election of a Senator as it now takes place. Their idea was that the legislature would get together, not hampered by previous pledges or party obligations, deliberately look over the State, pick out some conspicuously able and competent man, and elect him. The party spirit to-day, the dominancy of party in all such matters, was unknown to them. The party system—and, in saying this, I do not condemn political parties, for they are indispensable to our form of government—the party system has taken away all the virtues and left all the vices of the plan as it was left by the framers. Almost invariably the people have their choice of Senator previous to the meeting of the legislature. Through pledges and otherwise they communicate that choice to their agents, the members of the legislature. If the agent faithfully performs the trust reposed in him, he does nothing more than record the choice of the people who elected him. He simply acts as agent of the principal—the voter. So, in this way, the plan of the fathers falls. But, if the agent violates his trust and votes for some other than the choice of the people, then, and only then, is the election made without regard to instructions from the popular vote, as the fathers assumed it would be. So, under our party system, the ancient principle can only operate by reason of the violation of a trust

[1] Lorimer was later deprived of his seat on the charge that State legislators had been bribed to vote for his election.

or a pledge. That is one of the very conditions which demand a change. Says Edmund Burke:

> A state without the means of some change is without the means of its conservation.

The whole thing may be summed up in this—the principal has discharged the agent because the agent was incompetent, and the principal will now do precisely what the agent was authorized to do. Again I quote from Edmund Burke:

> Better to be despised for too anxious apprehension than ruined by too confident a security.

Finally, Mr. President, is it not our duty to give some consideration and some heed to the long-standing, well-sustained, almost universal demand of the people for this change? I can not get away from the belief that, in all these great matters which involve, not technical knowledge, but rather a broad and wholesome principle of clean and efficient government, the surest and safest guide is the deliberately formed and long-sustained judgment of the people. There is something more than rhetoric in the declaration "that the accumulated intellect of the masses is greater than the greatest brain God ever gave to a single individual." Mr. Bryce, in the closing pages of his interesting and instructive work on our institutions ["The American Commonwealth"] says:

> A hundred times in writing this book have I been disheartened by the facts I was stating; a hundred times has the recollection of the abounding strength and vitality of the nation chased away these tremors.

There are a vast number of things in this Government in which the people can have practically no voice and upon which they can therefore have but a most indirect influence. That sphere of government activity is, unfortunately, constantly increasing. We are fast becoming a Government by commission. Not a Congress sits, but a bureau must be created with its hundreds of retainers; not a Congress ends, but some part of the Government has been pushed a little farther from those in whose welfare we are supposed to work.

Now, of necessity, many of these things must be done in this way. But there are some things which the people may do which they ought to do and which we ought to afford them the most convenient opportunity to do. They may select their political servants who make their laws. They may select the constitu-

tional agents who execute the laws. This is a power which they can exercise and which it will be wholesome for them to continue to exercise. It is our duty to place this power in constant, direct, immediate touch with the people. Dismiss every agent that it is possible to be rid of and go direct to the principal. Give him the responsibility and his own sense of patriotism will appreciate in time that responsibility, and he will not abuse it. It is only under such a system that men may grow to the full stature of citizenship in a republic.

On January 20 Isidor Rayner [Md.] supported the resolution.

I want to call the attention of the Senate to the two amendments, one the amendment of the Senator from Utah [George Sutherland], and the other the amendment of the Senator from New York [Chauncey M. Depew].

The resolution reported by the committee provides:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

The Senator from Utah proposes to add to that:

> But Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

In other words, the Senator from Utah takes the provision that is now in the Constitution [Article I, § 4, par. 1] with reference to the election of Representatives and attaches that provision to the election of Senators by the people.

THOMAS H. CARTER [Mont.].—Is it not the understanding of the Senator from Maryland that, when Senators are elected by popular vote, just as members of the House of Representatives are elected by popular vote, the same rule as to control by the Federal Government should obtain as to both?

SENATOR RAYNER.—Not at all, Mr. President. I object to the rule; and, if the Senator from Montana asks me my own opinion, I will say that, if I had my way, I should like to take out of the Constitution the clause which gives Congress the right to change the regulations of the States, even as to the election of Representatives, because it was under that clause that the

bill known as the force bill was attempted to be passed here in the Senate, and I am opposed to it; but there it is and we can not change it, because we are not providing now for the election of Representatives, but, now that we have a new proposition for the election of Senators, I am opposed to applying the objectionable clause to the election of Senators.

If you give Congress the right to override the regulations of a State as to the manner of electing Senators, then you give Congress the power to pass a bill like the force bill or any bill substantially similar. I object to putting that power in the hands of the Federal Congress.

Now, let me come to the amendment of the Senator from New York [Mr. Depew], because we must take both these amendments together. Here is the amendment of the Senator from New York:

> The qualifications of citizens entitled to vote for United States Senators and Representatives in Congress shall be uniform in all the States, and Congress shall have power to enforce this article by appropriate legislation and to provide for the registration of citizens entitled to vote, the conduct of such elections, and the certification of the result.

Of course that goes much further than the amendment of the Senator from Utah, and it goes much further than the force bill attempted to go, because the force bill attempted to draw its power from the Constitution. This draws the power away from the Constitution and takes away the right of suffrage that is resident in the States and transfers it to the Federal Congress, gives Congress the right to control not only the machinery of elections, but to control the right of suffrage in every State of the Union. In other words, it shatters the Constitution of the United States to fragments by depriving the States of the right to say who shall enjoy the right of suffrage. It would deprive a State of the right to pass an educational qualification. It would deprive a State of the right to pass a property qualification. It would take away the entire power of the State and transfer it to the Federal Government, so far as the suffrage and qualification of its citizens are concerned. As it stands to-day, the States can do anything, provided there is no interference with the Fourteenth and Fifteenth Amendments, or there is no discrimination on account of race, color, or previous condition of servitude.

Limited by that amendment, I apprehend that there is not anything that the State can not do with reference to the suffrages of its citizens. The Supreme Court has said so in an

unbroken line of cases, from the case of Minor *vs.* Happersett, from which I will not quote, but which I have in my hand, and which is found in Twenty-first Wallace, up to the case of Williams *vs.* Mississippi. They have never yet said that suffrage rests in the Federal Government. They have never yet said that the right of suffrage is an immunity or a privilege under the Fourteenth Amendment. On the contrary, they have said the opposite. They held, in this case, when they were contending for woman's suffrage, that a woman was a citizen, but that suffrage was not an immunity, and that, while she had the right to enjoy the rights of citizenship, she did not have the right to vote under any provision of the Constitution of the United States, and the State, in denying her a vote, had a right to do so.

NORRIS BROWN [Neb.].—Before the Senator leaves that branch of his argument I would call his attention to the fact that this supervisory power of Congress against which he complains is already in the Constitution. It is found in section 4 of Article I.

The proposition in the joint resolution is not only to change section 1, to take away from the legislature the power to elect a Senator and confer it on the people, but it goes further and contains an additional amendment to the Constitution, taking away from Congress the power of supervision. Those are two distinct propositions. The effort of the Senator from Utah is to confine the joint resolution to one proposition, namely, to allow the people to have an opportunity to elect their Senators.

I wish the Senator from Maryland would suggest why he objects to giving the Senate an opportunity to vote on a single proposition. Why not give the people of the United States the right to vote on a single amendment—the one that has been discussed, the one that has been demanded by the American people, and that is the right to elect their Senators, and why is it necessary in this joint resolution to submit two separate and distinct amendments?

I will say to the Senator, so far as I am concerned, I am willing to vote for his proposition and let it be referred to the States. Our adoption of the joint resolution does not amend the Constitution, and, without regard to the merits of his proposition, I am willing to vote for it by itself and thereby give the people an opportunity to put it in the Constitution if they want it there.

SENATOR RAYNER.—Suppose the insertion of the amendment of the Senator from Utah defeats the resolution. Suppose every

Southern State votes against the amendment that Congress can control their elections. What would the Senator say then? Suppose every Southern State is in favor of the joint resolution the way we reported it, and that every Southern State is against it the way the Senator from Utah proposes to amend it; does the Senator think he would be justified in insisting on putting that amendment in the body of the joint resolution?

SENATOR BROWN.—The trouble with the Senator is that he assumes that we are insisting upon putting in the joint resolution two propositions. I am insisting on leaving the joint resolution with one proposition.

SENATOR RAYNER.—Then the Senator and I are in accord on our proposition.

SENATOR BROWN.—I am in accord with the proposition of leaving the Constitution, so far as this joint resolution goes, alone——

SENATOR RAYNER.—Oh!

SENATOR BROWN.—Except on the proposition of the election of Senators.

SENATOR RAYNER.—Then the Senator has not stated his position so that we can understand it. Let me state plainly what the Senator is in favor of: The Senator is dealing with a new proposition—the election of Senators by the people. He is dealing with a proposition that the Constitution does not refer to, because the Constitution does not apply to the election of Senators by the people.

The Senator proposes to take a clause of the Constitution, which applies only to election of Senators by the legislature, and make that clause applicable to the election of Senators by the people. Therefore he is embodying two propositions, and we are embodying one proposition.

SENATOR BROWN.—I propose to put nothing in the joint resolution except the proposition to give to the people of the State the right to elect by direct vote the Senators of that State.

Senator Rayner then turned his attention to the principle of the resolution.

The most formidable speech, perhaps, that was ever made in this body against submitting this question to the people was the one made by George F. Hoar, of Massachusetts. I want briefly just to refer to some of the objections that he urged, merely to show that most of them are now impractical and obsolete, and therefore do not apply to the present situation.

One of the objections pressed by the Senator was that—

> Such a method of election would essentially change the character of the Senate as conceived by the convention that framed the Constitution and the people who adopted it.

I am very sorry that I can not acquiesce in this statement. I do not think that an election by the people will change the character of the Senate. The members of the House of Representatives are elected by the people, and, in my judgment, there is no parliamentary assemblage in the world that compares with it, both as to character and ability.

The next objection that he made was this:

> It would transfer practically the selection of the members of this body from the legislatures, who are intrusted with all legislative powers of the States, to bodies having no other responsibilities, whose election can not be regulated by law, whose members act by proxy, whose tenure of office is for a single day, whose votes and proceedings are not recorded, who act under no personal responsibility, whose mistakes ordinarily can only be corrected by the choice of Senators who do not represent the opinions concerning public measures and policies of the people who choose them.

I answer that by saying that in a great many of the States now Senators are nominated at primary elections, and I believe the time will come when every State will adopt this system.

Senator Hoar then stated:

> It will create new temptations to fraud, corruption, and other illegal practices.

How will there be any temptations to fraud, corruption, or other illegal practices, especially in the States where they have corrupt practice laws?

Here is a proposition that I have never been able to understand. Senator Hoar said:

> It will absolve the larger States from the constitutional obligation which secures the equal representation of all the States in the Senate by providing that no State shall be deprived of that equality without its consent.

I can not see how it can possibly have this effect. This constitutional provision is not subject to amendment without the consent of the State that is affected, and it is, therefore, impossible for me to comprehend how the larger States can be absolved from a constitutional obligation which obligation is unamendable by the terms of the Constitution itself.

I ask Senators who are opposing the joint resolution, how will this proposition disturb the equality of the States? You can not disturb that equality, Mr. President, without the consent of the State itself. The Constitution provides that that equality can not be interfered with unless the States consent. If every State in the Union except the nonassenting State were to favor an amendment giving the larger States a greater representation in this body than the smaller States, it would be void, because the Constitution says it requires the acquiescence of the State whose representation is to be changed.

Then the Senator states:

> The constitutional convention concluded that every act of the legislature was to be twice considered and have the approbation of two different, separate Houses.

Has it not the approbation of two different, separate Houses? Whether those separate Houses are elected differently or elected the same way, how does it interfere with the approbation of two Houses to have both elections by the people?

Then the Senator says:

> These two Houses were to have a different constituency. So every proposed law must run the gauntlet of two diverse interests and be judged from at least two points of view. Every State in the construction of its legislature has maintained these two principles.

Is not that a mistake, Mr. President? Because in every State, as I understand it, the Senate and the House of Delegates are elected by the same constituency and not by different constituencies.

Then the Senator says:

> The Senate was to represent deliberation in the expression of the popular will by the length of the term of office of Senators.

We are not doing anything here to affect the term of office of Senator.

Then the Senator concludes the learned and masterly presentation of his objections by saying: "I do not believe in the brutal force of numbers."

The Earl of Roscommon once said that the multitude is always in the wrong. It seeems to me that in reading this great argument of this lamented Senator, there were some distinguished persons in this Republic who had reached the same conclusion. I think that the intelligent and patriotic multitude is generally in the right.

SENATOR SUTHERLAND.—If we do not adopt my amendment then we shall have in the Constitution hereafter two separate and, in some respects, antagonistic provisions. There will be a provision in the Constitution giving the Congress full supervisory power over the election of Representatives by the people and absolutely removing the supervisory hand of the Federal Government over the election of Senators by that same people. What reason is there for making that distinction? Why should we permit Congress to supervise the election of Representatives by the people and decline to give Congress the power to supervise the election of Senators by the people?

AUGUSTUS O. BACON [Ga.].—I want to ask the Senator from Utah if, in his opinion, this amendment should be adopted, would it be within the province of the Federal Government to prescribe that the Federal Government should have agents at elections to supervise those elections at which Senators would be chosen, to see the manner in which the votes were cast, and to enforce what might be thought to be the rights of electors?

SENATOR SUTHERLAND.—I think Congress would have that power, Mr. President, but that does not frighten me. Congress has possessed that power over elections to the House for nearly 125 years, and it has never exercised it, in my judgment, in a way that was not justified by the circumstances which existed at the time the particular laws have been passed. We have passed laws providing for supervision of elections, but this was at a time when such laws were absolutely necessary, and when the occasion for them had gone those laws were repealed.

On January 24 Senator Depew supported his amendment to the joint resolution.

This resolution virtually repeals the Fourteenth and Fifteenth Amendments to the Constitution. It validates by constitutional amendment laws under which citizens of the United States, constituting in the aggregate more than one-tenth of the electorate, are to be permanently deprived of the right of suffrage. These laws have their origin in a fear of the negro vote in those States where it is equal to the white vote or larger than the white vote. But they are urged or passed for purely political purposes in States where there is no possible fear of the dominance of the negro vote. Maryland, with a small proportionate negro vote, has tried several times within the last few years to disfranchise the colored people within that State, and the avowed purpose of the Democratic party in the

State of Maryland, which is not denied, is to continue this effort until they have succeeded in disfranchising this vote.

It is a curious commentary upon our forgetfulness of the results of the war for the Union that we have grown indifferent to such an extent to these provisions which were made the permanent results of that struggle by being engrafted into the Constitution. It becomes a subject of earnest study and of serious reflection whether, if it were a mistake to adopt the Fourteenth and Fifteenth Amendments at the close of the Civil War, it is not a greater mistake 45 years afterward, when intelligence and education have made such progess among these people, to so impair as to virtually repeal those articles.

The title of this proposition is to allow the people to vote. The purpose and object of the resolution is permanently to prevent the people from voting in any State where a dominant power or oligarchy wishes to disfranchise a certain portion of the citizens of that State. Now, I have sympathized with the conditions of the people of the Southern States since the Civil War. I have persistently and consistently opposed all the drastic measures which have been presented to interfere with their affairs. I was not in favor of the force bill. I was not in favor of the bill which passed the House of Representatives to enforce the provisions of the Fourteenth Amendment for the reduction of membership in the House of Representatives in proportion to the reduction of the negro vote in several States. But, when it comes to deliberately voting to undo the results of the Civil War, when it comes by constitutional amendment to permanently taking from 10,000,000 people the rewards of education and intelligence, that reward being in a free government the right to vote, I can not assent to or be silent upon the proposition.

Six years ago this same question came up in the Committee on Privileges and Elections, of which I was a member, and I then proposed this same amendment to the resolution which I have offered here.

This amendment simply says that, if the people are to vote for the election of United States Senators, then all the people recognized as citizens under the Constitution of the United States shall be permitted to vote. At that time this proposition of mine was incorporated into the general resolution, and had the unanimous vote of every Republican member of the committee, even of those who were in favor of changing the method of electing United States Senators from the legislature to the people. When it was adopted the resolution was defeated by the unanimous vote of the Democratic members of the committee.

But when I offered it in our Committee on the Judiciary it commanded only one vote beside my own.

Every Senator knows that the votes which have been cast in the several States for this measure have been so given in obedience to supposed party expediency and without general discussion. This movement has received more impetus from the advocacy of William J. Bryan than from any other cause during the half century since the war. And yet, when Mr. Bryan, with the responsibilities of office upon him as a member of Congress, proposed his idea of an amendment to the Constitution for this purpose in 1894, he left it for each State to decide whether it would elect United States Senators by the old method or the new. All the States which framed the Constitution and all those that can reckon a quarter of a century to their lives, in selecting men who have shed the greatest honor upon their respective commonwealths, have invariably named them from the membership of the United States Senate. No method of electing Senators could add to that glorious list. It has been said that governors of States furnish an example to the contrary, but it is the history of governors that they are in for a short time. They rarely succeed themselves, and, if they do, only once. I do not know that there is on record a single instance of a governor who has been ten years in the service of his State. Every Senator knows that the value of a member of this body, if he is fit to be a member of it, increases with the years. Every Senator also knows that, in popular elections, taking the governor as an example, covering the whole State, the second term would be the limit of the senatorial life of anyone, no matter how distinguished. Our Websters, our Clays, our Calhouns, with all their genius for public life and popular leadership, owed their influence upon the policies of parties and the legislation of the Republic to long experience in the Senate. The results of the primary laws have demonstrated that the United States Senator who comes here under the new system would, in a vast majority of cases, be the choice of a plurality, and, therefore, a minority candidate. In States where one party is sufficiently in the ascendant to make an election certain candidates would be as numerous as the ambitions of the citizens, and the successful one on the plurality might represent only a tenth of the electorate. The favorite of the great cities would always prevent the success of a candidate from the country. In many States, where the party discipline and organization have been submerged by the primary, races or religions combine and, by their united force, as against the scattered results of the general

electorate, secure the necessary plurality for one of their race or religion. There is not the slightest pretence that, during the long life of our Government, a Senator has ever been placed in this body because of race or religion. I do not share in this distrust of the legislatures. Our several commonwealths have wisely legislated for the interest of the family, of property, of liberty. I do not assent to the proposition that representative government has the distrust of the people.

The Athenian Assembly was the ideal of popular government. I stood once upon the rocky platform from which Demosthenes addressed the voters of Athens. There were 300,000 slaves and 10,000 citizens. Those 10,000 easily gathered upon the plain in front of the orator. He won from his audience the approval of the measures which he proposed against his antagonists because of his eloquence and his ability to fire the popular imagination, stir the popular enthusiasm, and, through them, influence for the moment popular judgment. By holding up the raw head and bloody bones of Philip of Macedon he swept away all opposition, while Philip of Macedon had no purpose such as Demosthenes charged. We all know the appeals which can move a popular audience. A war speech and the bloody shirt had their influence for 25 years after Appomattox. When the new generation of voters came upon the stage these appeals meant nothing to them, and the campaign orators had to write new speeches upon new issues or else retire from the platform, as many of them did, because they could not comprehend the new issues. For 25 years more the operation of the railroads was an effective rallying cry. But legislation has been perfected for the control of the railroads by providing penalties for abuse and conferring such absolute power upon the Interstate Commerce Commission and the Commerce Court that the Government is the paramount member of the directorate of every railroad in the United States, and that has ceased to be the rallying cry. Next, it was the corporations. Again, legislation has largely cured corporate evils. The Sherman anti-trust law, strengthened by the decisions of the courts, and the corporation-tax law, exposing ever secret of every corporation to the Government and, through the Government, to the people, furnishes power, on the one hand, to the Government and that publicity, on the other, which makes corporate iniquities exceedingly difficult and punishment swift and sure.

Now a Chautauqua audience can be raised to frenzied heights of rage by picturing to them that they are the slaves of the interests. The interests are vague, but the more shadowy, like the

ghost, the more terrible. Of course, the Athenian example is impossible with 100,000,000 of people, but the whole theory of democratic government in its evolution in Europe and in America is to escape, on the one side, from the arbitrary power of the autocrat, backed up by control of the army, the navy, the treasury, and taxes, and, on the other hand, to devise processes by which the passions of the hour shall not crystallize into legislation without plenty of time for deliberation and calm judgment. In a sense, every form of representative government may be called distrust of the people. Wherever a measure must take its chances, first with the Lower House and then with the Upper House, and then, again, in running the gauntlet, must escape the club of the veto of the Executive, every step is distrust of popular government. But it is a false idea to say that such distrust means lack of confidence in the people, or means defying the popular will. It is simply that where the great mass of the population are engaged in industrial pursuits, which absorb their minds and time, they must necessarily select from among their own number those whom they think best fitted for the tasks upon whom they devolve, as President or as Senator or as Representative or as governor or as member of the legislature, the perfection of measures and the enactment of laws which are for the best interests of the people.

I have received many letters since I introduced my amendment indicating the trend of popular thought, and many editorials not proper to be read in the Senate. Some of them go to an extreme which ought to please that eloquent advocate of popular government, the distinguished Senator from Oregon [Jonathan Bourne], and his recently organized salvation army. [Laughter.] They say: "Abolish the Senate. It is no further of any use. It was all very well when there were no railroads, no telegraphs, and no telephones, or morning and evening papers to have a Senate to hold in check the House until the people could be heard from; but now, with all these means of instantaneous and intelligent information, the people are informed every day, can reach their immediate Representatives every hour, and they need no protection by a conservative and critical body elected for a longer term and with securer hold of office." Others say: "In amending the Constitution, so amend it that no representative of the interests can be a Senator." They define the interests as every man who, in his personal business or in any employment he may have, is interested in legislation. They bar out everyone who, directly or indirectly, may be affected by the tariff. They bar out all who are counsel for those who may be affected by the tariff. They bar out all stockholders, bondholders, and counsel of corporations. They bar out labor unions. They reduce the opportunities for choice by this process of elimination until, if they ultimately succeed, the United States Senate will be composed entirely of undertakers, whose profits are in the increasing number of those who die. [Laughter.]

Two sets of States, though having entirely different interests, are cordially united in pressing this legislation. They are the new States with small populations compared with the older ones, and what were formerly known as the slave States of the Union. This is the only measure on which is unfortunately revived the "solid South." I warn each of them that they are prying off the lid from Pandora's box. They are letting loose the devils to pursue them with increasing aggressiveness, force, and strength during the coming years.

Senator Depew then discussed the subject of disfranchisement of negroes in the South, and the likelihood of this becoming a paramount political issue if the power of disfranchisement were strengthened by the adoption of the proposed constitutional amendment. He presented statistics on the subject.

Now, as to the qualifications or disqualifications, undoubtedly nobody votes in those States except those who are qualified by the State laws. But who are disqualified? We all know the grandfather clause, which is still in existence in many of the States. But there are others. For instance, there is the educational clause.

SENATOR BACON.—Found also in Massachusetts.

JOSEPH W. BAILEY [Tex.].—It ought to be found in all of them.

SENATOR DEPEW.—But in its application very different in Massachusetts. A very interesting story was told me, and sometimes an illustration shows the situation better than an argument. This story was told me by a friend of mine, a Southerner, a Yale man, and, therefore, entitled to belief on all questions. He said that at a precinct in his county a negro preacher came up to vote. The canvassing officer said: "You know under our law you have to read and write." "Well," he said, "I was educated at Howard University and at the Howard Theological School; I can read and write." "Do you understand the Constitution of the United States? That is another requisite."

"Well," said the clergyman, "I know it by heart, and think I understand it." "Well," said the canvasser, "under the Constitution of the United States you must get out a writ of *habeas corpus* before you can be permitted to cast a vote, and do you know what a *habeas corpus* is?" The minister answered: "No, Mr. Canvasser; I do not know what a *habeas corpus* is, but I do know that a negro can not vote in the State of Mississippi." [Laughter.]

Parties are always seeking paramount issues. The great leader of the Democratic party made this question of changing the method of the election of United States Senators, as he thought, a paramount issue. It failed to materialize as he imagined it would, because there was no popular response, and there is none to-day. But the glaring inequality exhibited by the figures which I present of negro disfranchisement are a firm foundation for a paramount issue. The resistless cry from the stump and from the press will be: "Less than a million of people shall not be permitted to neutralize and possibly defeat the wishes of over 27,000,000 citizens. This is a government of the people, by the people, and for the people, and here is a small oligarchy blocking the progress and defeating the wishes of an overwhelming majority. We have paved the way for this reform. It took us, the people, one hundred and twenty-two years to get rid of the fetish of the sacredness of the Constitution. Now we have buried that bugaboo, and the people, having come into their own in part, must regain the whole of the power to which they are entitled." What are our friends who are so gaily and hilariously pushing this proposition going to answer before indignant multitudes to this natural sequence? The next slogan for popular appeal will be: "Mend the Senate or end it."

Every intelligent student of the present rapid trend toward popular government must see what would happen when this sentimental bar of the States being represented by two Senators instead of by the people in the United States Senate is thrown down. The initiative, the referendum, and the recall are but symptoms of the times. That the people will have their way, because they, and they alone, are the government, is the underlying spirit of our institutions, of our newest State constitutions, and of our progressive laws. Skillful agitation seizes upon every pretext and eagerly grasps and enlarges every opportunity for appeal to the passions in an advancement of its purposes. The next cry will necessarily be: "Why not elect the Supreme Court of the United States by popular vote?" Why not elect the Federal judiciary everywhere by a popular vote? Unless we admit that the fathers made a mistake, and a grave one, in throwing these restrictions upon the immediate expression of the passion of the hour into legislation or decision, there is no legitimate answer to such a proposition. A constitutional convention can abrogate the promise of equality of the States in the Senate in the present Constitution. Let the wave rise high enough and thirty millions of people will not consent to have their will thwarted and their laws enacted by five millions. Majorities are never sentimental and, when they believe they are right, never merciful. "The power is ours by nature and by right, and we will come into our own," will be the cry of the majorities in the future, and there is no logical answer to the claim.

On February 6 Henry Cabot Lodge [Mass.] made a speech against the resolution in the tenor of the great speech of his predecessor, Senator Hoar.

On February 9 Joseph L. Bristow [Kan.] spoke in favor of the resolution.

We are warned not to depart from the wisdom of the Fathers by changing the manner of choosing the members of this body. Such an argument, in the light of modern development, is without weight. The conditions that exist in the United States to-day are vastly different from those that prevailed when the Constitution was framed. In 1790 there was but one post-office for every 52,000 people, while to-day we have one post-office for every 1,500 people. There was not a single letter carrier on the continent. Then the postage on a four-page letter from Washington to Boston was $1; now you can send that same letter from Porto Rico to Manila, more than half way around the globe, for 2 cents. At that time there was published but one copy of a newspaper or periodical per week for each 50 of our population; now there are four copies per day for every family. Such a state of society as we now enjoy was not within the wildest dreams of the most ardent enthusiasts among the founders of the Republic. Yet Senators tell us that to change the details or the manner of electing Senators is to reflect upon the wisdom of the forefathers. Mr. President, I join with the Senator from Massachusetts [Mr. Lodge] in paying high tribute to the great wisdom and patriotism of the framers of the Constitution. He can not hold them in deeper reverence than I, though his great learning enables him to express that reverence in more eloquent phrases. But, while I join him in paying

tribute to the wisdom of the Revolutionary fathers, I regret that he refuses to join me in expressing confidence in the judgment and wisdom of the people of our own times. Without reflecting in the slightest degree upon the ability of the members of Congress in any other age of our country's history, I assert that the average American citizen to-day has a better education, is more thoroughly informed on public questions, has a keener sense of the responsibilities of citizenship, and is better equipped to pass judgment as to the wisdom of governmental policies than was the average member of the House of Representatives a century ago. Then a college graduate in a community was a rare and distinguished individual. Now they are to be found by the dozen in almost every township.

For the first half century of our history the greed of commercialism, except as it related to the slavery question, was not developed; now it is a menace to the country's welfare. As the commercial spirit developed and opportunities increased to use the power of government to promote the selfish interests of financial and industrial institutions, such concerns became more anxious to control the Senate. This has brought about the numerous legislative scandals that have occurred in recent years, and such scandal not only will continue but will increase until there is a change in the method of electing Senators.

In this connection I desire to say that not only do I believe that opportunity should be given the people to vote direct for their Senators, and to elect them in the same manner as they elect their Congressmen and governors, but I believe that all delegates to our national conventions should be elected by a direct primary, and that, on the primary ballot, the voter should express his first and second choice for the nominees of his party. It then would be the business of the national conventions to carry out the will of the people as expressed in the primary election. The expression of a second choice, to show the general preference of the people of a State that might have a "favorite son" as a candidate, is necessary in order that the choice of the people independent of local favor may be ascertained. It has become customary for national conventions to be made up of a large number of Federal officeholders who want to perpetuate themselves in official power, or to be composed of ambitious men who hope to secure the Federal offices. In addition to these two classes there are a number of commanding delegates who represent the powerful financial and commercial institutions of the country, and who are there to look after the interests of such institutions. Trusts and combinations representing great

transportation and industrial companies seek to control the State and national conventions of both the great political parties, and, if they succeed, it makes little difference to them how the election goes or which side wins. Their representatives contribute generously to both campaign committees, and, because of such contributions, expect to secure certain appointments and also to control the legislation in which they are concerned. These selfish financial interests are exceedingly anxious, first, to control the appointment of Federal judges; second, to shape the laws which affect their interests; and, third, to control the appointment of the executive officers who are to administer those laws.

Mr. President, these great combinations of wealth, under the system that now prevails, have acquired too much power in the affairs of this Government, and they have used that power to enrich themselves at the expense of the general public. Unless a change is made, not only in the method of electing Senators, but also in the manner of selecting delegates to the national conventions, the rising tide of unrest and dissatisfaction that prevails throughout the country to-day will rapidly increase. Men will not become less greedy for wealth and power. The great financial interests will not abate their efforts to control, not only the business, but the politics of the country.

The Senator from Massachusetts declared that the political power of gigantic combinations of wealth had been broken, and that they are no longer endeavoring to control the politics of the country. How can the distinguished Senator entertain such a delusion when at this very hour there are in a number of States deadlocks in pending senatorial elections, caused solely by the dogged and persistent determination of certain powerful financial interests to control the election of Senators from those States. There never has been a time when these interests were more vigilant and grasping for political power and dominion than now.

Sir, I believe we are approaching a crisis, not only in our commercial and industrial life, but in our political affairs as well. The development of modern times has made it necessary to place more power directly into the hands of the people, that they may not only protect the man of small business from the greed of his great and powerful competitor, but that they may also protect the integrity of our political institutions.

We are warned by those who oppose this resolution that by this change in the manner of electing Senators we will make them responsible to the will of the mob, and, therefore, sub-

servient to the passion and prejudice of the unthinking masses; that by such a change we will endanger the perpetuity of our institutions. I do not believe it. I am not afraid of the mob. The American people are not controlled by passion or prejudice. They are conservative and cautious; do not welcome change, and cling to precedent. You place in their hands great power, and they will exercise it with deliberation and care.

The stability of a free government depends upon the intelligence and patriotism of its people. It is one of the fundamental laws of human nature that great responsibility not only brings out the best efforts of man, but also develops the conservative elements of his character.

Give the people greater power and more direct responsibility for the administration of the Government, and you bring to its institutions the most careful thought and patriotic consideration of the great masses of our population. General Grant has been credited with the statement that all the people know more than any one man. This, I believe, can be broadened into a declaration that all the people know more than any set of men. The marvelous and unprecedented progress of modern times in every branch of human industry and every line of mental effort has been possible only because the intellect of the race had been unshackled and the mental energies of the entire population brought into action. This Government of ours will be better administered and more wisely governed by inviting every citizen to give his best thought to the solution of its problems. Place greater responsibility for its administration upon the average man, and it will develop in him the highest degree of patriotism. It will place upon him that deep sense of responsibility that goes with ownership. He will feel more that this is his Government, and that he is responsible for the welfare of its institutions. Instead of endangering such institutions it will be their greatest safety. It will intrench them in the affections of an intelligent, patriotic, and devoted citizenship.

Sir, the menace to our country's future is not in the mad fury and passion of the unthinking mob. The mob has no influence with the American mind. It is repulsive to that sense of stability and order which is fundamental in the Anglo-Saxon's nature. Our menace is not the mob, but the greed and avarice of men who seek to control legislation for personal gain. Resentment against the injustice and tyranny of the trusts and the combinations of modern commercial life is far more dangerous to the welfare of this Republic than the action of an unthinking or turbulent spirit.

On February 20 Senator Borah spoke on the Sutherland amendment.

I do not know, Mr. President, how long the North is going to play the hypocrite or the moral coward on this negro question. The North always assumes, when we come to discuss the negro question, that there is in the North a superiority of wisdom and of judgment and of virtue and of tolerance with reference to dealing with that question which is not found in other parts of the country.

The Northern States have exhibited the same animosity, the same race prejudice and race hatred that have been developed in the other parts of the Union. We burn the negro at the stake; our Northern soil is cursed with race wars; we push the negro to the outer edge of the industrial world; we exhibit toward him the same intolerance in proportion to his number in our part of the country as they do in every other part of the land, and in the same way. I have not a particle of doubt, Mr. President, if we had to deal with this subject in all its widespread ramifications as others have to deal with it, judging from what has happened in Colorado, in Illinois, and in numberless other States of the North, that we would exhibit the same qualities, and display the same weaknesses and the same intolerance that others have been charged with exhibiting or possessing.

I want to ask my friends who have raised this question of protecting the negro in the South, and who assert that we have the power under Section 4 of Article I to deal with the subject, why we do not exercise the power if we have it. Speaking for myself, I deny that the power extends where the exigencies of this debate have sent it, and I resent the proposition that for 40 years wrongs have been committed which we have had the power to deal with, and that we have cowardly refused to exercise that power.

It is a fine situation, Mr. President, in which the great Republican party finds itself in this debate. It has been practically asserted, indeed, sir, it has been asserted upon the floor of the Senate that, under Section 4 of Article I, we can deal with what is called the "grandfather clauses" of State constitutions.

Then the question arises: When are we going to deal with them? It is my deliberate opinion that we have not an iota of power under Section 4 to deal with the question of suffrage in any State of this Union so long as it complies with the

Fifteenth Amendment of the Constitution, and whether it has or not can always be tested under the provisions of that amendment alone and of itself.

It has been asserted deliberately upon the floor of this body that the repeal of Section 4 of Article I would embarrass, if not repeal, the Fourteenth and Fifteenth Amendments to the Constitution.

Section 4 of Article I deals alone with individuals. The Fourteenth and Fifteenth Amendments deal alone with the States. It might be true that if Section 4 were retained we could do some things which it has been contended we should do by those Senators who are supporting the amendment which was offered by the Senator from Utah [Mr. Sutherland]; but certainly it can never be contended that a provision in the Constitution which deals with individuals can impair in any respect the provision of the Constitution which deals alone with the action of the States.

Let me say to the negro, from my place in the Senate, that, after the exigencies of this debate are over, after this resolution has again been killed, if they should succeed, you will never again hear anything about the virtues or the power of Section 4. No measure will be offered here, no bill passed under it for the substantial advantage or benefit of the negro. Let me say to the black man of the South and to his black brother in the North, do not permit the anxious and restless and hopeful spirit to call you from the path you are pursuing of working out your own salvation.

No law will be proposed, no statute passed, no voice will be raised in this Chamber again for years. The silence of the last decade will be followed by the silence of the next decade. The negro should turn from these political contentions and political exigencies and find the truth in reading the plain terms of the Constitution and decisions of the great tribunal that has never trifled with his cause. There he will find the exact measure of the nation's power.

Yes; let the truth be told. Let the hard facts be known that the State, and the State alone, fixes the qualifications of the voter, and that, outside of the principle of no discrimination, we are powerless to do otherwise. This is the great law of equality upon which all republics are founded, and it is the great law of equality under which all races must work out their salvation, and under which we must all be content to live. The North and the South must be satisfied with the rule. [Applause in the galleries.]

On February 21 Isidor Rayner [Md.] replied to an argument which had been previously made by Elihu Root [N. Y.].

I want to read the colloquy between the Senator from Georgia [Augustus O. Bacon] and the Senator from New York, and I want to see whether I cannot convince the Senator from New York that he is wrong in the proposition that he stated in that colloquy. There is no one at the American bar for whose opinion I have a higher respect than I have for that of the Senator from New York; there is no one for whose professional and private and public character I have a greater admiration. I know that in the heat of conflict he is as fair a foe as anyone could encounter, and I believe that, if he states a proposition of law and makes what I consider to be a fatal mistake, when his attention is called to it he will retract the statement he has made upon further reflection and an examination of the authorities.

The Senator from Georgia [Mr. Bacon] said:

> Mr. President, do I understand the Senator from New York to mean that if the States have now upon their statute books laws which regulate the suffrage in those States, such as the Senator speaks of as "the grandfather clause," though that is simply a term generic in its character which relates to a general class of legislation—does the Senator mean that, with the laws now upon the statute books of the several Southern States, if the proposed amendment of the Senator from Utah [Mr. Sutherland] should be adopted, and we should pass the joint resolution to amend the Constitution, and it should be ratified by three-fourths of the States, it would then be within the power of Congress, if it conceived that these grandfather clauses as they are called—all the body of laws with reference to the regulations and limitations of the suffrage in the Southern States—if Congress should conceive that they were unconstitutional, does the Senator mean that, in his opinion, Congress would have the power, under the amendment of the Senator from Utah, to annul those provisions and to make Federal laws to control the election of Senators in such a way as to insure the right to vote to all persons thought by Congress to be entitled to vote?
>
> Senator Root. Without the slightest doubt.
>
> Senator Bacon. Well, Mr. President, it is well that we are given this notice of what the Senator does mean and what the Sutherland amendment means.
>
> Senator Root. I meant to put you on notice, and I mean to put the whole country on notice if my words are able to do so.

With great deference to the Senator from New York, I say that he is mistaken in the proposition of law, entirely mistaken. He is at variance with the decisions of the Supreme Court, and I will proceed, within the space of a very few minutes, to attempt to demonstrate that he is wrong.

Mr. President, what is that proposition? Let us look at it a moment. Of course, I know the Senator from New York is perfectly honest and sincere. I know that the Senator is opposed to the popular election of Senators by the people. He has said that, and we know it. I do not believe for a moment that he wants the Sutherland amendment put into the joint resolution merely to obtain votes on our side against it; I believe he is earnestly in favor of the amendment; but he has stated a proposition which, if it were true, would concentrate the whole Democratic vote against the joint resolution. I purpose to show that, even if it be put into the joint resolution, it can not possibly have the effect that the learned Senator from New York gives to it.

The right of suffrage, my friends, is in the States. The right of suffrage is not embraced in the Constitution of the United States. Citizens derive their right to vote, subject to the Fifteenth Amendment, from the States; and Congress can not, except by a constitutional amendment, change the electoral systems of the South and take away their right to control the suffrage, because those systems, as announced in Williams *vs.* Mississippi, are in obedience to the Constitution, and have been upheld by the Supreme Court of the United States.

Therefore the Sutherland amendment will never give you the power to change the electoral systems of any Southern commonwealth. You can not take away the suffrage of its citizens. You can prevent discrimination, but the State is the judge of the qualifications of its electors. A State has a perfect right to adopt a property qualification; a State has a perfect right to adopt an educational qualification; and, if it applies to the negro as well as it does to the white man, then it is sanctioned by the Constitution of the United States and by the decisions that have been made in pursuance of it.

You could not, under the Sutherland amendment, register the negroes of the South in defiance of the laws of the States. Is it possible that under that amendment we can do anything that we could not do without the amendment? Is it possible, I ask the Senator from New York, that under that amendment we could, in the slightest degree, interfere with any of the electoral systems in any of the Southern States?

Senator Root.—I understand that the provision which authorizes the Congress to make or modify the regulations governing elections in respect of time and place and manner was not an empty form of words, but was included in the Constitution upon grave consideration and for a substantial purpose.

That provision in regard to the election of members of the House of Representatives it is proposed to continue, and the provision in regard to the Senate it is proposed to destroy by transferring the election from the legislature to the people without also transferring the power of regulation. The purpose for which I suppose these provisions were included corresponds with the purpose that practical observation of elections indicates. The naked right to make laws regarding the exercise of the right of suffrage is practically useless unless there be the power to so arrange the time, place, and manner of the election that the laws can be made practically applicable. The only way ever found by man to compel a fair election is through arranging the time and place and manner of the election beforehand in such a way that the decorations of the law will not be *brutum fulmen*.[1]

Now, sir, my understanding is that there are certain provisions of the Constitution, in respect of elections, conferring other power upon the Congress. There is the right to judge of the elections and qualifications of the members of the two Houses, and there are the Fourteenth and Fifteenth Amendments, which relate to the rights of suffrage.

My proposition is and has been from the beginning that the preservation of the constitutional authority of the Congress to arrange the regulations governing elections as to time and place and manner is a necessary condition precedent to the effective exercise of all the other powers.

The Senator from Georgia put a question to me the other day predicated upon the proposition that certain laws were found to be, in the opinion of Congress, in violation of the Constitution, and he asked me whether, in my view, the adoption of the Sutherland amendment would result in Congress having the power to compel a change in or an abandonment of those laws, and I answered him in the affirmative.

Now the Senator from Maryland says that I was mistaken, because the laws are not in violation of the Constitution.

Senator Bacon.—If the Senator from New York will pardon me, what I endeavored to say was this: That, of course, there would have been no question if it had been based on the assumption that the law was unconstitutional. My question was based on the assumption that, in the opinion of the States, it was constitutional, and, in the opinion of Congress, it was unconstitutional; and what, under the Sutherland amendment, I inquired of the Senator from New York, would, in his judgment,

[1] "Idle thunder."

be the power of Congress in such a contingency, which I suppose the Senator understands.

SENATOR ROOT.—I understand it.

SENATOR RAYNER.—Mr. President, there is no doubt about the proposition that Congress can not change the right of suffrage in the States, Sutherland amendment or not.

Is there any Senator here now, let me ask, because I want to be fair about this—I am not arguing this as a partisan, I am arguing it as a lawyer—is there any lawyer in this body who will rise and say that by law we can take away from the States the right of suffrage?

SENATOR ROOT.—Does the Senator mean his proposition to cover a case in which the franchise is established in the State by laws that are in contravention of the provisions of the Constitution?

SENATOR RAYNER.—Undoubtedly not. That is where the difficulty occurs between us. If the State laws are unconstitutional, the Supreme Court will set them aside. But, in Williams *vs.* Mississippi, the Supreme Court held that the laws of Mississippi were constitutional, and that they did not operate as a discrimination under the Fifteenth Amendment.

We have now a case from Maryland that has gone to the Supreme Court, and I apprehend that they will again decline to reverse it, and that they will never touch an electoral system of a Southern State, because the Southern States do not disfranchise the negro. They can not disfranchise the negro as such. They can not discriminate against the negro, and the laws that they pass, whether it be a property qualification or an educational qualification, apply to the characteristics of the white race just as well as to the negro.

The sum and substance, therefore, of my argument is this:

First. The Sutherland amendment is not necessary to punish fraud, violence, or intimidation at the polls at Federal elections.

Second. Under the Sutherland amendment efforts might be made by a partisan Congress to appoint boards of registration and certification to supersede the boards of registration and certification appointed by the State. If these boards, however, acted in defiance of the laws of the State and registered voters who had no right to be registered under the laws of the State, then the law of Congress would be void, and you do not want to confer upon Congress the power to pass a law which would be declared to be unconstitutional by the courts. If these boards of registration and certification acted in accordance with

the laws of the State, then there is no practical necessity for the Sutherland amendment, as the State regulations are sufficient. In other words, I admit that under the Sutherland amendment an attempt might be made to pass another bill similar to the force bill, but I deny the constitutionality of the force bill.

Third. No legislation can be enacted under the Sutherland amendment to deprive the States of their right of suffrage. Therefore the appeal to Republican Senators to vote for the Sutherland amendment in order to change the electoral systems of the Southern States should not prevail. The right of suffrage subject to the Fourteenth and Fifteenth Amendments is in the States, and we can not take away the right of suffrage from the States except by a constitutional amendment that shall expressly so provide.

On February 24 the amendment of Senator Sutherland was passed by a vote of 50 to 37.

The joint resolution came to vote on February 28—54 yeas and 33 nays. The requisite two-thirds majority not being obtained, the resolution was defeated.

During the next session (on April 13, 1911) the House by a vote of 296 to 16 passed a joint resolution submitting to the States for ratification a constitutional amendment providing for the popular election of Senators, and leaving the determination of the "times, places, and manner of holding the elections" to each State. It was introduced by William W. Rucker [Mo.].

The resolution came up for discussion in the Senate on May 15, when Joseph L. Bristow [Kan.] moved to amend it by striking out the provision in regard to the determination of the times, etc., of holding elections.

The question was discussed at length, the chief issue being the Bristow amendment, until June 12, 1911, when the amendment was adopted by the casting vote of Vice-President James S. Sherman, and the bill was passed by a vote of 64 to 24.

The House disagreed to the Senate amendment and a conference was appointed.

No action was taken on the resolution during the session.

On May 13, 1912, the House concurred in the Senate

amendment by 238 ayes to 39 nays, (more than the necessary two-thirds majority). Two days later President Taft signed the bill.

On May 31, 1913, William J. Bryan, Secretary of State, made official proclamation of the ratification of the Amendment by three-fourths of the States. For text of the Amendment see Volume I, page 428.

CHAPTER XIII

DIRECT LEGISLATION

[THE INITIATIVE, REFERENDUM, AND RECALL]

Speech of Sen. Jonathan Bourne [Ore.] on "Popular *vs.* Delegated Government"—Reply by Representative Charles F. Scott [Kan.]

ON May 5, 1910, Jonathan Bourne [Ore.], speaking in the Senate *pro forma* on an interstate commerce bill, delivered a notable address on direct legislation in Oregon, which, printed as a public document, afterward had a wide circulation because of the interest in the subject throughout the Union. The introduction of his speech is here presented.

POPULAR VS. DELEGATED GOVERNMENT

SENATOR BOURNE

Successful and permanent government must rest primarily on recognition of the rights of men and the absolute sovereignty of the people. Upon these principles is built the superstructure of our Republic. Their maintenance and perpetuation measure the life of the Republic. These policies, therefore, stand for the rights and liberties of the people and for the power and majesty of the Government as against the enemies of both.

The people have been shocked by the number of business and political exposures which have been brought out in the last ten years.

At the time of Mr. Roosevelt's inauguration the tendency was to measure national prosperity by property rather than by personal liberty. The commercial force of society was rapidly throttling the police power of the Government. Political machines and bosses dictated the legislative and administrative destinies of many communities and States. Mr. Roosevelt, with

his experience in practical politics, familiarity with governmental operations, inherent honesty, dynamic energy, and limitless courage, demonstrated that he measured up to the needs of the time, and assumed leadership for reinstatement of the police power of the Government in supremacy over the commercial force of society. To him belongs credit for reëstablishment of these two great forces in their proper relative positions. He awakened the public conscience, and the result is a struggle throughout the nation between the advocates of what I would term "popular government" and the advocates of delegated government.

In many instances the people have lost confidence in their public servants, the same as many stockholders have lost confidence in corporation management. The remedy in government is the direct selection by the people of their public servants, with the resultant accountability of the public servant to the people, and not to a political machine or boss. I purposely use the word "selection" rather than "nomination," for to my mind it more clearly expresses the idea of the responsibility of good citizenship. Selection implies the careful investigation of all and the resultant choice of one.

Much has been said in favor of representative government. I believe in a truly representative government, but where the selection of public servants is left to a political machine or boss, as is frequently the case under our convention system, the tendency is toward a misrepresentative, and not a truly representative, form of government, notwithstanding the election is supposedly by the people.

By popular government I mean direct legislation as far as practicable, popular selection of candidates, and such regulation of political campaigns as will secure fair and honest elections. Popular selection under the present stage of evolution of our Government can be obtained only by direct primary laws and complete elimination of convention and caucus nomination of public officers.

Time was when a few self-constituted leaders in Oregon politics arrogated to themselves the prerogatives of government and made their assumption effective through illicit combinations and the use of money in any and every quarter where necessary to their purposes of control—that is, they commercialized conventions, legislatures, and the administrative branches of the city, county, and State government.

Revolting against these conditions, the State which I have the honor, in part, to represent has evolved the best-known

system of popular government, and, because of this conviction, I take this opportunity of presenting not only to the Senate, but to the country, a brief analysis of the Oregon laws bearing upon this question.

In a speech on the popular election of Senators, on February 14, 1911, Senator Bourne continued the presentation of the principle of direct legislation, which formed the foundation of the specific subject.

To insure good service, responsibility and accountability must go together. Whatever an individual is responsible for he should to the same degree be accountable for. Under delegated government he is accountable to the political boss, who in most cases is but the agent of the largest campaign contributor, at best a shifting accountability, because of the relative fluctuations of contributions and contributors. Under popular government like the Oregon system the accountability is always to the composite citizen—individual unknown—always permanent, never changing, the necessitated result being that the public servant must serve the composite citizen who represents general welfare or be recalled, where the recall exists, or fail of reelection where an efficient direct primary exists.

The greater the centralization of power the wider should be the distribution of accountability. Where the accountability is to the individual, the payment will be personal, meaning necessarily special privilege or serving a selfish interest. Where the accountability in government is to the composite citizen—that is to say, the electorate, or, in corporate business, to all the stockholders—the inevitable result is necessitated service for the general welfare of all, or the earliest possible elimination of the servant, whether public or corporate.

The securing of proper accountability of government and corporate officials is one of our greatest national problems. The solution is simple. In government, direct accountability of all public servants to party and general electorates. This can be secured only by the people selecting all their public servants through direct primaries and minimizing the misuse of money through comprehensive corrupt practices acts, with the ultimate absolute elimination of all political machines, conventions, and caucuses. In business, rigid responsibility of the commercial force to the police force of society. In corporation management, primary responsibility to government, equal obedience to laws, and equal accountability to stockholders, giving the Govern-

ment and the stockholders the fullest publicity of its operations, including absolute honesty and simplicity of its accounts, thus protecting the rights of the people and insuring to all the stockholders proportional enjoyment in the fruits of successful management, resulting in far greater stability for values and an infinitely greater market for its securities.

Oregon has evolved and demonstrated the best-known solution of the governmental problem to date. It incorporates:

The Australian ballot, which assures the honesty of elections.

The registration law, which guards the integrity of the privilege of American citizenship—participation in government.

The direct primary, which absolutely insures popular selection of all candidates and establishes the responsibility of the public servant to the electorate and not to any political boss or special interest.

The initiative and referendum, which is the keystone of the arch of popular government, for by means of this the people may accomplish such other reforms as they desire. The initiative develops the electorate because it encourages study of principles and policies of government and affords the originator of new ideas in government an opportunity to secure popular judgment upon his measures if 8 per cent. of the voters of his State deem the same worthy of submission to popular vote. The referendum prevents misuse of power temporarily centralized in the legislature.

I unhesitatingly assert that under the initiative the people not only will not, but cannot enact legislation against general welfare. Self-interest is the dominant force of humanity. Probably in a majority of cases self-interest descends into selfish interest. No two people ever have been or probably ever will be exactly alike; consequently because of the difference of the personal equation of the individual units of society and the resultant difference in the self or selfish interest dominating each individual unit where they act collectively, as they do under the initiative, an immense number of different forces are liberated, each struggling for supremacy and thereby engendering friction, so that before any community action can be established this attrition must wear away the selfish interests, and general welfare, according to the majority view of the community, absolutely control the community action.

The initiative and recall must stand or fall together. If right in my assertion that the people under the initiative cannot legislate against general welfare, neither will they by the

same process of deduction ever recall a public servant who serves general welfare. If they are qualified to select their judges, they must be equally qualified to recall them. Judges, like all other public servants, are elected because of anticipated good service and would be recalled only for demonstrated bad service.

The corrupt practices act is necessary as a complement to the initiative and referendum and the direct primary, for without the corrupt practices act these other features of popular government could be abused. The publicity pamphlet provided for by the corrupt practices act affords all candidates for nomination or election equal means of presenting before the voter their views upon public questions and protects the honest candidate against the misuse of money in political campaigns. Under the operation of this law popular verdicts will be based upon ideas, not money; argument, not abuse; principles, not boss and machine dictation.

Under the machine and political boss system the confidence of sincere partisans is often betrayed by recreant leaders in political contests and by public servants who recognize the irresponsible source of power to which they are responsible. If the enforcement of the Oregon laws will right these wrongs, then they were conceived in wisdom and born in justice to the people, in justice to the public servant, and in justice to the partisan.

Plainly stated, the aim and purpose of these laws is to destroy the irresponsible machine and to put all elective offices in direct touch with the people as the real source of authority—in short, to give direct and full force to the ballot of every individual elector and to eliminate dominance of corporate and corrupt influences in the administration of public affairs. The Oregon laws mark the course that must be pursued before the wrongful use of corporate power can be dethroned, the people restored to power, and lasting reform secured. They insure absolute government by the people.

On February 28 Senator Bourne continued his exposition of direct government.

Mr. President, the most important measure enacted or adopted by the people of Oregon at the recent election, and, in fact, next to the initiative and referendum the most important law enacted by any State in recent years, is the law permitting voters in party primaries to elect their delegates to national

conventions and to instruct them through popular expression of choice for President and Vice-President. This law, when enacted in all States, will absolutely destroy the power of a Federal machine to renominate a President or determine who shall be his successor. The "steam roller" will be relegated to the political scrap heap, and its operators dismissed to the shadow of things forgotten, while fourth-class postmasters will, as they should, cease to be a political asset for anybody or any party.

In the light of past experiences it seems to me this plan should appeal to all patriotic citizens as well as to conscientious partisans. It is a well-recognized fact that nominations by national conventions are the exclusive work of politicians, which the electorate of the whole United States is permitted only to witness in gaping expectancy and to ratify at the polls in the succeeding November. As unrepresentative as this feature of the national convention is, its flagrancy pales into insignificance in the presence of that other abuse against partisan conscience and outrage upon the representative system, which is wrought by the Republican politician in hopelessly Democratic States, and by the Democratic politician in hopelessly Republican States in dominating the national conventions with the presence of these unrepresentative delegations that represent neither party, people, nor principle.

With the presidential preference law in force throughout the United States the Southern Republican delegations will no longer be the vest-pocket trading material of Republican bosses, nor will Democratic delegations from solid Republican States in the North be subject to the will of Democratic bosses. The voice of the people will be heard in the selection of candidates, and delegates will be made, as they should be, mere messengers, conveying the expressed wish of the people whom they profess to represent.

Mr. President, whenever this law becomes nation-wide in its application it will absolutely destroy the power of the Federal machine; prevent a President renominating himself, except by demonstration of good service; destroy the possibility of any President naming his successor, and relieve him of any obligations to political bosses, campaign contributors, national committeemen, or national delegates, thus transferring the obligation from any known individual to the composite citizen, where it belongs.

Mr. President, the charge that the President of the United States has used his appointing power to coerce members of Con-

gress is the most serious of all attacks made by the press. The accusation was made in recent months that, in an effort to dictate to members of Congress in what manner they should exercise their legislative power, President Taft had granted them the privilege of recommending persons for Federal appointment in their respective States, if the members voted in Congress as he desired, and had refused them this privilege if they voted upon measures in such a manner as to displease him. In other words, it was charged that the President of the United States engaged in a systematic trading of patronage for votes in Congress.

Reduced to its simple element, the charge was, in effect, bribery or intimidation—bribery if patronage was extended as a reward for voting in accordance with the wishes of the Executive, and intimidation if patronage was withheld as punishment for refusal to yield unwilling obedience. The charge was a direct attack upon the honesty of the Executive, and indirectly a reflection upon the intelligence, independence, and courage of members of Congress. It would be difficult to believe such a charge without positive proof.

Here Senator Bourne read a letter to a Republican leader in Iowa, dated September 15, 1910, and signed by "Charles D. Norton, Secretary to the President," which said in part:

> The President feels that the value of Federal patronage has been greatly exaggerated, and that the refusal to grant it has probably been more useful to the men affected than the appointments would have been. In the preliminary skirmishes in certain States, like Wisconsin and Iowa and elsewhere, he was willing, in the interests of what the leaders believed would lead to party success, to make certain discriminations, but the President has concluded that it is his duty now to treat all Republican Congressmen and Senators alike, without any distinction.

Since this letter was signed by the private secretary to the President, purports to have been written by his direction, and, although five months have elapsed, has not been repudiated, must it not be accepted as stating the facts?

On March 2, 1911, speaking *pro forma* upon a bill to amend the judiciary laws, Charles F. Scott [Kan.] delivered an address to the House in favor of representative government as opposed to direct legislation.

Representative Government vs. Direct Legislation

Charles F. Scott, M. C.

There is a question now before the country, particularly before the people of the State I have the honor to represent in part, upon which I entertain very positive convictions, and which, I believe, is a proper subject for discussion at this time and in this place. That question, bluntly stated, is this: Is representative government a failure? We are being asked now to answer that question in the affirmative. A new school of statesmen has arisen, wiser than Washington and Hamilton and Franklin and Madison, wiser than Webster and Clay and Calhoun and Benton, wiser than Lincoln and Sumner and Stevens and Chase, wiser than Garfield and Blaine and McKinley and Taft, knowing more in their day than all the people have learned in all the days of the years since the Republic was founded.

And they tell us that representative government is a failure. They do not put this declaration into so many words—part of them because they do not know enough about the science of government to understand that the doctrines they advocate are revolutionary, and the rest of them because they lack the courage to declare openly that it is their intention to change our form of government, to subvert the system upon which our institutions are founded. But that is in effect what they propose to do.

They graciously consent that the people shall continue to elect Representatives to a legislative assembly, but they proceed at once to discredit those Representatives—and incidentally to impeach the judgment or the honesty of the people who elected them—by proposing a fantastic scheme whereby legislation may be enacted entirely independently of them.

They will still permit judges to be chosen, but they propose a plan whereby the wisdom and justice of their decisions shall be passed upon at a popular election, thus preparing the way for a campaign in which we shall witness the edifying spectacle of a candidate for judicial position enthusiastically declaring from the stump that if elected he will render such and such a judgment. They will continue to elect administrative and executive officers, but, if one of them is charged with failure to do his duty or with malfeasance in office, he shall be tried, not by a judge and jury and upon the evidence of witnesses sworn to tell the truth, but in the newspapers and on the stump and

by whatever testimony partisan rancor or personal malice may see fit to present.

Such, in brief, is the plan of redemption offered to us by the prophets of the new dispensation. Such is the scheme which they propose as a substitute for the system of government which was devised by the founders of the Republic and which has been reaffirmed in every State constitution that has been drawn from that day to this.

I said that it is revolutionary and subversive of our present system of government. Let us see.

The Constitution of the United States, Section 4, Article IV, provides that "the United States shall guarantee to every State in this Union a republican form of government." By the very terms of our original charter, therefore, the form of government under which we live is that of a republic and not that of a democracy.

Every schoolboy knows that in a pure democracy the people themselves perform directly all the functions of government, enacting laws without the intervention of a legislature, and trying causes that arise under those laws without the intervention of judge or jury; while in a republic, on the other hand, the people govern themselves, not by each citizen exercising directly all the functions of government, but by delegating that power to certain ones among them whom they choose to represent them in the legislatures, in the courts of justice, and in the various executive offices.

Now, it does not follow by any means that because a proposed change is revolutionary it is therefore unwise. Taking it by and large, wherever the word "revolution" has come into human history it has been only another word for progress. Because a nation has pursued certain methods for a long time it does not at all follow that those methods are the best, although when a nation like the United States, so bold and alert, so little hampered by tradition, so ready to try experiments, has clung to the same methods of government for 130 years, a strong presumption has certainly been established that these methods are the best, at least for that particular nation.

But a presumption, however strong, must give way before a demonstration, and if it can be demonstrated, either by reason or experiment, that the system of government proposed by our latter-day leaders is wiser than that which has thus far prevailed, not only in our own country, but in every other important nation in the whole world, then we would be most foolish to refuse to adopt it.

But is the new system wiser than the old—in the matter of making laws, for example? The old system vests the lawmaking power in a legislative body composed of men elected by the people and supposed to be peculiarly fitted by reason of character, education, and training for the performance of that duty. These men come together and give their entire time through a period of some weeks or months to the consideration of proposed legislation, and the laws they enact go into immediate effect, and remain in force until set aside by the courts as unconstitutional or until repealed by the same authority that enacted them. Under this plan no law of general application is likely to be brought forward unless there is a widespread demand for it, no measure of importance can be passed without critical examination and discussion, and when passed it presumably represents the judgment of a majority of the people.

The new system—taking the Oregon law, for example, and it is commonly cited as a model—provides that 8 per cent. of the voters of a State may submit a measure directly to the people, and if a majority of those voting upon it give it their support it shall become a law without reference to the legislature or to the governor. That is the initiative. And it provides that if 5 per cent. of the voters are opposed to a law which the legislature has passed, upon signing the proper petition the law shall be suspended until the next general election, when the people shall be given an opportunity to pass upon it. That is the referendum.

Now, there are several things about this plan which I believe the people of this country, when they come really to consider it, will scrutinize with a good deal of care and possibly with some suspicion.

It is to be noted, in the first place, that a very few of the people can put all the people to the trouble and expense of a vote upon any measure, and the inquiry may well arise whether the cause of settled and orderly government will be promoted by vesting power in the minority thus to harass and annoy the majority. In my own State, for example, who can doubt that the prohibitory amendment, or some one of the statutes enacted for its enforcement, would have been resubmitted again and again if the initiative had been in force there these past 25 years.

Again, it will be observed that still fewer of the people have it in their power to suspend a law which a legislature may have passed in plain obedience to the mandate of a majority of the people, or which may be essential to the prompt and orderly

conduct of public affairs, and when they come to think about it the people may wonder if the referendum might not make it possible for a small, malevolent, and mischievous minority to obstruct the machinery of government and for a time at least to nullify the will of the majority.

In the third place, it is to be remarked that a measure submitted either by the initiative or the referendum cannot be amended, but must be accepted or rejected as a whole, and we may well inquire whether this might not afford "the interests" quite as good an opportunity as they would have in a legislature to "initiate" some measure which on its face was wholesome and beneficent, but within which was concealed some little "joker" that would either nullify the good features of the law or make it actively vicious, and which, through lack of discussion, would not be discovered. How often have we here in this House seen some measure which represented the most careful and painstaking effort of a skilled and experienced legislator metamorphosed in committee until its own author would hardly recognize it, and then when it was brought into this chamber as the fruit of the very best judgment of eighteen able and honest men how often have we seen it modified in its most essential features as the result of the refining fire of debate upon this floor? Every day we have new and incontestable proof that "in the multitude of counselors there is wisdom." But that wisdom can never be had under a system of legislation which lays before the people the work of one man's mind to be accepted in whole or rejected altogether.

Once more let us observe that under this system, no matter how few votes are cast upon a given measure, if there are more for it than against it, it becomes a law, so that the possibility is always present that laws may be enacted which represent the judgment or the interest of the minority rather than the majority of the people. Indeed, experience would seem to show that this is a probability rather than a possibility, for in the last Oregon election not one of the nine propositions enacted into law received as much as 50 per cent. of the total vote cast, while some of them received but little more than 30 per cent. of the total vote.

And finally and chiefly, without in the least impeaching the intelligence of the people, remembering the slight and casual attention the average citizen gives to the details of public questions, we may well inquire whether the average vote cast upon these proposed measures of legislation will really represent an informed and well-considered judgment. In his thoughtful

work on democracy, discussing this very question, Dr. Hyslop, of Columbia University, says:

> People occupied with their private affairs, domestic and social, demanding all their resources and attention, as a rule have little time to solve the complex problems of national life. The referendum is a call to perform all the duties of the profoundest statesmanship, in addition to private obligations, which are even much more than the average man can fulfill with any success or intelligence at all, and hence it can hardly produce anything better than the Athenian assembly, which terminated in anarchy. It will not secure dispatch except at the expense of civilization, nor deliberation except at the expense of intelligence. Very few questions can be safely left to its councils, and these only of the most general kind. A tribunal that can be so easily deceived as the electorate can be in common elections can not be trusted to decide intelligently the graver and more complicated questions of public finance or private property, of administration, and of justice. It may be honest and mean well, as I believe it would be; but such an institution can not govern.

As to the practical working of the referendum four years ago nearly every appropriation bill passed by the Oregon legislature was referred to the people for their approval or rejection before it could go into effect. As a result, the appropriations being unavailable until the election could be held, the State was compelled to stamp its warrants "not paid for want of funds," and to pay interest thereon, although the money was in the treasury. The university and other State institutions were hampered and embarrassed, and the whole machinery of government was in large measure paralyzed. In other words, under the Oregon law a pitiful minority of the people was able to obstruct and embarrass the usual and orderly processes of government, and for a time at least absolutely to thwart the will of an overwhelming majority of the people.

A system of government under which such a thing as that is not only possible, but has actually occurred, may be "the best system ever devised by the wit of man," as we have been vociferously assured, but some of us may take the liberty of doubting it. And, as evidence that the sentiment in regard to the system is not all one way even in the State which has adopted it, I wish to quote part of an editorial which recently appeared in the Portland (Ore.) *Oregonian*.

> The statement that no proposal here has ever assailed private or corporate property is absurd and untrue. Many measures have had no other motive or purpose. What is the single tax but an attack on private property? What of the gross earnings tax, enacted in 1906, and now in the United States Supreme Court? What of prohibition? What about the proposal for the State to get into the railroad business? And others that might be mentioned.

The theory of the proponents of direct legislation seems to be that only good laws will be initiated and only bad laws will be referred; that the initiative will be used only when a recalcitrant legislature has refused to respond to the demand of the people, and the referendum will be invoked only when a stupid or corrupt legislature has enacted a law which violates the rights or jeopardizes the interests of the people. But is not that theory pretty severely jolted by the facts? Since this system was adopted in Oregon the people have rejected nearly one-half of the measures submitted under the initiative, and they have approved exactly one-half of the laws submitted under the referendum. Now, these facts can be interpreted in only two ways: Either bad laws were submitted by initiative and good laws by the referendum, or the people deliberately voted against good laws and voted for bad laws. But to accept either of these alternatives brings us in square antagonism to another theory which is fundamental in the doctrine of direct legislation, and that is that the people can do no wrong.

The truth is, of course, that it is perfectly easy for a bad law to be initiated, and, if it is skillfully drawn so that its iniquity is not branded upon its very face, it is perfectly easy for the most honest people in the world to be deceived into voting for it. And it is perfectly easy for a good law to be referred and its operation thus suspended for two years with a large chance that with the right kind of a campaign it could be repealed altogether. A distinguished citizen of one of the States in which this system prevails has told me that if he needed a vicious law in his business he would rather submit it by the initiative than to try to put it through a legislature. And he added that if he were a "special interest" against which a legislature had passed some righteous measure he would rejoice in a system by which at the least he could be relieved of its operation for two years, with a big chance that at the end of that time he could defeat it entirely.

This sentiment is not an impeachment of the honesty, the intelligence, or the patriotism of the people. But it is an impeachment of a system of government under which laws are made by votes which from the very nature of the case are cast without information and without opportunity for that consideration which can only come from face to face discussion.

But the initiative and referendum, subversive as they are of the representative principle, do not compare in importance or in possible power for evil with the recall. The statutes of every State in this Union provide a way by which a recreant official

may be ousted from his office or otherwise punished. That way is by process of law, where charges must be specific, the testimony clear, and the judgment impartial. But what are we to think of a procedure under which an official is to be tried, not in a court by a jury of his peers and upon the testimony of witnesses sworn to tell the truth, but in the newspapers, on the street corners, and at political meetings? Can you conceive of a wider departure from the fundamental principles of justice that are written not only into the constitution of every civilized nation on the face of the earth, but upon the heart of every normal human being, the principle that every man accused of a crime has a right to confront his accusers, to examine them under oath, to rebut their evidence, and to have the judgment finally of men sworn to render a just and lawful verdict?

Small wonder that the argument oftenest heard in support of a proposition so abhorrent to the most primitive instincts of justice is that it will be seldom invoked and therefore cannot do very much harm. I leave you to characterize as it deserves a law whose chief merit must lie in the rarity of its enforcement.

But will it do no harm, even if seldom enforced? It is urged that its presence on the statute books and the knowledge that it can be invoked will frighten public officials into good behavior. Passing by the very obvious suggestion that an official who needs to be scared into proper conduct ought never to have been elected in the first place, we may well inquire whether the real effect would not be to frighten men into demagogy—and thus to work immeasurably greater harm to the common weal than would ever be inflicted through the transgressions of deliberately bad men.

We have demagogues enough now, heaven knows, when election to an office assures the tenure of it for two or four or six years. But if that tenure were only from hour to hour, if it were held at the whim of a powerful and unscrupulous newspaper, for example, or if it could be put in jeopardy by an affront which in the line of duty ought, we will say, to be given to some organization or faction or cabal, what could we expect? Is it not inevitable that such a system would drive out of our public life the men of real character and courage and leave us only cowards and trimmers and time servers? May we not well hesitate to introduce into our political system a device which, had it been in vogue in the past, would have made it possible for the Tories to have recalled Washington, the copperheads to have recalled Lincoln, and the jingoes to have

recalled McKinley? Above all, may we not well hesitate to introduce into our political system a device which would subject to recall a judge whose decision happened not to accord with the passion or the prejudice of the hour? Is it conceivable that any jurist of integrity and self-respect could be found who would accept a seat on the bench knowing that his tenure of office might be challenged at any hour, that his judgments were to be reviewed, not by a superior court, but by the newspapers and upon the political platform?

In all the literature of the age-long struggle for freedom and justice there is no phrase that occurs oftener than "the independence of the judiciary." The great fact which this phrase expresses is the foundation upon which rests the citadel of individual rights and of national liberty. In every battle that has ever been waged by the people against oppression and tyranny the one achievement which attested the final triumph was the establishment of a court that no despot could reach or control. The founders of the Republic realized more keenly than we do—for to them the tyranny of king-controlled courts was modern and not ancient history, as it is to us—the absolutely vital importance of the separation of king and courts, and so they safeguarded it, as they thought, for all time by declaring in the organic law of the land that the judiciary should be forever independent of the legislature and the executive. And all the world said that is well. Not one man could be found now among all our ninety millions to declare that our Constitution should be changed so as to permit the President in the White House or the Congress in the Capitol to dictate to our judges what their decisions should be. And yet it is seriously proposed that this power of dictation shall be given to the crowd on the street. That is what the recall means if applied to the judiciary: and it means the destruction of its independence as completely as if in set terms it were made subject to the President or the Congress.

It is the theory of the initiative that it will never be invoked except to pass a good law, and of the referendum that it will never be resorted to except to defeat a bad law; but we have already seen how easily a bad law might be initiated and a good law referred. And so it is the theory that the recall will be invoked only for the protection of the people from a bad judge. What guaranty can you give that it will not be called into being to harrass and intimidate a good judge? There never yet was a two-edged sword that would not cut both ways.

Mr. Chairman, I should be the last to assert that our present system of government has always brought ideally perfect results. Now and then the people have made mistakes in the selection of their representatives. Corrupt men have been put into places of trust, small men have been sent where large men were needed, ignorant men have been charged with duties which only men of learning could fitly perform. But does it follow that, because the people make mistakes in so simple a matter as the selection of their agents, they would be infallible in the incomparably more complex and difficult task of the enactment and interpretation of laws? There was never a more glaring *non sequitur*, and yet it is the very cornerstone upon which rests the whole structure of the new philosophy. "The people cannot be trusted with few things," runs this singular logic, "therefore let us put all things into their hands."

With one breath we are asked to renounce the old system because the people make mistakes, and with the next breath we are solemnly assured that, if we adopt the new system, the people will not make mistakes. You cannot change the nature of men, Mr. Chairman, by changing their system of government. The limitations of human judgment and knowledge and conscience which render perfection in representative government unattainable will still abide even after that form of government is swept away, and the ideal will still be far distant.

Let it not be said or imagined, Mr. Speaker, that, because I protest against converting this Republic into a democracy, therefore I lack confidence in the people. No man has greater faith, sir, than I have in the intelligence, the integrity, the patriotism, and the fundamental common sense of the average American citizen. But I am for representative rather than for direct government, because I have greater confidence in the second thought of the people than I have in their first thought. And that, in the last analysis, is the difference, and the only difference, so far as results are concerned, between the new system and that which it seeks to supplant.

At not one step in the long and shining pathway of the nation's progress has representative government failed to respond to the nation's need. Every emergency that 130 years of momentous history has developed—the terrible strain of war, the harassing problems of peace—representative government has been equal to them all. Not once has it broken down. Not one issue has it failed to solve. And, long after the shallow substitutes that are now proposed for it shall have been for-

gotten, representative government "will be doing business at the old stand," will be solving the problems of the future as it met the issues of the past, with courage and wisdom and justice, giving to the great Republic that government "of the people, for the people, and by the people" which is the assurance that it "shall not perish from the earth." [Prolonged applause.]

CHAPTER XIV

The Recall of Judges

[repeal of the judiciary act of 1801]

Debate in the Senate on the Bill to Repeal the Judiciary Law of 1801: In Favor of Repeal, John Breckinridge [Ky.], James Jackson [Ga.], Stevens T. Mason [Va.], David Stone [N. C.]; Opposed, Jonathan Mason [Mass.], Gouverneur Morris [N. Y.], Uriah Tracy [Ct.]—Debate in the House on the Repeal of the Judiciary Bill: Partisan Speeches by Thomas T. Davis [Ky.], Philip R. Thompson [Va.], William B. Giles [Va.], John Randolph [Va.], Republicans, and Archibald Henderson [N. C.], Thomas Morris [N. Y.], Joseph Hemphill [Pa.], John Stanley [N. C.], James A. Bayard, Sr. [Del.], Federalists—Impeachment of Justice Samuel Chase—Constitutional Amendment Proposed by John Randolph (1805) for the Removal of Federal Judges.

ONE of the first subjects to claim the attention of the first Congress was the organization of the Federal judiciary. This was felt to be the weakest of the three departments of government, and every effort was made to give it power within the limitations of the Constitution, and to impart to it impressive dignity.

The first judiciary act became law on September 24, 1789. It provided for a Supreme Court consisting of a chief justice and five associate justices, and holding two sessions a year beginning, respectively, in February and August; for Circuit Courts holding two sessions annually within their several districts, one of the Supreme Court justices and the district judge presiding; for a marshal and an attorney for each district; for an Attorney-General of the United States; for forms of writs, etc.

Since then the number of Supreme Court justices has increased to nine, and a distinct class of circuit judges

has been created, while, of course, the number of districts has vastly increased with the growth of the country.

The Midnight Judges

The first organization of a distinct class of Circuit Courts took place in the closing days of John Adams's Administration, when the Federalists planned to create, for certain of the faithful of their party, positions from which they could not be removed by the incoming party. In this plan President Adams, who had taken no part in the scheme to elect Burr in order to provide places for Federalists [see page 400 ss.], now came to the aid of his party, probably being incited to the act by an impulse of anger at the election of Jefferson.

On February 18, 1801, the day following the decisive ballot for Jefferson in the House, Adams signed an act of Congress creating twenty-three new judgeships. That this act was intended to make places for supporters of the Administration is clearly shown by the fact that at the time there was insufficient business to occupy the attention of the existing Federal judiciary. Adams, however, postponed rather contemptuously the appointment of the new judges until the evening of the last day of his Administration, when he spent the time until midnight affixing his signature to the necessary papers, whence the appointees received the name of the "midnight judges." A few of them, whose papers he hastily gathered into his pocket as the representative of the new President, fearing Adams's action, was taking possession of the executive office on the stroke of twelve, were dubbed throughout their short judicial careers "Adams's pocket judges."

The new Congress, being overwhelmingly Democratic, was desirous of annulling these acts of the Federalists, but were somewhat at a loss how most safely to proceed, since the Constitution provides that the terms of all Federal judges shall be for life, or during good behavior. They finally decided that if they could not remove the man from the office they could accomplish the same result by removing the office from the man.

Accordingly, on January 8, 1802, John Breckinridge [Ky.], the Administration leader in the Senate, introduced in that body a resolution to repeal the Judiciary act of February 18, 1801. The measure met with great opposition from the Federalists, who retained much of their former power in the Upper House.

At this session the proceedings of the Senate began to be reported, and so we are able for the first time in the history of that body extensively to reproduce one of its debates.

Other supporters of the repeal than Breckinridge were James Jackson, of Georgia, Stevens T. Mason, of Virginia, and David Stone, of North Carolina. Leading opponents of the repeal were Jonathan Mason, of Massachusetts, Gouverneur Morris, of New York, and Uriah Tracy, of Connecticut.

Repeal of the Judiciary Act

Senate, January 8-February 3, 1802

Senator Breckinridge.—Because the Constitution declares that a judge shall hold his office during good behavior, can it be tortured to mean that he shall hold his office after it is abolished? Can it mean that his tenure should be limited by behaving well in an office which did not exist? Can it mean that an office may exist although its duties are extinct? Can it mean, in short, that the shadow, to wit, the judge, can remain when the substance, to wit, the office, is removed? It must have intended all these absurdities, or it must admit a construction which will avoid them.

The construction obviously is that a judge should hold an existing office so long as he did his duty in that office; and not that he should hold an office that did not exist, and perform duties not provided by law.

Senator J. Mason.—The judges hold their appointments for life, unless they misbehave themselves. Why? For this reason: They are not the depositaries of the high prerogatives of government, such as are the President, the Senators, and the Representatives. They neither appoint to office, nor hold the purse-strings of the country, nor legislate for it. They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be disposed to pervert their power to improper purposes. What are their duties? To expound and apply the laws. To do this with fidelity and skill requires a length of time. The requisite knowledge is not to be procured in a day. These are the plain and strong reasons which must strike every mind for the different tenure by which the judges hold their offices, and they are such as will eternally endure wherever liberty exists.

On examination it will be found that the people, in forming their Constitution, meant to make the judges as independent of the legislature as of the Executive. Because the duties which they have to perform call upon them to expound not only the laws but the Constitution also; in which is involved the power of checking the legislature in case it should pass any laws in violation of the Constitution. For this reason it was more important that the judges in this country should be placed beyond the control of the legislature than in other countries where no such power attaches to them.

Senator Morris.—What will be the effect of the desired repeal? Will it not be a declaration to the remaining judges that they hold their offices subject to your will and pleasure? And what will be the result of this? It will be that the check established by the Constitution, wished for by the people, and necessary in every contemplation of common sense is destroyed. It had been said, and truly, too, that governments are made to provide against the follies and vices of men. For to suppose that governments rest upon reason is a pitiful solecism. If mankind were reasonable, they would want no government. Hence checks are required in the distribution of the power among those who are to exercise it for the benefit of the people. Did the people of America vest all power in the legislature? No; they had vested in the judges a check intended to be efficient—a check of the first necessity, to prevent an invasion of the Constitution by unconstitutional laws—a check which might prevent any faction from intimidating or annihilating the tribunals themselves.

Senator Jackson.—We have been asked if we are afraid of having an army of judges? For myself, I am more afraid of an army of judges, under the patronage of the President, than of an army of soldiers. The former can do us more harm. They may deprive us of our liberties, if attached to the Executive, from their decisions; and from the tenure of office contended for we cannot remove them; while the soldier, however he may act, is enlisted, or, if not enlisted, only subsisted for

two years; while the judge is enlisted for life, for his salary cannot be taken from him. Sir, it is said these evils will not happen. But what security have we for the truth of the declaration? Have we not seen sedition laws? Have we not heard judges crying out through the land sedition, and asking those whose duty it was to inquire, Is there no sedition here? It is true, the sedition law had expired with the last Administration, and he trusted it would not exist, or, at least, be acted on, under the virtuous Jefferson. But hereafter, if it should exist, your judges, under the cry of sedition and political heresy, may place half your citizens in irons. I thank God that no such law now exists or is likely to exist. I thank God that we are not now under the influence of an intolerant clergy, as is evident from their abuse of the President; and that we are not under dread of the patronage of judges is manifest from their attack on the Secretary of State [James Madison]. And I trust that we shall long keep this patronage off by not sanctioning the religious persecution of the clergy on the one hand nor the political violence of the judges on the other.

But, upon the principles of gentlemen, the law which creates a judge cannot be touched. The moment it is passed it exists to the end of time. What is the implication of this doctrine? To alter or amend what may greatly require alteration or amendment it is necessary to return to the creator, and to inquire what this creator is. My principle is that the creator is the people themselves; that very people of the United States whom the gentleman from New York had declared ourselves to be the guardians of, to save the people themselves from their greatest enemies; and to save whom from destroying themselves he had invoked this House. Good God! is it possible that I have heard such a sentiment in this body? Rather should I have expected to have heard it sounded from the despots of Turkey, or the deserts of Siberia, than to have heard it uttered by an enlightened legislator of a free country, and on this floor.

I am clearly, therefore, of opinion that, if the power to alter the judiciary system vests not here, it vests nowhere. It follows, from the ideas of gentlemen, that we must submit to all the evils of the present system though it should exhibit all the horrors of the Inquisition.

It has been remarked by a celebrated writer on the English Constitution that one of the greatest political evils that could befall a people was the existence of large judiciary bodies. To illustrate his ideas he had instanced the Parliaments of

France. If the spirit which last session gave existence to sixteen new judges continued, who could say by what number they would be limited? They might indeed soon become, what they had been likened to, an army of judges.

I do not wish to be severe in my remarks on the conduct of the late Administration. I admire the private character of Mr. Adams. But I do believe the succession of his political acts tended ultimately to accumulate in and attach all powers to a particular person or favorite family.

If I wished to bestow on Mr. Jefferson this mass of patronage which I contend this horde of officers bestows, I should be in favor of the bill that is now moved to repeal; but, as a political person, I am no more for Thomas Jefferson than for John Adams. When he acts, according to my opinion, right I will support him; when wrong, oppose him; and I trust a majority on this floor will act in the same way.

SENATOR TRACY.—Will it be said that, although you cannot remove the judge from office, yet you can remove his office from him? Is murder prohibited, and may you shut a man up, and deprive him of sustenance till he dies, and this not be denominated murder? The danger in our Government is, and always will be, that the legislative body will become restive and, perhaps, unintentionally break down the barriers of our Constitution. It is incidental to man, and a part of our imperfections, to believe that power may be safely lodged in our hands. We have the health of the nation at command, and are invested with almost irresistible strength; the judiciary has neither force nor wealth to protect itself. That we can, with propriety, modify our judiciary system so that we always leave the judges independent is a correct and reasonable position; but, if we can, by repealing a law, remove them, they are in the worst state of dependence.

SENATOR S. T. MASON.—If the arguments now urged be correct, that a court once established cannot be vacated, we are led into the greatest absurdities. For instance: Congress have assumed jurisdiction over the Mississippi Territory, and have established a court composed of three judges, which court is as much an inferior court as the circuit or district courts. Of this jurisdiction Georgia denies the validity. The contest is in a train of settlement. Suppose it shall turn out that the United States are convinced of the injustice of their claim, relinquish it, and restore the Territory to Georgia, what becomes of the judges? Their offices, their duties, are gone! Yet they will tell you: We are vested with certain constitutional rights

of which you cannot deprive us. It is true the territory is no longer yours. You have no jurisdiction, we have no power; yet we are judges by the Constitution. We hold our offices during good behavior, and we will behave well as long as you will let us. Is not this a strange situation? You have judges in a territory over which you have no jurisdiction; and you have offices which are perfect sinecures, and officers who are pensioners for life. Such an absurdity I am sure the Constitution never meant to justify. It is an absurdity equally repugnant to the letter and genius of the Constitution.

I fear that, if you take away from these judges that which they ought officially to do, they will be induced, from the want of employment, to do that which they ought not to do. They may be induced, perhaps, to set about that work gentlemen seem so fond of. They may, as gentlemen have told us, hold the Constitution in one hand and the law in the other, and say to the departments of Government, So far shall you go and no farther. This independence of the judiciary, so much desired, will, I fear, sir, if encouraged or tolerated, soon become something like supremacy. They will, indeed, form the main pillar of this goodly fabric; they will soon become the only remaining pillar, and they will presently become so strong as to crush and absorb all the others into their solid mass.

Senator Mason then went into the history of the passage of the Judiciary act which it was proposed to repeal.

I will say that not an argument was urged in favor of the bill, not a word to show the necessity or propriety of the change. Yet we are told that there was great dignity, great solemnity in its progress and passage!

But there is something undignified in thus hastily repealing this law, in thus yielding ourselves to the fluctuations of public opinion! So we are told! But, if there be blame, on whom does it fall? Not on us, who respected the public opinion when this law was passed, and who still respect it; but on those who, in defiance of public opinion, passed this law after that public opinion had been decisively expressed. The revolution in public opinion had taken place before the introduction of this project; the people of the United States had determined to commit their affairs to new agents; already had the confidence of the people been transferred from their then rulers into other hands. After this exposition of the national will, and

this new deposit of the national confidence, the gentlemen should have left untouched this important and delicate subject—a subject on which the people could not be reconciled to their views, even in the flood tide of their power and influence; they should have forborne till agents better acquainted with the national will, because more recently constituted its organs, had come into the Government. This would have been more dignified than to seize the critical moment, when power was passing from them, to pass such a law as this. If there is error it is our duty to correct it; and the truth was no law was ever more execrated by the public.

SENATOR STONE.—I take it to be a thing undeniable that there resides somewhere in the Government a power to declare what shall amount to misbehavior in office by the judges, and to remove them from office for the same, without impeachment. The Constitution does not prohibit their removal by the legislature, who have the power to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States. But, says the gentleman from New York [Mr. Morris], the judges are officers instituted by the Constitution, to save the people from their greatest enemies, themselves; and, therefore, they should be entirely independent of and beyond the control of the legislature. If such was the design of the wise men who framed and adopted the Constitution, can it be presumed they would have provided so ineffectual a barrier as these judges can readily be shown to be? It is allowed, on all hands, the legislature may modify the courts: they may add judges, they may fix the times at which the courts shall sit, etc. An understanding between the President and the Senate would make it practicable to fill the new offices with men of different views and opinions from those now in office. And what, in either case, would become of this boasted protection of the people against themselves?

What danger is there to the people from the legislature which the courts can control? The means of oppression nearest at hand to the legislature, and which afford the strongest temptation to their use, are the raising extravagant and unnecessary sums of money and the imbodying large and useless armies. Can the courts oppose effectual checks to these powers? I presume not. The Constitution permits their exercise to any extent within the discretion of the legislature.

The objects of courts of law, as I understand them, are to settle questions of right between suitors; to enforce obedience

to the laws, and to protect the citizens against the oppressive use of power in the executive offices. Not to protect them against the legislature, for that I think I have shown to be impossible, with the powers which the legislature may safely use and exercise; and because the people have retained, in their own hands, the power of controlling and directing the legislature by their immediate and mediate elections of President, Senate, and House of Representatives.

It is not alone the sixteen rank and file which the gentleman from New York has so ludicrously depicted that I apprehend immediate danger from, but it is the principle which converts the office of judge into an hospital of incurables, and declares that an expiring faction, after having lost the public confidence, may add to those sixteen until they become sixteen hundred or sixteen thousand; and that the restored good sense of the legislature, the whole Government and Constitution, retains no means of casting them off but by destroying itself and resorting to revolutionary principles. The legislature may repeal unnecessary taxes, may disband useless and expensive armies, may declare they will no longer be bound by the stipulations of an oppressive treaty; and, if war should follow, the Constitution is still safe. But, if the construction which gentlemen contend for be correct, a band of drones, to any amount in number, under the denomination of judges, may prey upon the substance of the people, and the Government retains not the power to remove them but by destroying the Constitution itself.

Senator Morris.—The framers of the Constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered that since that day many of the States, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. The convention contemplated the very act you now attempt. They knew also the jealousy and the power of the States; and they established for your and for their protection this most important department. I beg gentlemen to hear and remember what I say: it is this department alone, and it is the independence of this department, which can save you from civil war. Yes, sir, adopt the language of gentlemen, say with them, by the act to which you are urged, "If we cannot remove the judges we can destroy them." Establish thus the dependence of the Judiciary Department, who will resort to them for protection against you? Who will confide in, who will be bound by their decrees? Are

we then to resort to the ultimate reason of kings? Are our arguments to fly from the mouths of our cannon?

If we undertake to construe this Constitution to our purposes, and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wish to destroy the First Magistrate, you can destroy him; and, should he to-morrow be able to conciliate to him the popular will, and lead them to wish for your destruction, it is easily effected. Adopt this principle and the whim of the moment will not only be the law but the Constitution of our country.

Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride or aroused your resentment? Have, I conjure you, the magnanimity to pardon that offence? I entreat, I implore you to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin. Indeed, indeed, it will be but of little, very little, avail whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will which has brought us frail beings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained. I stand in the presence of Almighty God and of the world: and I declare to you that, if you lose this charter, never, no, never, will you get another! We are now, perhaps, arrived at the parting point. Here, even here, we stand on the brink of fate. Pause—pause! For Heaven's sake, pause!

The motion to repeal the Judiciary act passed in the Senate by a vote of 16 to 15.

When the bill came to the House it precipitated a

debate which was the most acrimonious that had ever been known in that body. The subject occupied the entire attention of the House from February 16 to March 3, when the act was passed by a strict party vote of 59 to 32. The main arguments relative to the measure had already been presented in the Senate, and it was a foregone conclusion that it would pass; therefore the speakers seized the opportunity to address the country in a series of stump speeches in which they discussed every political issue that had arisen since the inauguration of Washington, extolling the virtues of their own party and denouncing their opponents as the arch enemies of liberty and social order. About thirty Representatives made speeches, most of these long and rambling ones. There is space here to reproduce only a few passages of the most typical speeches. The Democratic speakers selected are Thomas T. Davis, of Kentucky, William B. Giles, of Virginia, and John Randolph and Philip R. Thompson, of Virginia. The Federalist speakers selected are James A. Bayard, Sr., of Delaware, Thomas Morris, of New York, Joseph Hemphill, of Pennsylvania, and Archibald Henderson and John Stanley, of North Carolina.

Repeal of the Judiciary Act

House of Representatives, February 16-March 3, 1802

Mr. Henderson.—The construction which gentlemen on the other side of the House contend for tends to the concentration of legislative and executive powers in the same hands. If Congress, who have the power of making laws, can also displace their judges by repealing that which creates the offices they fill, the irresistible consequence is that whatever law is passed the judges must carry into execution or they will be turned out of office. Whatever the legislature declares to be law must be obeyed. The constitutional check which the judges were to be on the legislature is completely done away. They may pass *ex post facto* laws, bills of attainder, suspend the writ of *habeas corpus* in time of peace, and the judge who dares to question their authority is to be hurled from his seat. All the ramparts which the Constitution has erected around the liberties of the people are prostrated at one blow by the passage of this

law. The monstrous and unheard of doctrine which has been lately advanced that the judges have not the right of declaring unconstitutional laws void will be put into practice by the adoption of this measure. New offences may be created by law. Associations and combinations may be declared treason, and the affrighted and appalled citizen may in vain seek refuge in the independence of your courts. In vain may he hold out the Constitution and deny the authority of Congress to pass a law of such undefined signification, and call upon the judges to protect him; he will be told that the opinion of Congress now is that we have no right to judge of their authority; this will be the consequence of concentrating judicial and legislative power in the same hands. It is the very definition of tyranny, and wherever you find it the people are slaves, whether they call their government a monarchy, republic, or democracy.

Mr. Chairman, I see, or think I see, in this attempt that spirit of innovation which has prostrated before it a great part of the old world—every institution which the wisdom and experience of ages had reared up for the benefit of man. A spirit which has rode in the whirlwind and directed the storm to the destruction of the fairest portion of Europe; which has swept before it every vestige of law, religion, morality, and rational government; which has brought twenty millions of people at the feet of one, and compelled them to seek refuge from their complicated miseries in the calm of despotism. It is against the influence of this tremendous spirit that I wish to raise my voice, and exert my powers, weak and feeble as they are. I fear, sir, on the seventh of December it made its appearance within these walls, clothed in a gigantic body, impatient for action. I fear it has already begun to exert its all-devouring energy. Have you a judiciary system extending over this immense country, matured by the wisdom of your ablest and best men? It must be destroyed. Have you taxes which have been laid since the commencement of the Government? Are they paid exclusively by the wealthy and the luxurious part of the community? And are they pledged for the payment of the public debt? They must be abolished. Have you laws which require foreigners coming to your country to go through a probationary state, by which their habits, their morals and propensities may be known, before they are admitted to all the rights of native Americans? They must be repealed, and our shores crowded with the outcasts of society, lest oppressed humanity then should find no asylum on this globe!

Mr. Thompson.—How long, Mr. Chairman, are we to be

imposed on by sound, how long are we to be entangled with the cobwebs of sophistry? The gentleman from North Carolina [Mr. Henderson] has warned us, solemnly warned us, against a violation of the Constitution. Why were not these sensations which he now experiences with such exquisite sensibility awakened a year ago, when he might perhaps have prevented an actual violation of the Constitution? I ask the honorable gentleman, sir, when with a sacrilegious hand this vital wound was inflicted on the Constitution if he raised the plaintive cry of, Spare, oh! spare the Constitution of my country? Yesterday, sir, the gentleman informed us, if the bill on your table should pass, he would heave no sigh, he would drop no tear over the expiring Constitution. When that law passed did he heave no sigh, did he drop no tear? Oh, no, sir, very different was the course which was then pursued. With cool, with cruel deliberation the devoted victim was immolated, and the blood which issued from the gaping wound will forever stain the pages of your statute book. The common law extends to all persons and all things. If the judges have the right of adopting this law, or such parts as they may deem applicable, they can annul your laws. If these powers are really contended for on the part of the judiciary, and if these powers should ever be conceded, they would without doubt possess an unlimited and uncontrollable power of legislation. I am free for my own part to declare that I had rather live under the government of a lenient despot than such a government of judges. And, if those powers are really contended for, I feel no hesitation in informing you, Mr. Chairman, that this is the tree where despotism lies concealed. And this, too, is the auspicious moment when those branches shall be pruned away which of late have vegetated with extraordinary luxuriancy. But, sir, nurture it with your treasure, stop not its ramifications, and suffer me seriously to inquire, What will be the consequence? It will overshadow your extensive Republic; your soil will become too sterile for the plant of liberty; your atmosphere will be contaminated with its poisonous effluvia, and your soaring eagle will fall dead at its root.

Mr. Hemphill.—The independence of the judges was a great point gained by the people of England. While the tenure of office depended on the nod of the Crown, they supported the arbitrary measures of the king; in one instance they decided that the king had a right to levy ship-money, without the consent of Parliament or people; and many an instance might be brought to the recollection of this honorable commit-

tee where they determined through fear and not from judgment. It is said they are not independent of Parliament. Why, sir, nothing is independent of Parliament; and there is not the same necessity there. There being no written constitution in England, the judiciary forms no check upon Parliament; and, besides, our Government is not a copy of the British Government; and this is not the only solitary instance where we have outstripped, as it is called, our too favorite prototype. There is not a leading feature in the Constitution that bears testimony of any servile imitation; it is our opponents who wish to test our Constitution by the principles of the British Government; it is they who wish that a construction be put upon the Constitution by Congress which shall be considered as the Constitution itself; and are unwilling that there should be any check to oppose it; and, of course, every construction put on it by the different legislatures will exhibit the appearance of a new Constitution, a Constitution to be tossed and blown about by every political breeze. The powers of Congress will be equal to the powers of the English Parliament, transcendant, splendid, and without control. I little expected that such lordly power would be grasped at by our plain Republicans, who have no ambitious desires and who wish rulers to be contented with humble prerogatives.

Mr. Davis.—I found my opinion of the expediency of repealing the judiciary law, the power the judges declare they have, in the language of Judge Patterson, to "declare a law null and void." Never can I subscribe to that opinion. Never can I believe the judiciary paramount to both branches of the legislature. If it is, I have yet to learn it. There is an end to legislation. A knave or a fool can make void your best and most wholesome laws. In the present state of things, how will it affect us? The minority possessing one department of government completely frustrates the views of the other two, and governs the nation against the will of the people and the legislative and executive power. I am willing to admit the judiciary to be coördinate with the legislature in this respect, to wit, that judges thinking a law unconstitutional are not bound to execute it; but not to *declare* it null and void. That power rests alone with the legislature. But we are told this judiciary is necessary to check this House and the Senate, and to protect the people against their worst enemies. This is saying to the people, You are incapable of governing yourselves, your representatives are incapable of doing it; in the judiciary alone you find a safe deposit for your liberties; and saying

also that the judiciary is the vitals of the nation, wherein all power, all safety dwells; that the legislature is subordinate thereto and a mere nominal thing, a shadow without substance, its acts perfectly within the control of the judiciary. I tremble at such ideas. The sooner we put men out of power whom we find determined to act in this manner, the better; by doing so we preserve the power of the legislature and save our nation from the ravages of an uncontrolled judiciary.

Mr. Morris.—Gentlemen speak of the present as a very favorable moment for us to determine this great constitutional question. Sir, I believe that this is, of all moments, the most unfortunate for such a determination. I believe so because such have been the fatal effects of executive persecution that it has wrought up party spirit to its highest pitch of irritation. [Here there was a cry of order from different parts of the House.]

I did not mean to say anything that was disorderly, but, having occasion to allude to the present state of irritation of the public mind, I cannot help attributing it to what I believe to be the true cause of it. Sir, I am incapable of attributing to a majority of this House a settled determination of violating the Constitution of their country; but I do believe that, if they act from the impulse of the present moment, that valuable instrument will be sacrificed at the altar of resentment. And how can this belief be resisted when you hear so respectable a gentleman as the honorable member from Kentucky so far get the better of his usual discretion as to permit himself to say that he would vote for the bill because in no other way can judges be driven from their posts?

Mr. Stanley.—Popular assemblies are as much under the dominance of passion as individuals; they feel as sensibly and resent as malignantly. He who has not made this observation is a stranger to what has passed in all popular governments; and, I am sorry to add, a stranger to what has so lately passed in this country. By the exercise of this power, firm, upright judges, men of unbending virtue, are to be removed upon every change of administration, to make way for more pliant minions, the humble instruments of the legislature. The bulwark of our liberties against legislative encroachment, the independence and purity of our judiciary, is tumbled into ruins, and the rights of millions are crushed by its fall. The sacred altar of justice is polluted, the sword of justice becomes the rod of oppression. On the other hand, what danger is to be apprehended from that independence of the judges for which the friends of the Constitution contend? Not that bad and corrupt

men will be fastened on us. No, the Constitution provides for their removal by impeachment. Not that they will viciously oppose the constitutional acts of the legislature. No, the legislature is a check upon them by the mode of impeachment, in which the House is the accuser and the Senate the judge. If the judge be corrupt, if he misdemean himself, he may be removed. If he continue pure and upright, he ought not to be removed; no earthly power but the mighty hand of the people, which formed the Constitution and can destroy it, can legally remove him. Should this measure be adopted and the independence of our judiciary be destroyed; should the administration of our Government unfortunately pass into the hands of men who feel power and forget right, our Constitution becomes indeed "a Lilliputian tie"; and this measure will be the first link in that chain of measures which will add the name of America to the melancholy catalog of fallen republics.

Mr. Giles said: A great portion of the human mind has been at all times directed toward monarchy as the best form of government to enforce obedience and ensure the general happiness; whereas another portion of the human mind has given a preference to the republican form as best calculated to produce the same end; and there is no reason for applying improper motives to individuals who should give a preference to either of the principles, provided in doing so they follow the honest dictates of their own judgments. It must be obvious to the most common observer that, from the commencement of the Government of the United States, and perhaps before it, a difference of opinion existed among the citizens, having more or less reference to these two extreme fundamental points, and that it manifested itself in the modification or administration of the Government as soon as it was put in operation. On one side it was contended that in the organization of the Constitution a due apportionment of authority had not been made among the several departments; that the legislature was too powerful for the executive department; and to create and preserve a proper equipoise it was necessary to infuse into the executive department, by legislation, all artificial powers compatible with the Constitution upon which the most diffusive construction was given; or, in other words, to place in Executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his constitutional responsibility to the people. On the other side it was contended that the doctrine of patronage was repugnant to the opinions and feelings of the people; that it was

unnecessary, expensive, and oppressive, and that the highest energy the Government could possess would flow from the confidence of the mass of the people, founded upon their own sense of their common interests. Hence what is called party in the United States grew up from a division of opinion respecting these two great characteristic principles. Patronage, or the creation of partial interest for the protection and support of Government, on the one side: on the other side, to effect the same end, a fair responsibility of all representatives to the people; an adherence to the general interests and a reliance on the confidence of the people at large, resulting from a sense of their common interests.

Here the speaker entered into a history of the Federalist Administration of John Adams, showing the growth of the system of executive patronage.

The general disquietude which manifested itself in consequence of these enterprising measures in the year 1800 induced the Federal party to apprehend that they had pushed their principles too far, and they began to entertain doubts of the result of the presidential election which was approaching. In this state of things it was natural for them to look out for some department of the Government in which they could entrench themselves in the event of an unsuccessful issue in the election, and continue to support those favorite principles of irresponsibility which they could never consent to abandon.

The judiciary department, of course, presented itself as best fitted for their object, not only because it was already filled with men who had manifested the most indecorous zeal in favor of their principles, but because they held their offices by indefinite tenures, and of course were further removed from any responsibility to the people than either of the other departments. Accordingly, on the 11th of March, 1800, a bill for the more convenient organization of the courts of the United States was presented to the House of Representatives. This bill appears to have had for its objects, first, the gradual demolition of the State courts, by increasing the number and extending the jurisdiction of the Federal courts; second, to afford additional protection to the principles of the then existing Administration by creating a new corps of judges of concurring political opinions. This bill, however, was not passed into a law during that session of Congress, perhaps from an apprehension that it would tend to increase the disquietudes

which other measures had before excited, and therefore operate unfavorably to the approaching presidential election. At the next session, after the result of the late election was ascertained, the bill, after having undergone some considerable alterations, was passed into the law now under discussion. This law, it is now said, is inviolable and irrepealable. It is said the independence of the judge will be thereby immolated. Yes, sir, this law is now considered as the sanctuary of the principles of the last Administration, and the tenures of the judges as the horns of inviolability within that sanctuary. Gentlemen, discarding all generalizing expressions and the spirit of the instrument, tie down all construction to the strict letter of the Constitution.

Mr. Giles said it gave him great pleasure to meet gentlemen on this ground; and the more so because he had long been in the habit of hearing very different language from the same gentlemen. He had long been in the habit of hearing the same gentlemen speak of the expressions of "the common defence and the general welfare" as the only valuable part of the Constitution; that they were sufficient to obliterate all specifications and limitations of power. That the Constitution was a mere nose of wax, yielding to every impression it received—that every "opening wedge" which was driven into it was highly beneficial in severing asunder the limitations and restrictions of power—that the republicanism it secured meant anything or nothing. It gave him, therefore, great pleasure at this time to obey the injunctions of gentlemen in rallying round the Constitution as the ark of our political safety, and in interpreting it by the plain and obvious meaning and letter of the specified powers. But, he said, as if it was always the unfortunate destiny of these gentlemen to be upon extremes, they have now got round to the opposite extreme point of the political compass, and even beyond it. For, he said, they not only tie down all construction to the letter of the instrument, but they tell us that they see, and call upon us also to see, written therein, in large capital characters, "the independence of judges"; which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, nor in any other political establishment, he believed, under the sun.

Mr. Giles said he rejoiced that this subject was now to be discussed; he thought the crisis peculiarly auspicious for the discussion. He said the European world, with which the United States have the most relations, is now tranquilized.

The tremendous scenes of blood and revolution which had agitated that portion of the globe had at length subsided into profound peace; and had left mankind in silent amazement to retrospect the wonderful events which were passed; and he hoped, with calm deliberation, to improve the lessons they had furnished for the benefit of mankind in time to come. The interests and sympathies which the people of the United States felt in these events no longer turn their attention from their internal concerns; arguments of the highest consideration for the safety of the Constitution and the liberty of the citizens no longer receive the short reply, French partisans! Jacobins! Disorganizers! And, although the gentleman from North Carolina sees, or thinks he sees, the destructive spirit mount in the whirlwind and direct the storm, let him be consoled by the information "that all these, our actors, are mere spirits, and are dissolved into thin air." Yes, sir, these magical delusions are now vanished, and have left the American people and their Congress, in their real persons and original American characters, engaged in the transaction of American concerns.

Mr. Giles discussed at length the construction of the Constitution as to the judiciary, closing as follows:

Can so much inattention and folly be attributed to the framers of the Constitution as would result from the supposition that, if it was their intention that a law growing out of one of the specified powers, in contradistinction to all others, should be irrepealable when once passed, so extraordinary a principle would be left to mere implication? Such a supposition would be the highest injustice to the superior intelligence and patriotism of those gentlemen manifested in every other part of the instrument. No, sir, they would have made notes of admiration: they would have used every mark, adopted every caution, to have arrested and fixed the attention of the legislature to so extraordinary a principle.

They would have said, Legislators, be circumspect! Be cautious! Be calm! Be deliberate! Be wise! Be wise not only for the present, but be wise for posterity! You are now about to tread upon holy ground. The law you are now about to pass is irrepealable! Irrevocable! We are so enamored with the salutary and practical independence of the English judiciary system that, in infusing its principle into our Constitution, we have stamped it with the proverbial folly of the Medes and Persians! If this principle had been introduced into

the Constitution in express words it would have formed an unfortunate contrast to all other parts of the instrument; yet gentlemen make no difficulty in introducing that principle by construction which would have appeared so stupid and absurd if written in express words in the body of the instrument. But there is no such language in the Constitution. Let us see what is the language of that instrument. "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." Here, then, instead of cautioning the legislature that a law for the organization of courts, when passed, can never be repealed, it contains an invitation to a revision from time to time. It contains an intimation that the subject is new and difficult, and an injunction to ordain and establish your courts from time to time, according to the results which an experience of the system alone could suggest.

MR. BAYARD.—Mr. Chairman, I must be allowed to express my surprise at the course pursued by the honorable gentleman from Virginia [Mr. Giles]. I had expected that he would have adopted a different line of conduct. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House as from the professions of a desire to conciliate which he has so repeatedly made during the session. We confided in the gentleman's sincerity, and cherished the hope that, if the divisions of party were not banished from the House, its spirit would be less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the House and inflame the passions of the nation. I am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has therefore determined to make the measure a party question. He has probably secured success, but would it not have been more honorable and more commendable to have left the decision of a great constitutional question to the understanding and not to the prejudices of the House? It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far, from the points of the debate, and has extended his ani-

madversions to all the prominent measures of the former Administrations. In following him through his preliminary observations I necessarily lose sight of the bill upon your table.

Whatever impression it might be the intention of the gentleman to make, he does not believe that there exists in the country an anti-Republican party. Insinuations of this sort belong not to the legislature of the Union. Their place is an election ground or an alehouse. Within these walls they are lost; abroad, they have an effect, and I fear are still capable of abusing the popular credulity.

We were next told of the parties which have existed, divided by the opposite views of promoting executive power and guarding the rights of the people. The gentleman did not tell us in plain language, but he wishes it to be understood that he and his friends were the guardians of the people's rights, and that we were the advocates of executive power.

I know that this is the distinction of party which some gentlemen have been anxious to establish; but this is not the ground on which we divide. I am satisfied with the constitutional powers of the Executive, and never wished nor attempted to increase them; and I do not believe that gentlemen on the other side of the House ever had a serious apprehension of danger from an increase of executive authority. No, sir, our views as to the powers which do and ought to belong to the general and State governments are the true sources of our divisions. I coöperate with the party to which I am attached because I believe their true object and end is an honest and efficient support of the general Government in the exercise of the legitimate powers of the Constitution.

I pray to God I may be mistaken in the opinion I entertain as to the designs of gentlemen to whom I am opposed. Those designs I believe hostile to the powers of this Government. State pride extinguishes a national sentiment. Whatever is taken from this Government is given to the States.

The ruins of this Government aggrandize the States. There are States which are too proud to be controlled; whose sense of greatness and resource renders them indifferent to our protection, and induces a belief that, if no general Government existed, their influence would be more extensive and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression to which the Government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember that human affairs are not to be arrested in their course at artificial points. The im-

pulse now given may be accelerated by causes at present out of view. And when those who now design well wish to stop they may find their powers unable to resist the torrent. It is not true that we ever wished to give a dangerous strength to executive power. While the Government was in our hands it was our duty to maintain its constitutional balance by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The struggle was to maintain the constitutional powers of the Executive. The wild principles of French liberty were scattered through the country. We had our Jacobins and disorganizers. They saw no difference between a king and a president, and, as the people of France had put down their king, they thought the people of America ought to put down their President. They who considered the Constitution as securing all the principles of rational and practicable liberty, who were unwilling to embark upon the tempestuous sea of revolution, in pursuit of visionary schemes, were denounced as monarchists. A line was drawn between the Government and the people, and the friends of the Government were marked as the enemies of the people. I hope, however, that the Government and the people are now the same; and I pray to God that what has been frequently remarked may not in this case be discovered to be true, that they who have the name of people the most often in their mouths have their true interests the most seldom at their hearts.

A little experience will give the gentleman a new idea of the patronage of this Government. He will find it not that dangerous weapon in the hands of the Administration which he has heretofore supposed it; he will probably discover that the poison is accompanied by its antidote, and that an appointment of the Government, while it gives to the Administration one lazy friend, will raise up against it ten active enemies.

Mr. Bayard then replied, point by point, to Mr. Giles's indictment of the Adams Administration. At the close he said:

There are the events of the general Government which the gentleman has reviewed in succession and endeavored to render odious or suspicious. For all this I could have forgiven him, but there is one thing for which I will not, I cannot, forgive him—I mean his attempt to disturb the ashes of the dead; to disturb the ashes of the great and good Washington! Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only

say that, as long as exalted talents and virtues confer honor among men, the name of Washington will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late Executive, he opened another, equally poisoned, against the judiciary. He has told us, sir, that when the power of the Government was rapidly passing from Federal hands—after we had heard the thundering voice of the people which dismissed us from their service—we erected a judiciary which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better, sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. I believe these gentlemen regard public opinion because their power depends upon it; but I believe they respect no existing establishment of the Government; and, if public opinion could be brought to support them, I have no doubt they would annihilate the whole. I shall at present only say further on this head that we thought the reorganization of the judicial system a useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of our country.

The honorable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented going about searching out victims of the sedition law. But no fact has been stated; no proof has been adduced, and the gentleman must excuse me from refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

Do not say that you render the judges dependent only on the people. You make them dependent on your President. This is his measure. The same tide of public opinion which changes a President will change the majorities in the branches of the legislature. The legislature will be the instrument of his ambition, and he will have the courts as the instrument of his vengeance. He uses the legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the Government will be concentrated in the hands of one man, who will dare to act with more boldness because he will be sheltered from responsibility. The independence of the judiciary was the felicity of our Constitution. It was this principle which was to curb the fury of party upon sudden changes. The first moments of power, gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the judiciary which was to control the fiery zeal and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent which deluged in blood one of the fairest countries of Europe. France had her National Assembly, more numerous and equally popular with our own. She had her tribunals of justice and her juries. But the legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck we may bid a final adieu to the Constitution.

Mr. Randolph said that he did not rise for the purpose of assuming the gauntlet which had been so proudly thrown by the Goliath of the adverse party; but that he believed even his feeble powers, armed with the simple weapon of truth, a sling and a stone, capable of prostrating on the floor that gigantic boaster, armed *cap-à-pie* as he was; but that he was impelled by the desire to rescue from misrepresentation the arguments of his colleague (Mr. Giles), who was now absent during indisposition.

To the long catalogue of unpopular acts which have deprived their authors of the public confidence, the gentleman [Mr. Bayard] tells us he and his friends were "goaded" by the clamor of their opponents. He solemnly assures us that in the adoption of those measures they clearly foresaw the downfall of their power; but, impressed with a conviction that they were essential to the public good, and disdaining all considerations of a personal nature, they nobly sacrificed their political existence on the altar of the general welfare; and we are called upon now to revere in them the self-immolated victims at the shrine of patriotism. These are, indeed, lofty pretensions; and, although I shall not peremptorily deny, in this age of infidelity I may be permitted to doubt them; for I call upon this committee to decide whether, in this day's discussion, the gentleman has evinced that purity of heart or that elevation of sentiment which could justify me in clothing him with the attributes of Curtius or of the Decii!

I have long been in the habit of attending to the arguments of the gentleman from Delaware, and I have generally found, in their converse, a ready touchstone, the test of which they

are rarely calculated to withstand. If you are precluded from passing this law, lest depraved men make it a precedent to destroy the independence of your judiciary, do you not concede that a desperate faction, finding themselves about to be dismissed from the confidence of their country, may pervert the power of erecting courts, to provide to an extent for their adherents and themselves? And that, however flagrant that abuse of power, it is remediless and must be submitted to? Will not the history of all governments warrant the assertion that the creation of new and unnecessary offices, as a provision for political partisans, is an evil more to be dreaded than the abolition of useless ones? Is not an abuse of power more to be dreaded from those who have lost the public confidence than from those whose interest it will be to cultivate and retain it? And does not the doctrine of our opponents prove that, at every change of administration, the number of your judges are probably to be doubled? Does it not involve the absurdity that, in spite of all constitutional prohibitions, Congress may exercise the power of creating an indefinite number of placemen, who are to be maintained through life at the expense of the community? But, when these cases are cited, you are gravely told that they suppose a degree of political depravity which puts an end to all argument. Here, sir, permit me to state an important difference of opinion between the two sides of this House. We are accused of an ambitious usurpation of power; of a design to destroy a great department of government, because it thwarts our views, and of a lawless thirst of self-aggrandizement which no consideration can restrain. Let us not be amused by words. Let us attend to facts. They will show who are contending for unlimited and who for limited power. The opponents of this bill contend that they did possess the power of creating offices to an indefinite amount; which, when created, were beyond the control of the succeeding legislature. They, of course, contend for the existence of such a power in the present legislature, for whose exercise there is no security but their self-respect. In other words that, if the present majority should incur the suspicion of the people, they may, as soon as there is any indication of their having forfeited the public confidence, on the signal of their dismissal from their present station, make ample and irrepealable provision for themselves and their adherents by the creation of an adequate number of judicial offices. Now, sir, this is a power which we reject, though it is insisted that we possess it. We deny that such an authority does exist in us. We assert that

we are not clothed with the tremendous power of erecting, in defiance of the whole spirit and express letter of the Constitution, a vast judicial aristocracy over the heads of our fellow citizens on whose labor it is to prey. Who, then, are, in reality, the advocates of a limited authority, and who are the champions of a dangerous and uncontrollable power? In my estimation the wisest prayer that ever was composed is that which deprecates the being led into temptation. I have no wish to be exposed myself, nor to see my friends exposed, to the dangerous allurements which the adverse doctrine holds out. Do gentlemen themselves think that the persons whom I see around me ought to be trusted with such powers? Figure to yourselves a set of men whose incapacity or want of principle have brought on them the odium of their country, receiving, in the month of December, the solemn warning that on the fourth of March following they are to be dismissed from the helm of government; establish the doctrine now contended for, and what may we not expect? Yes, sir, the doctrine advanced by our opponents is that of usurpation and ambition. It denies the existence of one power by establishing another infinitely more dangerous; and this you are told is to protect, through the organ of an independent judiciary, the vanquished party from the persecution of their antagonists, although it has been shown that, by increasing the number of judges, any tone whatever may be given to the bench.

If gentlemen dread the act which we are about to pass they will remember that they have been the means of compelling us to it. They ought to have had the forbearance to abstain from such a measure at such a crisis. They have forced upon us the execution of a painful duty by their own want of prudence. If they wished the judges, like the tribe of Levi, to have been set apart from other men for the sacred purposes of justice, they should have considered well before they gave to publicans and sinners the privilege of the high priesthood.

Impeachment of Judge Chase

John Randolph made the control of the judiciary by the legislature a favorite measure. During the following year (1803) Samuel Chase, an associate-justice of the Supreme Court, delivered at his home in Baltimore, Md., what the Democrats considered a partisan harangue to the grand jury. For this and previous exhibitions of

unjudicial temper by the justice, who was a very free speaking and irascible man, Randolph, in 1804, introduced in the House of Representatives a resolution that Justice Chase be impeached. This was passed in March, and the trial was set for the ensuing session of the Senate. The impeachment proceedings occupied the attention of this body from December 7, 1804, to March 1, 1805, when the accused was acquitted of all the eight charges brought against him, there being no constitutional majority (two-thirds) on any count, although on three there were bare majorities declaring him guilty.

The high position from which it was sought to remove the accused caused the proceedings to be memorable in the judicial and political annals of the country. The ablest legal and oratorical talent of the country was secured by both sides. Randolph led the prosecution. Chase's counsel were Luther Martin, Robert G. Harper, Charles Lee, P. B. Key, and Joseph Hopkinson.

This decision was valuable in the later history of American jurisprudence in discountenancing the impeachment of judges on frivolous grounds, and, at the same time, in warning judges to suppress all manifestations of partisanship while on the bench, for it was on charges of such conduct that Chase was found in fault by bare majorities, and for which he suffered odium throughout the remainder of his service on the bench, which was coterminus with his life.

The failure of the impeachment caused Randolph, on the day of Chase's acquittal, to introduce in the House the following amendment to the Constitution:

> The judges of the Supreme and all other courts of the United States shall be removed by the President, on the joint address of both Houses of Congress requesting the same, anything in the Constitution of the United States to the contrary notwithstanding.

The motion came forward in one form and another and presented by various persons during the next six years, each time creating considerable discussion. On January 29, 1811, the House finally refused to consider it.

CHAPTER XV

The Recall of Judges

[constitution of arizona]

Debate in the Senate on the Admission of Arizona into the Union, with Constitutional Provision for the Recall of Judges: Varying Views by Robert L. Owen [Okla.], James P. Clarke [Ark.], Joseph W. Bailey [Tex.], George Sutherland [Utah], George E. Chamberlain [Ore.], Jonathan Bourne [Ore.], William E. Borah [Ida.], Elihu Root [N. Y.]; Resolution Adopted; Veto Message of President Taft; Arizona Admitted without Recall, Which Is Then Adopted by State Legislature—Ex-President Roosevelt Supports Recall of Judicial Decisions; President Taft Opposes It—Joseph L. Bristow [Kan.] Introduces in the Senate Constitutional Amendments for Such Recall.

THE subject of the recall of judges came forward early in 1911 in connection with the admission of Arizona into the Union.

On June 20, 1910, President Taft signed an act of Congress enabling the Territories of New Mexico and Arizona to form State constitutions and governments preparatory to their admission into the Union.

On January 21, 1911, the people of New Mexico adopted a constitution, and on February 7, 1911, the people of Arizona adopted theirs. When these were presented to Congress the radicals opposed the constitution of New Mexico as "reactionary," and the conservatives opposed the constitution of Arizona as "anarchistic."

On March 4, 1911, Robert L. Owen [Okla.] spoke in the Senate in defence of the Arizona constitution.

In Defence of the Arizona Constitution

Senator Owen

Mr. President, the alleged offensive provisions of the constitution of Arizona are the initiative, referendum, and recall.

The people in Arizona, from whom all power flows, from whom comes all power, reserve to themselves this right of direct legislation. The Constitution makes it plain what these powers are:

Article IV, Sec. 2. The first of these reserved powers is the initiative. Under this power 10 per cent. of the qualified electors shall have the right to propose any measure, and 15 per cent. shall have the right to propose any amendment to the constitution.

Now we are told that Arizona may be admitted a little later on with this provision, but I call attention to the experience which we in Oklahoma had. We put this provision in our constitution, and our present National Chief Executive made an address in our State advising our people to vote down that constitution. One of his objections to it was that he regarded this provision as unwise. I know of no reason to believe that he has changed his mind with regard to it, although that is entirely possible. I deeply trust he may do so, but I greatly fear the reactionaries in the Senate will not vote to admit a progressive State, and I do not wish to leave the matter open.

(3) The second of these reserved powers is the referendum. Under this power the legislature, or 5 per cent. of the qualified electors, may order the submission to the people at the polls of any measure, or part of any measure, enacted by the legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State government and State institutions.

Oklahoma has this provision in her constitution, and I am not willing to have Arizona affronted before the whole world and before this Republic because she has dared to write the initiative and referendum in her constitution. I do not think that right, and I am not going to submit to it. Why should the right be denied Arizona and the people of Arizona to write the organic law under which they live? There is no sound reason for it. Seventy-six per cent. of the people of Arizona have voted in favor of this constitution. It is all very well to say, "Let us have New Mexico admitted now and Arizona hereafter," but I do not believe the reactionaries or retrogressives intend to do anything of the kind if they can help it.

It is well known to everybody that the President is going to call an extra session. It will not be pretended that I am bringing about an extra session. The only thing which I am doing here is to emphasize this matter of the contest between dele-

gated government and a government by popular sovereignty. That is the issue here, and I want to emphasize it as strongly as I can. It is the issue which is sweeping this nation; it is an issue which carried California in the last election, carried Washington, and which has controlled Oregon and has controlled Montana; which has become a part of the constitution of South Dakota; which is indorsed by both parties in North Dakota; which is written into the law of Nevada; which has been established as a principle in Arizona; which has been adopted by Colorado and Oklahoma and Missouri and Arkansas, and is about to be written into the laws of Nebraska. It is the issue in Michigan. It is an issue in Minnesota. It is the issue in Wisconsin, and is now about to be written on the face of the constitution of Wisconsin. It carried Illinois in the last election by four to one, and carried Governor Foss into the governor's chair in Massachusetts; and I think this notion of this being an "insane" doctrine is merely an evidence of the astonishing ignorance of some Senators of the United States of what is going on in this Republic.

Even the old State of Maine adopted it by a vote of two to one two years ago and wrote the initiative and referendum in her constitution.

JAMES P. CLARKE [Ark.].—The Senator is predicating his present address to the Senate upon the idea that it is necessary to defeat the adoption of the joint resolution proposing to admit New Mexico at this time because he thinks that thereby the prospect of the early admission of Arizona will be promoted. Is he not aware of the fact that, in the event this Congress shall fail to adopt the joint resolution admitting New Mexico, the President of the United States may do so, and that he has accomplished nothing in the interest of Arizona by the contest which he is making at this time?

SENATOR OWEN.—Now, it is true, as the Senator from Arkansas so forcibly points out, that, if Congress at its next regular session does not act or fails to disapprove, the President can and the President will admit. Why, then, this appeal to me to save New Mexico? Look at the astonishing constitution of New Mexico, with corporate control and machine politics written all over it, an ignorant electorate put in power and perpetuated so that an intelligence qualification is impossible.

THOMAS H. CARTER [Mont.].—I inquire of the Senator if he has prepared an amendment to this pending joint resolution proposing the concurrent admission of the Territories of New Mexico and Arizona?

SENATOR OWEN.—I have read it into the *Record* already, Mr. President.

Now, admitting Arizona and New Mexico together, it seems to me, might be a wise and proper method of proceeding if New Mexico had a decent constitution, but to admit New Mexico with a corporation constitution and allow the people of New Mexico to send two standpat Republican Senators to this floor, and deny the people of Arizona, with a people's rule constitution, the privilege of sending two Democratic Senators to this floor, I do not think a very good doctrine from a mere party standpoint, and I cannot consent to follow the leadership of the honored Senator from Texas [Joseph W. Bailey] in this proposal and demand, regardless of the merits of either constitution, for it will do the Republicans great service in the control of the next Senate and next presidential campaign, giving them four presidential electors, and will do the Democrats great harm by denying them two Democratic Senators and three presidential electors.

I do not like the direction of such Democratic leadership, and I cannot consent to follow it.

Now, perhaps the most obnoxious feature about the Arizona constitution to my distinguished opponents is the recall, and particularly as the recall applies to judges on the bench.

Article VIII, Section 1. Every public officer in the State of Arizona holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal 25 per cent. of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer may by petition, which shall be known as a recall petition, demand his recall.

They say this will apply to a judge. So it does, and why should it not if the Arizona people want it? If a judge on the bench proves to be corrupt, proves to be unworthy and dishonest, or a brutal tyrant on the bench, imposing upon his fellow citizens by virtue of the power in his hands, why should he not be recalled by the Arizona people if they wish to have the law so? It is an easier method of dealing with him than by impeachment. The impeachment of a judge is done under circumstances most painful to the man who is impeached. Is not impeachment the right of recall? Impeachment puts a stigma upon him, however. It disgraces him to such an extent that men dislike to associate with him thereafter, whereas

the right to recall is simply a matter of advising a man that he is not an acceptable public servant. The man who is defeated in a recall goes from his office without any necessary disgrace and without any deep stigma. It is simply a question of his being an unacceptable public servant. It has never been applied except for dishonesty. It has only been used three times on the Pacific coast—once in Los Angeles, where the mayor was believed to be corrupt. They simply nominated his successor and elected him, and the former mayor went out of office without any particular stigma except that of being a defeated candidate who was replaced by another man.

I want to quote from very high authority, our honorable ex-President, who has written upon this matter. In the *Washington Post* of March 4, 1911, this very morning, I find this item by our distinguished ex-President Theodore Roosevelt:

INTELLIGENT CRITICISM OF THE JUDGES AN ABSOLUTE NECESSITY

[Theodore Roosevelt, in the *Outlook*]

In the first place, it is absolutely necessary that there should be discrimination between, and therefore intelligent criticism of, the judges, who by their power of interpretation are the final arbiters in deciding what shall be the law of the land. Men ought not to be classed together for praise or blame because they occupy one kind of public office. The bonds that knit them in popular esteem or popular disfavor should be based not upon the offices they hold, but upon the way in which they fill these offices. Chief Justice Taney was, I doubt not, in private life as honorable a man as Chief Justice Marshall; but during his long term of service as Chief Justice his position on certain vital questions represented a resolute effort to undo the work of his mighty predecessor. If, on these positions, one of these two great justices was right, then the other was wrong; if one is entitled to praise, then the other must be blamed. Buchanan and Lincoln do not stand together in the popular eye because both were Presidents; on the contrary, they represent antipodal schools of thought. Andrew Johnson and Grant were as far asunder as Washington and Jefferson. There is no more ground for demanding that we refrain from differentiation between, and therefore from criticism of, Chief Justices than for adopting the same attitude as regards Presidents.

We must bear in mind the office; but we must also bear in mind the man who fills the office. This is a government of law, but it is also, as every government always has been, and always must be, a government of men; for the worth of a law depends as much upon the men who interpret and administer it as upon the men who have enacted it.

And Mr. Roosevelt in his recent Chicago speech asserted his belief that the right should not be denied Arizona to put the recall in her constitution as Massachusetts did in 1780.

It is not necessary to insist on the wisdom of the recall of judges, but I do insist that the people of Arizona have the right

to establish their own organic law, if it be not in violation of the Constitution of the United States and of the principles of the Declaration of Independence.

The recall is not a novelty. It appears in the constitution of Massachusetts of 1780 and of to-day. The State of Massachusetts, moreover, elects its governor and other State officers only for one year, recalling them at the end of a year by a short tenure of office without reproach or reproof. If they are quite satisfactory, they are reëlected; if they are not quite satisfactory, they are automatically recalled by the short tenure.

If a governor were guilty of high crimes, they might impeach, which would be a recall in the form of a trial.

I can readily understand how an argumentative objection might be argued to the recall of judges on the ground that it would interfere with the independence of the judiciary. But it must be remembered that a judge on the bench, being only a human being, after all, may, under temptation, become corrupt, and corrupt in such a fashion that proof of his corruption is impossible, so that impeachment is impossible, while the recall, nominating his successor, is available.

Again, a judge upon the bench, being only a human being, after all, might become grossly intemperate, not sufficient to justify impeachment, but sufficient to justify recall.

Again, a judge upon the bench, being only a human being, after all, might become utterly tyrannical, overbearing, dictatorial, and offensive to the people over whom he has been trusted to discharge this function; not sufficient, perhaps, to justify impeachment, but yet sufficient to justify recall.

Moreover, a judge upon the bench, interpreting the law, may so interpret the law as to become a lawmaker instead of a law interpreter; may exercise, under the color of judicial power, legislative power. Not sufficient to justify impeachment, perhaps, but yet sufficient to justify recall.

Moreover, judges on the bench, being merely human beings, after all, are themselves controlled by their environment, by their professional education, by social, political, and business influences. They may lead a judge to a point of view which is extremely injurious to the common welfare. Not sufficient, perhaps, to justify impeachment, but yet sufficient to justify recall.

And, Mr. President, even Boston, the "Hub of the Universe," around which revolves all intellectual, moral, and ethical worth, two years ago adopted the doctrine of the recall in relation to the mayor and members of the municipal council.

Ex-Senator Henry W. Blair, of New Hampshire, advises me

that the power of removal of the judiciary by address of the two houses of the legislature existed, and perhaps still exists, in the State of New Hampshire, while the entire judiciary has been changed frequently by act of the legislature whenever the public good seemed to require it, and the courts, since I can remember, about four times.

Has not Arizona the right to write her own organic law if Arizona is to be admitted on an equal footing with the other States, as required by the Constitution of the United States? If Arizona should be forced to expunge the initiative and referendum and recall from her constitution and was then admitted, could she not write those provisions into her constitution immediately afterward? Can you forestall it or prevent it? Or will you drive out of the Union the States of Oregon, Montana, South Dakota, Maine, Arkansas, Oklahoma, Colorado, California, Wyoming, and Nevada, who have already adopted this provision?

The question answers itself.

The truth is self-evident. The initiative and referendum and the recall are not contrary to the Constitution of the United States. The Constitution of the United States was adopted by a practical referendum of delegates pledged by the people.

And the recall of the President of the United States is provided by impeachment proceedings, and the principle of recall by impeachment is recognized in the Constitution of the United States and of every State in the Union, as well as in the hundred municipalities who have recently directly adopted it.

On April 4, 1911, Henry D. Flood [Va.], from the Committee on Territories, introduced a joint resolution in the House approving the constitutions of New Mexico and Arizona. It was referred back to the committee. The committee, on May 16, reported it back with an amendment suggesting to the voters of Arizona that, in view of the objection of President Taft to the provision for the recall of judges, in their constitution as submitted they eliminate this feature.

The subject was warmly discussed until May 23, when the joint resolution was passed in the form that the constitution submitted, "being republican in form and not repugnant to the Constitution of the United

States and the principles of the Declaration of Independence," was approved.

The resolution was referred in the Senate to the Committee on Territories, which, on July 11, reported it subject to amendment.

The Arizona Constitution

Senate, July 11-August 15, 1911

George Sutherland [Utah] opposed the resolution.

While I thoroughly disapprove of the initiative and the modern referendum and the recall as applied to executive and legislative officers, I could well subordinate my judgment to that of the people of Arizona if they had not gone further and provided that the recall should embrace the judiciary as well. The power to recall a judge who renders an unpopular judgment is to my mind so utterly subversive of the principles of good government that I can never get my own consent to withhold my condemnation and disapproval of it.

The Senator from Oregon—not the father of the "composite citizen" [Jonathan Bourne], but the junior Senator, George E. Chamberlain—in his speech of April 17 last, asks:

But, as an abstract proposition, why should a judicial officer be independent of the wishes of his constituents?

Ah, Mr. President, much of the vice and fallacy of the argument for the right to recall judges rests in this assumption that the judge, like a Congressman or a legislator, represents a constituency. What is a constituent? He is a person for whom another acts. A constituent implies, as a necessary corollary, a representative who speaks for him. A judge has no constituents; he is only in a restricted sense a representative officer at all. The people who elect him can with propriety make known their wishes only through the laws which they enact. The judge is the mouthpiece of the *law*. His constituents are the *statutes* duly made and provided. If his decisions are wrong, the remedy is to appeal to a higher court—not to the people. The scales of justice must hang level or there is an end of justice. The recall puts into the scale, upon one side or the other, in every case where strong public feeling exists, the artificially induced anxiety of the judge for the retention of his place. Bound by all the sacred traditions of his office to decide im-

partially between the parties according to the law and the evidence, he begins the discharge of his high duties with a personal interest in his own decision.

The judge represents no constituents, speaks for no policy save the public policy of the law. If he be not utterly forsworn, he must at all hazards put the rights of a single individual above the wishes of *all* the people. He has no master but the compelling force of his own conscience. Every circumstance which diminishes his independence and his courage, which closes his ears to the righteousness of the cause and opens them to the voice of clamor, makes for injustice.

If charged with incompetency, dishonesty, or corruption, common fairness demands that he should be tried in the open before an impartial tribunal, where he may be heard, not with a limitation of 200 words upon his defence, but in full, and where he may face his accusers and test the truth of their accusations by those orderly methods of procedure which the experience of centuries has demonstrated are essential to the ascertainment of truth. But the recall institutes a tribunal where everybody decides and nobody is responsible; where at least 25 per cent. of the membership have already, as the judge's accusers, prejudiced his case, and from whose arbitrary and unjust findings there is no appeal. In such a forum idle gossip and village scandal stand in the place of evidence; assertion takes the place of sworn testimony; and the foulest lie goes unchallenged by the touchstone of cross-examination. The voter will make up his verdict of vindication or conviction under the illuminating radiance of the torchlight procession, in the calm, judicial atmosphere of the brass band and the drum corps, and upon the logical summing up of the spellbinder and the campaign quartet.

Mr. President, I am not one of those who have become impatient at the restraints and checks and safeguards of the representative form of government and the written Constitution. I am not one of those who would launch the ship of state, with every sail set, upon the wide sea of tossing waters—with all its unsounded depths and unknown shallows, with here a whirlpool and there a half-submerged rock—without a chart or a compass or a rudder or an anchor, trusting alone to the merciful chance of wind and wave and the tumultuous efforts of an uncaptained crew to preserve it from disaster. I disagree utterly with the distinguished Senator from Oklahoma [Mr. Owen], who told us a few days ago, in that calm, judicial way of his, that the Constitution of the United States—for which

some of us had conceived a rather high opinion—was all wrong; that it was not sufficiently democratic; that it was so drawn by Madison and those who were in the constitutional convention as to vest unfair power in the hands of the minority, and that this principle shows from one end of it to the other; that, among other things, to his deep regret, he had been unable to discover in that worn and antiquated document any provision for the recall of the Supreme Court of the United States. There are some individuals in this country who ought to be prosecuted for monopolizing so much of the wisdom that a discriminating Providence intended should be distributed in modest proportions among a somewhat extended number of people. I do not mean to say that the Senator from Oklahoma is one of these, but I feel sure that it was a distinct misfortune that he did not make his appearance at a date sufficiently early to give the fathers who framed the Constitution the benefit of his counsel and advice. I am not certain that in that event the Constitution would have been better, but I am sure it would have been longer.

For a century and a quarter the great names of Washington, who was the president of the convention; of Benjamin Franklin, Alexander Hamilton, James Madison, James Wilson, Charles Pinckney, and all the others of the immortal list, have occupied a shrine of glory in the hearts of the misguided multitude as the framers of a Constitution which, instead of being undemocratic "from one end of it to the other," is inspired "from one end of it to the other" with the thought that the day when the king commands and the people obey has gone, and that the new day has risen when the people shall command and the king obey.

But we have all been mistaken. The fathers, in framing the Constitution, were unpatriotic and undemocratic. They were engaged in turning over an amiable majority to the mercy of a ferocious minority; in setting up a government that could not be overturned by every breath of popular emotion; in creating a responsible and independent judiciary; and in other similar unholy and reprehensible enterprises, for which, I have no doubt, the enlightened "composite" citizenship of Oklahoma would, if they had the opportunity, commit them to the county jail as a gang of nonprogressive, standpat aristocrats.

Against these criticisms of the Constitution by this American Senator I would put the strong words of the great British commoner [William E. Gladstone], who described it as "the most wonderful work ever struck off at a given time by the brain

and purpose of man." Against the petulant view of this American Senator, that this learned, courageous, and patriotic court should be made responsive, by means of the recall, to the changing moods of the majority, I would set the vigorous statement of another Briton, James Bryce, who said:

> The Supreme Court is the living voice of the Constitution; that is, of the will of the people expressed in the fundamental law they have enacted. It is, therefore, as some one has said, the conscience of the people, who have resolved to restrain themselves from hasty or unjust action by placing their Representatives under the restriction of a permanent law. It is the guaranty of the minority, who, when threatened by the impatient vehemence of a majority, can appeal to this permanent law, finding the interpreter and enforcer thereof in a court set high above the assaults of faction.
>
> To discharge these momentous functions the court must be stable, even as the Constitution is stable. Its spirit and tone must be that of the people at their best moments. It must resist them the more firmly, the more vehement they are. Intrenched behind impregnable ramparts, it must be able to defy at once the open attacks of the other departments of the Government and the more dangerous, because impalpable, seductions of popular sentiment.

Against all such wild and visionary demands for the popular recall of the judges I would print in letters of living light the strong words of Chief-Justice John Marshall:

> The judicial department comes home, in its effects, to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent, *with nothing to influence or control him but God and his conscience?*

Sir, I hope I am not given to overextravagant statement, but I declare my solemn conviction that, the moment a provision for the recall of the judges of the Supreme Court shall be written into the Federal Constitution, that moment will mark the beginning of the downfall of the Republic and the destruction of the free institutions of the American people.

And now, Mr. President, what is to be the next step in the onward march? Will it be to apply the referendum to judicial matters? Why not? If laws can be made by the simple formula of counting heads at the ballot box, why not laws construed and questions of fact unraveled by the same infallible method?

Such a device would seem to be the fitting complement of the recall. When a court is confronted with a particularly perplexing case in which there are great popular interest and warm

public feeling, where the precedents of the law and the sentiment of the people are both conflicting, and the poor judge is driven to his wits' end to harmonize the one and accurately interpret the other, instead of putting him to the uncomfortable alternative of rendering a judgment which, however satisfactory to himself, may not meet the preponderating fancy of the multitude, surely he might have the benefit of the ballot-box opinion *before* instead of *after* he has decided. This *may* result in more or less disappointment to the losing litigant; it *will* result in a good deal of uncertainty respecting the law, but the judge will be saved and the power of the people will be vindicated.

Sir, the suggestion is not so fanciful as it may at first appear. In the wild witches' dance which is only just beginning the nimble feet of the "composite citizen" seem destined to cut livelier capers and more bewildering pirouettes than even this. An enterprising district attorney in San Diego, Cal., has already proposed to submit to the taxpayers of the county, if a way can be found, the question as to whether he shall further prosecute a case of arson in which the jury has already twice disagreed.

Those who are so intemperately appealing to the people to take over the *direct* management of their government, with its multiplicity of detail and difficulty, the successful operation of which demands concentration of effort and thoroughness of application, are preparing the way for future mischief. They are advocating a political creed alluring to the imagination, but utterly impossible of successful realization, and which, if adopted, will lead us more and more into the domain of the impracticable, with political chaos or political despotism as the ultimate result. It is the old contest between idealism and stubborn, matter-of-fact reality. It is the story of the philosopher's stone over again—the dream of transmuting all the metals into gold—the hunt for the master key that will open all locks, however different in size and shape—the problem of fitting square pegs into round holes—the puzzle of how to eat one's cake and have it—the search for the chimera of perpetual motion—the quest for the mythical pot of gold at the foot of the rainbow—and all the other impossible undertakings which have vexed men's souls and turned their brains and filled the lunatic asylums since mankind was divided into those who see facts and those who see visions. Finally, this latest delusion of having everybody drive the horses and everybody ride in the coach at the same time must share the fate of all the others, for it is

now as it has always been, that the pursuit of the unattainable is the most profitless of human occupations.

On August 5 Jonathan Bourne [Ore.] replied to Senator Sutherland.

Mr. President, the Senator from Utah has seen fit to ridicule that portion of my address of February 27, 1911, in which I expressed my conviction that the action of the composite citizen always tends to promote the general welfare. Let me repeat what I said:

> The people can be trusted. The composite citizen knows more and acts from higher motives than any single individual, however great, experienced, or well developed. While selfishness is usually dominant in the individual, it is minimized in the composite citizen. The composite citizen is made up of millions of individuals, each dominated in most cases by selfish interest. But because of the difference in the personal equations of the individual units making up the composite citizen, there is a corresponding difference in the interests dominating said units; and while composite action is taking place friction is developed, attrition results, selfishness is worn away, and general welfare is substituted before action is accomplished.

In my speech I demonstrated that under the initiative and referendum the people cannot legislate against the general welfare, and by the same logic I assert that under the recall the people will never recall a public servant, judicial or otherwise, who serves the general welfare.

Mr. President, objection is made to the admission of Arizona because its constitution contains the recall provision. The particular point of objection is that the recall applies to the judiciary as well as to executive, administrative, and legislative officers. The great fear is that constant accountability to the people of the State will exercise an improper influence upon the courts.

To my mind this objection is untenable. As I said recently in an article in the *Saturday Evening Post*, if the people of Arizona or any other State are competent to elect their judges and can be trusted to act fairly and honestly in the election, they can also be trusted in the exercise of the recall power. The Arizona constitution, like that of nearly every other State, provides for the election of judges by the people. Those who oppose the power of the people to recall a judge should—in order to be consistent—also oppose the power to elect judges in the first instance.

The people of a State or district elect a man to a judicial position, because they believe he will serve the general welfare. They elect him in anticipation of good service and they would recall him only for demonstrated bad service. The assumption that the people would recall a judge without reason—for the gratification of spite or while they were under the impulse of passion—is without justification. The American people never act in such a way when given an opportunity to act in a lawful and considerate manner.

Men who profess opposition to the recall as applied to the judiciary for fear judges will be improperly influenced by public opinion do not realize that they are offering a greater insult to the judiciary than the advocates of the recall could possibly offer. Advocates of the recall have confidence in the judiciary in general; but they recognize the fact, demonstrated by experience, that human frailty exists in judges as in other men.

To assert that judges are above corruption or improper prejudice and that they are always efficient public servants is too absurd for serious consideration. The men who sit on the bench to-day were boys when members of the legislative branch of government were boys. They were no better or worse on the average than we. In childhood and young manhood we mingled on an equality, enjoyed the same sports, received instructions in the same schools, were taught the same religious principles, were subjected to the same temptations, indulged in the same vices, and cherished the same ambitions. Upon what reasoning, then, can it be asserted that the boy who studied law and found such favor in the eyes of the political boss as to secure a nomination for the bench is superior in either efficiency or honesty to his brother who entered business and was slated by the same boss for a position in the executive or legislative branch of government? Let us look at this subject from a common-sense viewpoint.

There hangs no halo of sanctity around the head of the judiciary, except as unthinking men concede a sacredness which the legal profession has assumed for occupants of the bench. Judges, like all other men in public or private life, are generally honest. Their failure, in exceptional instances, to serve faithfully the people by whom they are employed is due to the same cause to which may be attributed similar failure on the part of other public servants. This cause is the unrepresentative system by which they are chosen.

Opponents of the extension of the recall to the judiciary profess great fear that judges will listen to what they call public clamor and will render decisions against justice in order to avoid public displeasure. How strange that this fear of improper influence has been so long suppressed! In every State where the convention system is in vogue political machines exist, with political bosses in control. The political bosses maintain their machine organizations by means of funds contributed by individuals having special interests to promote or protect. Where the convention system exists the successful candidate for nomination for judicial position must have the active or passive support of the political boss. Special privilege is as much interested in the judiciary as in any other branch of government. Though it may be true that in most cases there is no express agreement between the political boss and the candidate for a judicial nomination, any man with the least knowledge of human nature knows that the political boss will aid in securing the nomination of the candidate who seems most likely to be satisfactory to his backers.

Under that same convention system the man once elected judge must look to the political boss for his renomination for a second term. Will anyone say that a judge who will listen to popular clamor will not also yield to the wishes and interests of the political boss? And, if the judge must be subject to influences controlling his election or retention in office, which presents the greater danger, the influence of popular will or the influence of the political boss?

It is useless for men to hold up their hands in horror and assert that the judiciary is above the influence of the political boss. If the judiciary is above that influence it is certainly also above the influence of popular clamor, and the argument against the recall falls to the ground.

We have heard much in recent weeks about the "rule of the mob" in connection with the initiative and referendum and the recall. Now a mob is a body of men acting against law, order, and justice. Legislatures sometimes do this—the people never, if an opportunity is given to act in a lawful way. I grant that where wrongs have been long imposed and remedies have been denied the people finally resort to force to redress their grievances, just as they did in the American Revolution. To some this is mob action. I am disposed to give it a higher characterization; and, though it is an overthrow of existing authority, I regard it as the establishment of law and order in the highest sense.

The overthrow of a misrepresentative system, maintained by political machines enjoying dictatorial powers, and the substitu-

tion of a truly representative system mean the attainment of higher standards of human justice and equality, and, consequently, of a more peaceful and more nearly perfect government. The voice of the people should be the law of the land, and since the initiative and referendum and the recall register the voice of the people they are the best mediums for the establishment of the best governmental principles.

The people of Arizona have the courage to assert themselves and the patriotism to sacrifice even statehood, if necessary, rather than yield their political principles. Their admission to all the privileges of American citizenship will be an honor to the Union; the refusal to admit them would be a national disgrace.

On August 7 William E. Borah [Idaho] supported the resolution, although he was opposed to the recall of judges.

The constitutions submitted by the respective Territories conform to the terms of the enabling act. They are also, in my judgment republican in form, as that term was used and is understood in the guaranty clause of the Federal Constitution. I propose to vote for their admission, therefore, notwithstanding there is one provision in the Arizona constitution to which, as a principle and policy of government, I do not subscribe. But the right of local self-government is an indispensable—and, to my mind, should be an inviolate—principle under our system, and notwithstanding my individual views and objections I must concede the right of the people of Arizona to settle that question for themselves. So long as their constitution is republican in form I feel that the proper rule is to leave the details to the people who are to live under it.

There is another reason which leads me to this conclusion, and that is that we would have no power to keep this provision out of the State constitution of Arizona if Arizona were once admitted to the Union. I think, therefore, that it serves no good purpose to demand temporarily that which we can not effect permanently.

But, in view of the fact that either or both of the resolutions require the submission of the question of the recall of judges again to the votes of the people, I want to submit some reasons why, in my judgment, the people should not retain it in their constitution. While it is not unrepublican in form, I believe it to be unwise in principle.

Senator Borah presented his argument largely in the form of quotations. Those from George Washington, John Adams, Alexander Hamilton, James A. Bayard, Sr., Daniel Webster, the great commentators on constitutional law, James Kent and Joseph Story, Edmund Burke, Benjamin Harrison, and Wendell Phillips, upheld the general principle of the independence of the judiciary. Those from Governor Woodrow Wilson [N. J.], and ex-President Theodore Roosevelt more specifically applied to the case in hand.

Dr. Woodrow Wilson has been quoted a number of times of late by reason of his peculiarly honorable and high position in public thought, and I call attention to a word from him upon this subject. He has given it his consideration, not only from the standpoint of a student, but of late undoubtedly, as he has other questions, of a man in the practical affairs of life. Governor Wilson says:

The recall is a means of administrative control. If properly regulated and devised, it is a means of restoring to administrative officials what the initiative and referendum restore to legislators, namely, a sense of direct responsibility to the people who choose them.

The recall of judges is another matter. Judges are not lawmakers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and of freedom, is of the first consequence to the stability of the State. To apply to them the principle of the recall is to set up the idea that determinations of what the law is must respond to popular impulse and to popular judgment.

It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established. The importance and desirability of the recall as a means of administrative control ought not to be obscured by drawing it into this other and very different field.

Colonel Roosevelt, speaking to the people of Arizona, said:

Speaking generally, and as regards most communities under normal conditions, I feel that it is to our self-interest, to the interest of decent citizens who want nothing but justice in its broadest sense, not to adopt any measure which would make judges timid, which would make them fearful lest deciding rightly in some given case might arouse a storm of anger, temporary but fatal. You should shun every measure which would deprive judges of the rugged indifference and straightforward courage which it is so preëminently the interest of the community to see that they preserve.

I know, Mr. President, that politics sometimes has its influence in the highest court. We all concede that the controversy is how to diminish the effect of it rather than how to increase it; and, in my humble judgment, the recall of judges, instead of diminishing, would increase it. I would necessarily bring it into politics; you could not prevent it. Merciful justice! have we not enough politics in our system already, such as it is? Shall we now include the courts? You are much mistaken if you think the people want more politics; they want less. If you will give me a law-making department which is intelligent and true to the people, and an executive department which is fearless and true, with the judicial system which we now have, I will show you the best governed and the happiest people in the world.

But, Mr. President, I am not only opposed to the popular recall, but I am opposed to private recall. I am opposed to the subtle, silent system which has grown up in this country to a remarkable extent unknown to most people—that of exercising an influence upon Federal judges through the executive departments of our Government. If there is going to be a recall, we want a popular recall. We want a people's recall. We want it in the open and not in quiet and subtle ways by devious and undiscovered methods. We want the privacy sought to be established between Federal judges and the heads of departments forever condemned and damned. It is vicious, indefensible, and ought to forever discredit the judge who would brook it or the department head which would seek it.

If the time ever comes in this country when the people of the country understand that there is any string attached to a Federal judge which they do not through established laws hold, they will not only elect, but they will recall their Federal judges.

Senator Borah said in conclusion:

I sympathize fully, and I want to coöperate at all times, with those who would make the political side of our Government more responsive and more obedient to the demands of the people. I know that changed conditions demand a change in the details of our Government upon its political side. But the rules by which men who distribute justice are to be governed and the influences which embarrass them in this high work are the same now, and will always be the same, as they have ever been. Let us not impeach the saneness and the worth of our great cause by challenging the great and indispensable principle of an

independent judiciary. Let us not mislead the people into the belief that their interests or their welfare lies in the direction of justice tempered with popular opinion. Let us not draw these tribunals, before which must come the rich and the poor, the great and the small, the powerful and the weak, closer, even still closer, than now, to the passions and turmoils of politics. Let us cling to this principle of an independent judiciary as of old they would cling to the horns of the altar.

Elihu Root [N. Y.] opposed the resolution.

The Supreme Court of the United States has decided in the Coyle case, the case relating to the right of the people of Oklahoma to change the location of their State capital, notwithstanding the provision of the enabling act which forbade that change, that, after a Territory has once been admitted as a State, the provisions of the enabling act do not control the action of the State. Therefore, in the consideration and action of the Senate upon this joint resolution, we speak the last word that it is competent for us to speak regarding the provisions of the State's constitution.

The question before the Senate is: Do we now approve the provisions of the Arizona constitution? Are we ready, Mr. President, to approve this provision of the recall of judges? If we are, we shall say so by our action upon this joint resolution. If we are not ready to approve this provision of this constitution, we are bound by the law we ourselves have enacted to make that known by our action, and we cannot escape the responsibility for, or the consequences of, that act.

Let me ask the Senate to consider for a moment what will be the necessary working of such a system? We all know that from time to time there arise in all courts cases which enlist great popular interest. Sometimes these are cases in which men are accused of crime and there is a well-founded and general public abhorrence of the crime. I submit to the experience of the members of the Senate the suggestion that the tendency of the public in their abhorrence of a great crime is to assume that the man who is declared by the police authorities to be responsible for it is responsible, to overlook questions of evidence as to whether he be the true criminal and questions as to the degree and character of his guilt, and to assume that the man who is charged is the man who is guilty. The more atrocious the crime the more general and customary is this tendency to condemn a person who is charged with its commission.

Sometimes questions which attract public interest are questions having a political bearing. In our complicated system of government it frequently happens that questions are submitted to the courts upon the determination of which must depend the success of one party or another in establishing its views or in securing the control of the machinery of government. There is great public excitement, intense interest, strong desire to have the decision in accordance with the views of political partisans, who naturally consider the view of their own party to be the correct view.

Sometimes such questions arise from the conflict of religious opinions. I have heard it said in this Hall to-day that courts can never pass upon religious questions. Ah, Mr. President, would any Senator say that no court can enforce the provisions of our Constitution in favor of religious liberty? New sects are continually arising in our country, and the votaries of the religious views of those sects are, at the beginning, small and insignificant minorities. Questions regarding their rights as religious bodies, questions regarding their rights to freedom of worship and of expression, are protected by the provisions of our constitutions, and against the wish, against the prejudice, against the passion of the vast majority of the people; the courts, and the courts alone, can maintain the rights of the few to pursue the dictates of their own conscience rather than the will of the majority.

Sometimes questions arise upon those limitations which our constitutions impose upon the action of legislatures and executive officers and people alike by those great rules that protect liberty and property against the power of government wherever it be vested.

Now, sir, picture to yourselves a judge before whom one of these cases is brought. A few people, a single man, is upon one side. The powers of a government are upon the other side. For the few and the weak there stand only the rules of law. Upon the other side stands the public desire to have a decision in accordance with the public interest or the public feelings. Picture to yourselves the judge who is called upon to decide one of those cases, and consider what his frame of mind and condition of feeling must be when he knows that if he decides against public feeling immediately a recall petition will be signed and filed, and the great body of the people against whose wish he has ruled will be called upon, will be required, to vote whether they prefer him to some man who has never offended public opinion.

Upon all these cases, sir, so far as they depend upon evidence—and a vast majority of them do depend upon evidence—which is produced in the trial and which enters into the record of the case, the public does not see the record. It receives its information from the press. I beg the Senate to recall the reports of trials and arguments in our courts which they have been accustomed to see in the public press. The conditions of newspaper enterprise do not permit the publication of the full record of any trial. The gentlemen of the press, eager to secure items of news that will be interesting to the readers of their papers, catch upon the spectacular and interesting and startling incidents of the trial and reproduce them in their columns.

The judge is to pass upon the evidence that appears in the record, but he is to be judged upon the newspaper reports of the trial. And to whom, sir, will the judge try that case? To whom will counsel argue that case? What will become of that spirit which pervades every true court of justice, in which the facts as ascertained and the law interpreted and these alone form the basis of judgment? Is it in human nature that a judge, sitting under such circumstances as are exhibited by this provision which I have read, shall do other than try his case rather to the reporters than to his conscience, to his knowledge of the law, and to his understanding of the facts? For, at every step, the judge is on trial. His defence will not come when he has the opportunity to put 200 words of justification onto the ballot. His defence will begin with the first step in the trial of the cause. Human nature can not work otherwise. In all these great cases of public interest the judge will be on trial on the newspaper record, and in that trial he will take a far deeper interest than in the trial of the defendant or in the rights of the parties upon the record of the court.

Mr. President, there are many provisions in this constitution which I deeply regret to see incorporated in the constitution of any American State. But, for all that, I would not oppose the admission of Arizona as a State upon a constitution adopted by a vote of her people because it contained those provisions or because it contained any provision which did not seem to me to be fundamental in its character and to be in a considerable measure a negation of the true principles of our Government.

I conceive that this provision for the recall of judges is of that character. I think it goes to the very basis of our free Government. I have no quarrel with the gentlemen who extol the wisdom of the people. I believe that, in the long run, after mature consideration and full discussion and when conclusions

are reached under such circumstances as to exclude the interests or the prejudice or the passions of the moment, the decisions of the American people are sound and wise. But, sir, they are sound and wise because the wisdom of our fathers devised a system of government which does prevent our people from reaching their conclusions except upon mature consideration, after full discussion, and when the dictates of momentary passion or self-interest are excluded.

Many of the framers of the Republic were men who inherited the traditions of a theocratic government, in which men were controlled as against their own impulses and passions by the dictates that were handed down in the revelation from the Divine Ruler. In a belief which we can not gainsay to-day they undertook to establish for this Government a code of fundamental principles of justice, of equality, principles formulated in specific rules of conduct to make practical their application. Those principles we describe as the constitutional limitations of the national and the State constitutions:

> No man shall be deprived of his property except by due process of law.

And all the others, that great array of the fundamental and essential principles by which the American Republic has imposed restraints upon itself against its own interest of the moment, its own wishes of the moment, its own prejudice and passion of the moment. This is the great secret of the success of the American experiment in government, the maintenance of justice and order, individual liberty and individual opportunity in this vast continent, among these 90,000,000 people. And for the maintenance of those rules of justice our fathers provided that the government which may seek, under the interest or the passion of the moment, to override them shall be withheld by the judgment of a body of public officers separated from the interests and passions of the hour, with no pride of opinion because of having made a law, with no lust for power because of a desire to execute a law, with a strong hand according to individual opinion as to what may be best; but impartial, sworn only to the administration of justice, without interest, without fear, and without favor. They intrusted the maintenance of these rules to a body of judges, who were to speak the voice of justice without fear of punishment or hope of reward.

It is the establishment of this system of rules, fundamental rules, intrusted for their declaration and maintenance to a

body of impartial judges, that is the great contribution of America to the political science of the world, the great contribution of America to the art of self-government among men.

The essential difference, sir, between the establishment of one of these great rules of right conduct in a constitution and the enactment of a law either by a legislature or by a people is that the fundamental rule is established upon considerations of abstract justice. The rule is established when no one has any concrete interest to be affected, when no one is desirous of doing the wrong thing that the rule prohibits or of undoing the right thing that the rule maintains. It is then, sir, that the voice of an intelligent people is the voice of God, when upon considerations of justice, when considering what is right and fair, and makes for justice and liberty, a people establish for their own control and restraint a rule of right; and the abstract rule is necessary because when the concrete interest comes into play, because when the passion of the moment comes into play, because when religious feeling is rife, when political feeling is excited, when the desire for power here or the desire to push forward a propaganda of views here comes into play, then the inherent weakness of human nature makes it certain that the great and fundamental principles of right will be disregarded.

Sir, we see every day legislatures of our States passing laws which are in violation of these fundamental rules. We see every day public officers exercising an arrogant power in violation of the fundamental rules, except as they are restrained by the cold and impartial voice of those tribunals that our people have established to assert the control of the principles of justice over the interests and the passions of the moment.

Mr. President, this provision for the recall of judges strikes at the very heart of that fundamental and essential characteristic of our system of government. It nullifies it; it sets it at naught; it casts to the winds that protection of justice that our fathers established and that has made us with all our power a just and orderly people. For, sir, when we say to the judge upon the bench, who is bound to assert the rules of justice established in a constitution long years before for the restraint of the people in their passion or their prejudice, you shall decide for the rules of justice at your peril; when we say to the judge if you maintain the abstract rule of justice against the wish of the people at the moment you shall be turned out of office in ignominy, we nullify the rule of justice and we establish the rule of the passion, prejudice, and interest of the moment.

So, sir, I say that this provision of the Arizona constitution strikes at the very heart of our system of government. It goes deeper than that. This provision, sir, is not progress, it is not reform; it is degeneracy. It is a movement backward to those days of misrule and unbridled power out of which the world has been slowly progressing under the leadership of those great men who established the Constitution of the United States. It is a move backward to those days when human passion and the rule of men obtained rather than the law and the rule of principles, for it ignores, it sets at naught the great principle of government and of civilized society, the principle that justice is above majorities.

I care not how small may be the numbers of a political faith or a religious sect, I care not how weak and humble may be a single man accused of however atrocious a crime, time was when the feelings and the passions and the wish of a majority determined his rights and oftentimes his right to life; but now, in this twentieth century, with all the light of the civilization of our times, after a century and a quarter passed by this great and free people following the footsteps of Washington, Hamilton, Jefferson, and Madison, now with all the peoples of the world following their footsteps in the establishment of constitutional governments, the hand of a single man appealing to that justice which exists independently of all majorities has a power that we cannot ignore or deny but at the sacrifice of the best and the noblest elements of government.

There is such a thing as justice, and, though the greatest and most arrogant majority unite to override it, God stands behind it, the eternal laws that rule the world maintain it, and if we attempt to make the administration and award of justice dependent upon the will of a majority we shall fail, and we shall fail at the cost of humiliation and ignominy to ourselves.

I do not envy the men who prefer the uncontrolled rule of a majority free from the restraints which we have imposed upon ourselves to the system of orderly government that we have now established. I do not envy the men who would rather have the French constituent convention, controlled by Marat and Danton and Robespierre, than to have a Supreme Court presided over by Marshall; who would rather have conclusions upon a question of justice reached by a popular election on the basis of newspaper reports than to have the impartial judgment of a great court. I do not envy the men who have no sympathy with Malesherbes and De Sèze pleading for the lawful rights of

Louis XVI against the dictates of the majority of the French capital in 1793.

I do not envy the men who see nothing to admire in John Adams defending the British soldiers against the protests of his neighbors and friends and countrymen after the Boston massacre. Rather, sir, would I feel that my country loves justice and possesses that divine power of self-restraint without which the man remains the child, the citizen remains the savage, and the community becomes the commune; that my country has carried into its system of law, and, whatever be its wish for the moment, whatever its prejudice, whatever its passion for the moment, will forever maintain as of greater importance than any single issue or any single man or any single interest that reverence for the eternal principles of justice which we have embedded in our fundamental law as our nearest approach to the application of the Divine command to human affairs.

The Senate passed the joint resolution on August 8, 1911, by a vote of 53 to 18.

On August 15, 1911, President Taft vetoed the joint resolution for the following reasons:

Veto of the Admission of Arizona

President Taft

This provision of the Arizona constitution, in its application to county and State judges, seems to me so pernicious in its effect, so destructive of independence in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority, and, therefore, to be so injurious to the cause of free government, that I must disapprove a constitution containing it. I am not now engaged in performing the office given me in the enabling act already referred to, approved June 20, 1910, which was that of approving the constitutions ratified by the peoples of the Territories. It may be argued from the text of that act that in giving or withholding the approval under the act my only duty is to examine the proposed constitution, and, if I find nothing in it inconsistent with the Federal Constitution, the principles of the Declaration of Independence, or the enabling act, to register my approval. But now I am discharging my constitutional function in respect to the enactment of laws, and my discretion is equal to that of the Houses of Congress. I must therefore withhold my approval from this

resolution if in fact I do not approve it as a matter of governmental policy. Of course, a mere difference of opinion as to the wisdom of details in a State constitution ought not to lead me to set up my opinion against that of the people of the Territory. It is to be their government, and, while the power of Congress to withhold or grant statehood is absolute, the people about to constitute a State should generally know better the kind of government and constitution suited to their needs than Congress or the Executive. But when such a constitution contains something so destructive of free government as the judicial recall it should be disapproved.

The Constitution distributes the functions of government into three branches—the legislative, to make the laws; the executive, to execute them; and the judicial, to decide in cases arising before it the rights of the individual as between him and others and as between him and the Government. This division of government into three separate branches has always been regarded as a great security for the maintenance of free institutions, and the security is only firm and assured when the judicial branch is independent and impartial. The executive and legislative branches are representative of the majority of the people which elected them in guiding the course of the Government within the limits of the Constitution. They must act for the whole people, of course; but they may properly follow, and usually ought to follow, the views of the majority which elected them in respect to the governmental policy best adapted to secure the welfare of the whole people. But the judicial branch of the Government is not representative of a majority of the people in any such sense, even if the mode of selecting judges is by popular election. In a proper sense, judges are servants of the people; that is, they are doing work which must be done for the Government and in the interest of all the people, but it is not work in the doing of which they are to follow the will of the majority except as that is embodied in statutes lawfully enacted according to constitutional limitations. They are not popular representatives. On the contrary, to fill their office properly they must be independent. They must decide every question which comes before them according to law and justice. If this question is between individuals, they will follow the statute, or the unwritten law if no statute applies, and they take the unwritten law growing out of tradition and custom from previous judicial decisions. If a statute or ordinance affecting a cause before them is not lawfully enacted, because it violates the constitution adopted by the people, then they must

ignore the statute and decide the question as if the statute had never been passed. This power is a judicial power imposed by the people on the judges by the written constitution. In early days some argued that the obligations of the Constitution operated directly on the conscience of the legislature, and only in that manner, and that it was to be conclusively presumed that whatever was done by the legislature was constitutional. But such a view did not obtain with our hard-headed, courageous, and far-sighted statesmen and judges, and it was soon settled that it was the duty of judges in cases properly arising before them to apply the law and so to declare what was the law, and that if what purported to be statutory law was at variance with the fundamental law, *i. e.*, the Constitution, the seeming statute was not law at all, was not binding on the courts, the individuals, or any branch of the Government, and that it was the duty of the judges so to decide. This power conferred on the judiciary in our form of government is unique in the history of governments, and its operation has attracted and deserved the admiration and commendation of the world. It gives to our judiciary a position higher, stronger, and more responsible than that of the judiciary of any other country, and more effectively secures adherence to the fundamental will of the people.

What I have said has been to little purpose if it has not shown that judges to fulfill their functions properly in our popular Government must be more independent than in any other form of government, and that need of independence is greatest where the individual is one litigant and the State, guided by the successful and governing majority, is the other. In order to maintain the rights of the minority and the individual and to preserve our constitutional balance, we must have judges with courage to decide against the majority when justice and law require.

By the recall in the Arizona constitution it is proposed to give to the majority power to remove arbitrarily, and without delay, any judge who may have the courage to render an unpopular decision. Controversies over elections, labor troubles, racial or religious issues, issues as to the construction or constitutionality of liquor laws, criminal trials of popular or unpopular defendants—these and many other cases could be cited in which a majority of a district electorate would be tempted by hasty anger to recall a conscientious judge if the opportunity were open all the time. No period of delay is interposed for the abatement of popular feeling. The recall is de-

vised to encourage quick action and to lead the people to strike while the iron is hot. The judge is treated as the instrument and servant of a majority of the people and subject to their momentary will, not after a long term in which his qualities as a judge and his character as a man have been subjected to a test of all the varieties of judicial work and duty so as to furnish a proper means of measuring his fitness for continuance in another term. On the instant of an unpopular ruling, while the spirit of protest has not had time to cool, and even while an appeal may be pending from his ruling, in which he may be sustained, he is to be haled before the electorate as a tribunal, with no judicial hearing, evidence, or defence, and thrown out of office and disgraced for life because he has failed, in a single decision, it may be, to satisfy the popular demand. Think of the opportunity such a system would give to unscrupulous political bosses in control, as they have been in control not only of conventions but elections! Think of the enormous power for evil given to the sensational, muckraking portion of the press in rousing prejudice against a just judge by false charges and insinuations, the effect of which in the short period of an election by recall it would be impossible for him to meet and offset! Supporters of such a system seem to think that it will work only in the interest of the poor, the humble, the weak, and the oppressed; that it will strike down only the judge who is supposed to favor corporations and be affected by the corrupting influence of the rich. Nothing could be further from the ultimate result. The motive it would offer to unscrupulous combinations to seek to control politics in order to control the judges is clear. Those would profit by the recall who have the best opportunity of rousing the majority of the people to action on a sudden impulse. Are they likely to be the wisest or the best people in a community? Do they not include those who have money enough to employ the firebrands and slanderers in a community and the stirrers-up of social hate? Would not self-respecting men well hesitate to accept judicial office with such a sword of Damocles hanging over them? What kind of judgments might those on the unpopular side expect from courts whose judges must make their decisions under such legalized terrorism? The character of the judges would deteriorate to that of trimmers and timeservers, and independent judicial action would be a thing of the past. As the possibilities of such a system pass in review, is it too much to characterize it as one which will destroy the judiciary, its standing, and its usefulness?

The argument has been made to justify the judicial recall that it is only carrying out the principle of the election of the judges by the people. The appointment by the executive is by the representative of the majority, and so far as future bias is concerned there is no great difference between the appointment and the election of judges. The independence of the judiciary is secured rather by a fixed term and fixed and irreducible salary. It is true that, when the term of judges is for a limited number of years and reëlection is necessary, it has been thought and charged sometimes that shortly before election in cases in which popular interest is excited judges have leaned in their decisions toward the popular side.

As already pointed out, however, in the election of judges for a long and fixed term of years, the fear of popular prejudice as a motive for unjust decisions is minimized by the tenure on the one hand, while the opportunity which the people have calmly to consider the work of a judge for a full term of years in deciding as to his reëlection generally insures from them a fair and reasonable consideration of his qualities as a judge. While, therefore, there have been elected judges who have bowed before unjust popular prejudice, or who have yielded to the power of political bosses in their decisions, I am convinced that these are exceptional, and that, on the whole, elected judges have made a great American judiciary. But the success of an elective judiciary certainly furnishes no reason for so changing the system as to take away the very safeguards which have made it successful.

Attempt is made to defend the principle of judicial recall by reference to States in which judges are said to have shown themselves to be under corrupt corporate influence and in which it is claimed that nothing but a desperate remedy will suffice. If the political control in such States is sufficiently wrested from corrupting corporations to permit the enactment of a radical constitutional amendment like that of judicial recall, it would seem possible to make provision in its stead for an effective remedy by impeachment in which the cumbrous features of the present remedy might be avoided, but the opportunity for judicial hearing and defence before an impartial tribunal might be retained. Real reforms are not to be effected by patent short cuts or by abolishing those requirements which the experience of ages has shown to be essential in dealing justly with everyone. Such innovations are certain in the long run to plague the inventor or first user and will come readily to the hand of the enemies and corrupters of society after the pass-

ing of the just popular indignation that prompted their adoption.

Again, judicial recall is advocated on the ground that it will bring the judges more into sympathy with the popular will and the progress of ideas among the people. It is said that now judges are out of touch with the movement toward a wider democracy and a greater control of governmental agencies in the interest and for the benefit of the people. The righteous and just course for a judge to pursue is ordinarily fixed by statute or clear principles of law, and the cases in which his judgment may be affected by his political, economic, or social views are infrequent. But even in such cases judges are not removed from the people's influence. Surround the judiciary with all the safeguards possible, create judges by appointment, make their tenure for life, forbid diminution of salary during their term, and still it is impossible to prevent the influence of popular opinion from coloring judgments in the long run. Judges are men, intelligent, sympathetic men, patriotic men, and in those fields of the law in which the personal equation unavoidably plays a part there will be found a response to sober popular opinion as it changes to meet the exigency of social, political, and economic changes. Indeed, this should be so. Individual instances of a hidebound and retrograde conservatism on the part of courts in decisions which turn on the individual economic or sociological views of the judges may be pointed out; but they are not many, and do not call for radical action. In treating of courts we are dealing with a human machine, liable, like all the inventions of man, to err, but we are dealing with a human institution that likens itself to a divine institution, because it seeks and preserves justice. It has been the corner-stone of our gloriously free Government, in which the rights of the individual and of the minority have been preserved, while governmental action of the majority has lost nothing of beneficent progress, efficacy, and directness. This balance was planned in the Constitution by its framers, and it has been maintained by our independent judiciary.

Precedents are cited from State constitutions said to be equivalent to a popular recall. In some, judges are removable by a vote of both houses of the legislature. This is a mere adoption of the English address of Parliament to the Crown for the removal of judges. It is similar to impeachment, in that a form of hearing is always granted. Such a provision forms no precedent for a popular recall without adequate hearing and defence, and with new candidates to contest the election.

It is said the recall will be rarely used. If so, it will be rarely needed. Then why adopt a system so full of danger? But it is a mistake to suppose that such a powerful lever for influencing judicial decisions and such an opportunity for vengeance because of adverse ones will be allowed to remain unused.

But it is said that the people of Arizona are to become an independent State when created, and even if we strike out judicial recall now they can reincorporate it in their constitution after statehood.

To this I would answer that in dealing with the courts, which are the corner-stone of good government, and in which not only the voters, but the nonvoters and nonresidents, have a deep interest as a security for their rights of life, liberty, and property, no matter what the future action of the State may be, it is necessary for the authority which is primarily responsible for its creation to assert in no doubtful tones the necessity for an independent and untrammeled judiciary.

The recall provision was omitted from the Arizona constitution, and a joint resolution was passed by Congress admitting that Territory and New Mexico into the Union. It was approved by President Taft on August 22, 1911.

The Arizona State legislature at its first session adopted the original recall provision as a part of its constitution.

Early in the next session of Congress (December 4, 1912) Joseph L. Bristow [Kan.], a Progressive, introduced in the Senate a joint resolution submitting to the States two constitutional amendments, the first permitting the President to submit to popular vote at a congressional election any measure he has recommended to Congress upon which no action has been taken for six months, and the second providing that, "if the Supreme Court shall decide a law, enacted by Congress, is in violation of the provisions of the Constitution of the United States, the Congress at a regular session held after such decision may submit the act to the electors at a regular congressional election."

Under each amendment it is proposed that the questions submitted to the people must have a majority of the popular vote in a majority of the States, as well as in a majority of the congressional districts.

The resolution was referred to the Judiciary Committee.

A new form of the recall was injected as an issue in both national and State politics by Theodore Roosevelt in the presidential campaign of 1912. This was the recall of judicial decisions. Colonel Roosevelt brought forward the issue early in his contest with President Taft for the Republican nomination and defended it through that contest and through the presidential campaign which followed. He gave it an important place in his speech at Chicago, August 6, 1912, before the Progressive national convention which nominated him as its candidate.

The Recall of Judicial Decisions

Theodore Roosevelt

The American people and not the courts are to determine their own fundamental policies. The people should have power to deal with the effect of the acts of all their governmental agencies. This must be extended to include the effects of judicial acts as well as the acts of the executive and legislative representatives of the people.

Where the judge merely does justice as between man and man, not dealing with constitutional questions, then the interest of the public is only to see that he is a wise and upright judge.

Means should be devised for making it easier than at present to get rid of an incompetent judge; means should be devised by the bar and the bench, acting in conjunction with the various legislative bodies, to make justice far more expeditious and more certain than at present. The stick-in-the-bark legalism, the legalism that subordinates equity to technicalities, should be recognized as a potent enemy of justice.

But this is not the matter of most concern at the moment. Our prime concern is that in dealing with the fundamental law of the land, in assuming finally to interpret it, and therefore finally to make it the acts of the courts should be subject to and not above the final control of the people as a whole. I deny

that the American people have surrendered to any set of men, no matter what their position or their character, the final right to determine those fundamental questions upon which free self-government ultimately depends.

The people themselves must be the ultimate makers of their own Constitution, and where their agents differ in their interpretations of the Constitution to the people themselves should be given the chance, after full and deliberate judgment, authoritatively to settle what interpretation it is that their representatives shall thereafter adopt as binding.

Whenever in our constitutional system of government there exist general prohibitions that, as interpreted by the courts, nullify, or may be used to nullify, specific laws passed, and admittedly passed, in the interest of social justice, we are for such immediate law, or amendment to the Constitution, if that be necessary, as will thereafter permit a reference to the people of the public effect of such decision, under forms securing full deliberation, to the end that the specific act of the legislative branch of the Government thus judicially nullified, and such amendments thereof as come within its scope and purpose, may constitutionally be excepted by vote of the people from the general prohibitions, the same as if that particular act had been expressly excepted when the prohibition was adopted.

This will necessitate the establishment of machinery for making much easier of amendment both the national and the several State constitutions, especially with the view of prompt action on certain judicial decisions—action as specific and limited as that taken by the passage of the Eleventh Amendment to the national Constitution.

We are not in this decrying the courts. That was reserved for the Chicago convention in its plank respecting impeachment. Impeachment implies the proof of dishonesty. We do not question the general honesty of the courts. But, in applying to present-day social conditions the general prohibitions that were intended originally as safeguards to the citizen against the arbitrary power of government in the hands of caste and privilege, these prohibitions have been turned by the courts from safeguards against political and social justice and advancement.

Our purpose is not to impugn the courts, but to emancipate them from a position where they stand in the way of social justice, and to emancipate the people, in an orderly way, from the iniquity of enforced submission to a doctrine which would turn constitutional provisions which were intended to favor so-

cial justice and advancement into prohibitions against such justice and advancement.

We in America have peculiar need thus to make the acts of the courts subject to the people, because, owing to causes which I need not now discuss, the courts have here grown to occupy a position unknown in any other country, a position of superiority over both the legislature and the Executive. Just at this time, when we have begun in this country to move toward social and industrial betterment and true industrial democracy, this attitude on the part of the courts is of grave portent, because privilege has intrenched itself in many courts, just as it formerly intrenched itself in many legislative bodies and in many executive offices. Even in England, where the constitution is based upon the theory of the supremacy of the legislative body over the courts, the cause of democracy has at times been hampered by court action.

In a recent book by a notable English Liberal leader, L. T. Hobhouse, there occurs the following sentences dealing with this subject:

> Labor itself had experienced the full brunt of the attack. It had come, not from the politicians, but from the judges; but in this country we have to realize that within wide limits the judges are, in effect, legislators, and legislators with a certain persistent bent which can be held in check only by the constant vigilance and repeated efforts of the recognized organ for the making and repeal of law.

It thus appears that even in England it is necessary to exercise vigilance in order to prevent reactionary thwarting of the popular will by courts that are subject to the power of the legislature.

In the United States, where the courts are supreme over the legislature, it is vital that the people should keep in their own hands the right of interpreting their own Constitution when their public servants differ as to the interpretation.

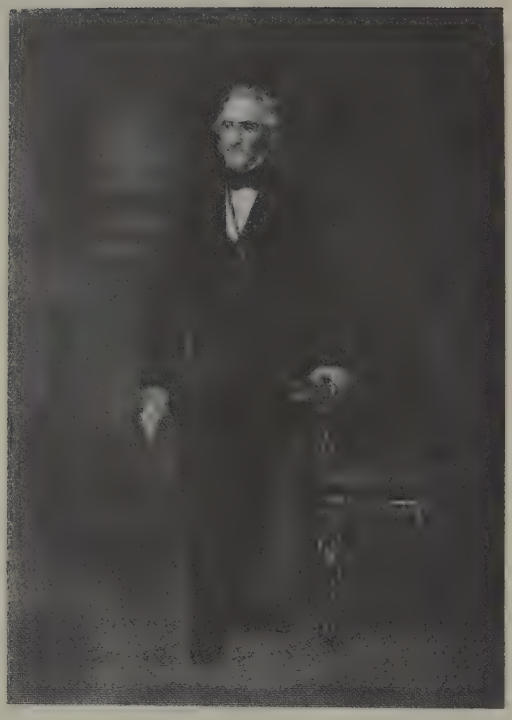
I am well aware that every upholder of privilege, every hired agent or beneficiary of the special interests, including many well-meaning parlor reformers, will denounce all this as "Socialism" or "anarchy"—the same terms they used in the past in denouncing the movements to control the railways and to control public utilities.

As a matter of fact, the propositions I make constitute neither anarchy nor Socialism, but, on the contrary, a corrective to Socialism and an antidote to anarchy.

Many replies were made to Colonel Roosevelt on this issue by prominent statesmen and publicists. The common tenor of their arguments was virtually the same as that of the opposition to the recall of judges. This was expressed by President Taft in a speech at Toledo, O., on March 8, 1912[1]:

> "I have examined this method of reversing judicial decisions on constitutional questions with care, and I do not hesitate to say that it lays the axe to the root of the tree of freedom and subjects the guaranties of life, liberty, and property without remedy to the fitful impulse of a temporary majority of an electorate."

[1] See introduction to the present volume.



Thomas H. Benton

GREAT DEBATES IN AMERICAN HISTORY

From the Debates in the British Parliament on the Colonial Stamp Act (1764–1765) to the Debates in Congress at the Close of the Taft Administration (1912–1913)

EDITED BY

MARION MILLS MILLER, Litt.D. (Princeton)

Editor of "The Life and Works of Abraham Lincoln," etc.

IN FOURTEEN VOLUMES

EACH DEALING WITH A SPECIFIC SUBJECT, AND CONTAINING A SPECIAL INTRODUCTION BY A DISTINGUISHED AMERICAN STATESMAN OR PUBLICIST

VOLUME TEN

ECONOMIC AND SOCIAL QUESTIONS: PART ONE

With an Introduction by Arthur Twining Hadley, LL.D.
President of Yale University

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INTRODUCTION

Our Physical Bonds of Union: the Public Domain and Interstate Commerce

THE problem which lay before the United States in 1789 was in many respects a unique one. The federal governments of earlier times—in Greece and in Switzerland, for instance—had been charged with the duty of making nations out of elements that already existed. The statesmen of America had to create the elements as well as to unite them.

The territory of which the United States found itself in possession at that time was underpopulated to an extraordinary degree. Never, perhaps, in the recent history of the world has so large and fertile an area supported so small a population as was the case in North America under the dominion of the Indian tribes. These peoples were so backward in industry that they could neither multiply their own numbers nor amalgamate with higher races, while at the same time they were so forward in the arts of war that they had contrived to exterminate all the higher civilizations with which they had come in contact until the advent of the white men from Europe. The men who settled the United States found much land but little labor or capital. The country presented a clean sheet on which the statesman gifted with industrial knowledge and industrial vision might write what he pleased.

Other nations have always been face to face with the question how they should make their land support their population. The United States during the first century

of its existence was dealing with the opposite question: how to get a population which should occupy and utilize the land. Natural resources were abundant; labor was scarce. How should we get this labor? We might, of course, have trusted to the natural increase of our own numbers. But this policy would have involved private loss and public danger; private loss, by preventing the development of trade and trade centers; public danger, by leaving the Western land so long unoccupied that it would have tempted the English to send colonies up the St. Lawrence and the Spaniards or French to send them up the Mississippi. Under such circumstances the United States would have found the back country taken out of their hands before they knew it, and the most fertile parts of the continent occupied by alien, if not hostile, powers. It was necessary for us to attract the labor of Europe by the offer of free lands, abundant business opportunities, and an early participation in the rights of American citizenship; it was almost equally necessary to give the population which settled the new territory access to markets on the seacoast and in Europe by a proper system of internal communications.

Dominant in the financial policy of the Administration at the beginning of the history of the United States was Alexander Hamilton; and Hamilton, more than any of his contemporaries, saw the possibility of using industrial policy to make a nation great. He laid down the principle, which was accepted at the time and never has been abandoned, that the public domain should be used, not primarily for the profit of the Government, but with a view to the settlement and sound development of the country as a whole.

In pursuance of this policy the United States gave direct encouragement to the settler by a series of preemption, homestead, and timber culture acts; and it gave indirect encouragement to the development of the country by grants of land in favor of schools and colleges on the one hand and of canals and railroads on the other.

It was the railroad land grants which, for good and for ill, furnished the most distinctive feature in the com-

mercial policy of the United States. More important to our country than its foreign trade, or indeed than any other part of its industrial development, was the growth of its internal commerce. Our large extent of territory and our sparse population gave this matter of domestic trade and exchange an importance which it probably possessed nowhere else. Without facilities for internal commerce the country was bound to remain a nation of clans, very slightly advanced in economic civilization; prosperous, indeed, to this extent, that the people would have plenty of land and abundant supplies of food, but unprosperous when measured by the range of comforts that they could enjoy or the opportunities for progress for themselves and their children. Politically, also, the development of internal trade was as necessary as it was industrially. Without it the United States would remain a number of disconnected provinces, bound to fall apart by their own weight as soon as occasion should arise. A good system of internal communication would bind these separate units together as nothing else could do.

Under these circumstances the leading American statesmen of all parties, whatever their theories of government, favored practical measures for the development of internal trade. George Washington foresaw the importance of canal communication in the development of the United States. DeWitt Clinton devoted his public life to this development, and by so doing placed on a secure basis his own reputation as a statesman and the industrial prosperity of his State. Albert Gallatin and John C. Calhoun, though differing in many of their constitutional theories, were united in their wish that the Government should establish an efficient system of post roads, and have left their views on record in two of the most masterly documents in the whole series of American state papers.[1]

When railroads were invented the matter became even more vital and urgent. To other countries the railroad was in some sense a luxury. It enabled communities which were already well developed to exchange their

[1] American State Papers, XX, 724; XXI, 533.

surplus products with other communities. To the United States the railroad was a necessity. It ministered to the opening of new regions which, without railroad communication, could have had neither commerce nor civilization for many years. Nor was it from the industrial standpoint alone that railroads were of vital importance to the United States. They were a political necessity if we were to remain one nation instead of several.

This necessity was sharply felt at the time of the Civil War, when the secession of the Southern States brought closely home to men's minds the danger of a similar movement in the extreme West. California indeed held to the Union, sending men and money to the support of the North in the contest with the South. But California was a State apart. She had come into the possession of the United States only a few years prior to the war; and, in order to cement the adhesion of California more firmly to the Union, Congress was ready to do everything to open railroad communication across the continent, wholly apart from the industrial return promised. The Central Pacific line to San Francisco, begun in the early part of the war and completed not long after its end, received, in addition to its land grant, a use of Government credit which amounted to a money subsidy of many thousands of dollars a mile. The Northern Pacific, a little later, was unsuccessful in its application for a money subsidy, but it received a double grant of land in lieu thereof.

The work of these Pacific railroad builders, crossing thousands of miles of desert and mountain, did for the United States on the industrial side what the Civil War did for it on the political side. It made us for the first time a single nation, whose parts were so bound together that secession was not only indefensible in theory but improbable in practice. It was a matter of more than ordinary significance that Charles Carroll, last surviving signer of the Declaration of Independence, laid the first rail of the Baltimore and Ohio Railroad. The Declaration of Independence initiated the making of a nation; the development of a railroad system completed it.

In the earliest days, when we had much land and little capital, every possible means was used to attract the capitalist. We were concerned with getting the country developed; that the powers which we invoked to develop the country might become unduly strong, or that they might waste its resources instead of utilizing them, did not enter our minds for many years afterward. A few clear-sighted men saw signs of danger before the Civil War, but it was not until the year 1870 that public attention was aroused to these dangers on a large scale. The Granger movement, in spite of all its political and economic blunders, was significant as being the first organized protest of the legislature against the abuses of corporate power. Since that day the country has witnessed a succession of movements, both in the State legislatures and in Congress, to restrain railroad corporations and other corporations from dangerous extensions of their authority. The debates on these movements possessed exceptional interest on account of the constant necessity of appeal to fact. There is no field of discussion in which the incautious use of rhetoric or the attempt to analyze a situation from one side only leads a speaker to graver practical blunders and his followers to surer discredit than the domain of railroad regulation.

The significance and importance of the debates on railroads are not bounded by the limits of their immediate theme. The success or failure of our experiments in railroad regulation will probably determine the lines of action which the Government pursues in regulating industry of many other kinds. For the railroad is not a thing which stands apart from other industrial agencies, as people thought a generation ago. It is simply the foremost example of tendencies which are making themselves felt in the organization of industry as a whole. Thirty years ago we said that, while other industries were subject to competition, railroads tended to become a monopoly. To-day we see that the same tendency toward monopoly which was felt in connection with railroads is being manifested in every industry involving

large fixed capital. Thirty years ago we said that railroads differed from other industries because their schedules of rates and wages were matters of public concern. To-day we see that to a greater or less degree all schedules of rates and wages are becoming matters of public concern. The railroad problem of 1880 and the trust problem of 1910 were not two different questions. They were two different phases of the same question.

All this adds enormously to the interest of a collection of debates on railroads. What was said in the discussions on the Interstate Commerce Law from 1879 to 1887 may be mere matter of past history as far as interstate commerce is concerned. It is a matter of present-day politics in its relation to a dozen problems of production and distribution, of rates and wages, which are coming up in connection with the consolidated manufacturing and commercial enterprises of this generation. If we take the lessons derived from our experience with railroad regulation at their full value and make effective use of them we may perhaps be spared the expense and delay and the political tumult of learning the same lessons over again in other fields.

Arthur Twining Hadley

by my venerable and venerated friend from North Carolina [Nathaniel Macon] that governments are not made for the poor, but against them; that the rich get the benefits and the poor get the burdens of government; and I know that this severe remark has much foundation in the history of mankind, yet it has not always been so. There have been exceptions, and especially in that great republic, whose name, after the lapse of two thousand years, still shines as a leading star in the firmament of nations. It was not so among the ancient Romans. With that heroic people, although the government was chiefly in the hands of the Patricians, yet the poor had an interest in their country, and that interest was founded in their share of the public lands. When a conquest was made, half the lands were immediately set aside for gratuitous distribution among the poor; the other half was put up to sale for the benefit of the public treasury. Besides this fundamental law, we read in the history of that great people of occasional donations of land to 20,000 poor families at a time. Many laws were made for the protection of their lands—as the Licinian law, which secured their possessions for several hundred years, and for the enforcement of which the Gracchi lost their lives. It was this interest in the soil of their country which made the love of that country so strong a passion in the breast of the Roman citizen. It was this which made every Roman glory in the name, and hold himself forever ready to fight and die for his country. And cannot the same cause produce the same effect with us? Congress is charged with providing for "the common defence" of the nation, and she expends millions upon the fortifications of the seacoast, and upon the equipment of ships for the sea. And may she not give land for the defence of the Western frontier? Great Britain is now filling upper Canada with freeholders, at a great expense to the Crown. One hundred and fifty acres of choice land to each emigrant—expenses of removal—provisions for one year—seed grains for the first crop —farming tools, and household utensils, a cow, at the cost of £4 10s. sterling: such are the inducements which England holds out for the settlement of upper Canada. And why? For the obvious purpose of strengthening herself against us in that quarter: and shall we not strengthen ourselves against her in the opposite quarter? And by the same means? The defence furnished by patriotism and valor has been called "the cheap defence of nations," and so in fact it is. A brave people, devoted to their country, is its cheapest, as well as its surest, defence. Of this defence, it is in the power of this Government

CHAPTER I

The Land Question

[the homestead law]

Senator Thomas H. Benton [Mo.] Advocates Donations of Public Lands to Settlers: His Speech on "Free Land the Cure for Poverty"—Samuel A. Foot [Conn.] Introduces Resolution in the Senate to Suspend Sales of Public Land; Debate: In Favor of Donations to Settlers, Robert Y. Hayne [S. C.]; In Favor of Sales, Daniel Webster [Mass.]—Andrew Johnson [Tenn.] Introduces in the House Bill for Free Grants of Land to Settlers—Debate: In Favor, William C. Dawson [Ga.], Joseph Cable [O.], Charles Skelton [N. J.], Cyrus L. Dunham [Ind.], Galusha A. Grow [Pa.], Joseph R. Chandler [Pa.], Mr. Johnson; Opposed, Thomas J. D. Fuller [Me.], Richard I. Bowie [Md.]—Final Passage of the Bill.

THOMAS HART BENTON was elected to the Senate from Missouri in 1820. In the earlier years of his long service in that body he specially devoted himself to the policy of having the public lands sold at fixed graduated prices with outright donations to actual settlers instead of the system which prevailed of selling them at auction to the highest bidders, with an arbitrary minimum price. From 1824 almost annually he presented bills to this effect, which, though defeated, had an effect in modifying the public land system in respect to recognizing preëmption rights of so-called "squatters" upon the lands.

On April 8, 1828, he spoke as follows:

Free Land the Cure of Poverty

Senator Benton

I know it to be written in that book which is the epitome of all knowledge, "that the rich ruleth the poor, and the borrower is the servant of the lender." I know, too, that it is said

to avail itself to any degree. It may have as many warriors as it pleases on its frontier. It has hundreds of millions of acres of vacant land in the frontier States and Territories, and some hundred thousand citizens without freeholds. Let it give them land; let it give them an interest in their country; a home for their wives and their little ones; and they will never be found without a horse and a rifle; without a willing mind, a courageous heart, and a strong arm, when that country demands their service.

Poverty is not always the effect of vice or laziness. Many are born poor, and remain so; many are born rich, and become poor through misfortune; and, to all, the change of condition from tenant to freeholder is the most difficult part of their lives. Let the Federal Government make that change for them. It can do it for hundreds of thousands, and be none the weaker or poorer, but richer and stronger on account of it. Great and meritorious are the services of the poor. They are soldiers in the time of war, and cultivators both in war and peace. Their daily labor is the perennial source of food to man and beast. Daily do they moisten the earth with the sweat of their brow. Shall that sweat continue to fall upon ground which is not their own? Shall they remain without land under a government abounding with land? Shall they be compelled to choose between the hard alternatives of being trespassers or tenants all their lives? Shall they see forever this Federal Government, after constituting itself sole purchaser of land from Indians, resolve itself into the hard character of speculator and monopolizer, and make "merchandise" out of God's first and greatest gift to man?

Webster-Hayne Debate

This question of the proper disposition of the wild lands belonging to the Government was brought forward in the Senate on January 19, 1830, by a resolution of Samuel A. Foot [Conn.] inquiring into the expediency of a temporary suspension of the sale of such lands. On this subject Robert Y. Hayne [S. C.] and Daniel Webster [Mass.] were the chief speakers, Hayne being in favor of a free grant of the lands to actual settlers, and Webster advocating a continuance of the old policy of sale to the highest bidder.

The discussion, like many side issues in this period,

was soon drawn into the main current of political thought: the increase of Federal powers to the weakening of those of the States, and this debate has therefore been reported elsewhere in this work [see Volume V, chapter ii].

During the session of 1849-50, Andrew Johnson [Tenn.] introduced in the House of Representatives a bill to grant to every head of a family a homestead of 160 acres out of the public domain, conditioned only on its occupancy and cultivation. It was referred to the Committee on Agriculture, who reported it to the House, whereupon it was referred to the Committee of the Whole, where, said one of the speakers on the bill—Joseph Cable [O.]—"it took the infidel's eternal sleep," Mr. Johnson brought it up again in 1850-51, when it was again smothered. Finally, on March 3, 1852, it succeeded in getting before the House. It remained a subject of discussion throughout the session. Among those who spoke in its favor were William C. Dawson [Ga.], Joseph Cable [O.], Charles Skelton [N. J.], Cyrus L. Dunham [Ind.], Galusha A. Grow [Pa.], and Joseph R. Chandler [Pa.]. Among those opposed were Thomas J. D. Fuller [Me.] and Richard I. Bowie [Md.].

The Homestead Law

House of Representatives, Beginning March 3, 1852

Mr. Dawson.—This Government was founded by the peôple for the good of the people. Its great basis is popular affection. It possesses an immense property which it cannot sell but by a process equal in time to a period of centuries. Compare the number of acres sold up to this date, and the length of time (sixty-four years) that has been consumed in making the sales, with the number of acres now undisposed of, and it will be seen that it will require, at the same pace, nine hundred years to dispose of the same. The progressive spirit of the age is impatient of the delay, and demands a quickened step. Vast forests and prairies separate our Atlantic and Pacific regions, which every consideration of security and of intercourse require should be settled. Its settlement would place upon a distant frontier a force able and willing to defend us against hostile

savages, and thus spare us much of the expense we are now required to defray. It would be justice to the new States in which portions of the public lands are situated, by converting them into private property—subjecting them to taxation—and thus requiring them to bear their legitimate proportion of the burdens of State government.

With all of our unexampled prosperity, Mr. Chairman, in the arts and sciences, in the progress of improvement, in the extent of our commerce, in the growth and success of our manufactures, in wealth and in power, it is nevertheless true that there is great inequality in the condition of life, and that much can be done to ameliorate that condition without doing injustice or violence to the rights of any. There is no government that has so much to spare as ours, and none where the gift would be productive alike of mutual benefit. It would be the exhibition of a union of philanthropy and national interest, consummating a measure by which worthy citizens would be made comfortable, not by wasting the property of the State, not by exactions from the property of others, but by moderate grants of wild land, the cultivation of which would swell the productive property of the country, and thus contribute its proportion to the common necessities, in peace and in war.

A large portion of our population is desirous, yet unable, for the want of means, to push forward to the frontier, and there form settlements. It is difficult enough for them to reach the country and provide for their support until the land, improved by their labor, becomes productive. To require them to pay beyond that for the land amounts to prohibition against their going there. The preëmption system stimulated emigration and settlement; but experience has shown that inability to pay the Government for the title after a period of severe trials incident to such new settlement gave the land, in many instances, into the clutch of the speculator, and drove the hardy pioneer again to the forest.

Certainty and *reliability* are words full of import and value in the American language. The certainty of being secure in a small possession—a *home*—even on the extreme confines of civilization would nerve the heart of many an honest man of limited means to make the effort to secure it. Pass this bill, and it will provide homes, and happy ones, for a vast number of meritorious persons, and teach them the value of a government which desires to fulfill the first of its duties: that of promoting the happiness and prosperity of its citizens.

What a useful lesson would such a plan prove to the gov-

ernments of Europe, and what an example would it furnish of republican care for the good of all, thus promoted by our happy institutions. It would present a spectacle at which the patriot, in the full exultation of his heart, might rejoice—at which the honorable gentleman from Tennessee [Mr. Johnson] might rejoice—as Lycurgus did when returning through the fields just reaped, after the generous provision that he had made for the citizens of Sparta and Laconia; and, seeing the shocks standing parallel and equal, he smiled, and said to some that were by: "How like is Laconia to an estate newly divided among many brothers."

Mr. Cable.—The history of mankind proves the fact that the *monopoly of the soil* has been a more fruitful source of wars and bloodshed—of oppression and cruelty—of poverty and misery—of debauchery and crime, than all other causes; and they are legion. For a single instance, look now at the tears, groans—dying groans, misery, wretchedness, famine, destitution, squalid poverty, and prostration of brave, generous, industrious, and faithful Ireland? What is the great, the leading, the *only* cause of all her calamity? Why does now, *seemingly*, a curse rest upon the once joyous "land of song"? *Monopoly of the soil*—nothing else!

The fee simple of the "Green Isle" is held by perhaps less than thirty thousand persons who abstract from *labor* its whole reward, except so much only as may be deemed necessary to keep the laborer's "soul and body together"; and often those who labor are reduced to starvation, while those in whom the fee simple is vested roll in wealth and luxury, pride and pomp, dissipation and crime, thus pampered and luxuriating upon the hard earnings of those in poverty and want. The identical year in which we, as a people, were sending over our vessels loaded with the necessaries of life to relieve the people of Ireland from starvation there were raised in Ireland and shipped to the landlords in England (the seat of the worst government, because of its power to do more evil than any other on earth), *one million's* worth of good and wholesome provisions. Thus did the monopolist of the soil in Ireland abstract from the then *eight* (now *six*) millions of Irish people so much of the reward of their labor as to leave, in that year, *one-half million* of their number the victims of disease and awful famine—died for want of food! What heart can contemplate such scenes of human misery, agony, and death, even in that one year, without realizing that the tongue can be robbed of utterance other than to invoke God's mercy upon the sufferers and

his judgments upon their oppressors? So it has ever been, and so it ever will be, in all countries where the *monopoly of the soil* is tolerated. So, too, it would have been in this country, had not the foresight of our heroic fathers, in connection with our immense domain, prevented it.

Had the boundaries of our own beloved country been confined to the limits of the "original thirteen States," this people, too, would have been, ere this, trodden down by the iron heel of usurpation, fraud, and tyranny. The Shylocks, bankers, with their paper issues, stock jobbers, speculators, and their auxiliaries, would have *monopolized* the entire soil of this country long ago and put the people under contributions. But, thanks to an allwise Providence who has guided the star of these States to a more glorious destiny, our widely extended domain has thrown an insurmountable barrier in the way of usurpation and oppression based upon the *monopoly* of the soil.

In reference to the fee simple of our *public domain*, it is held by some that these wild lands *belong* to the Government. Under our form, under the science of free government, this is a gross absurdity. The title rests with the *source* of sovereignty, and not with the representative agency thereof.

The title, the proprietorship of the unsold lands (the public domain) is in the whole people; and "the Congress" has the disposition thereof *in trust*, and so delegated constitutionally. It then follows that the fee simple is in *man*, not of this nor the other generation, but of the whole people in all time to come.

My friend from Tennessee, on a former occasion, quoted, as authority on this point, from Moses, Vattel, and Jackson, but he might have gone still further, and *proven the original title in man from his creation, bestowed by God himself upon the whole human family—not the few!* After his creation man was directed to *"fill the earth and subdue it."* "And the Lord God sent him out of the Paradise of pleasure—the Garden of Eden *—to till the earth from which he was taken."* The Lord said: "In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it thou wast taken: for dust thou art and unto dust thou shalt return."

By these quotations two things are proven.

First: that man (speaking alone of his mortality) is of the earth, belongs to the earth—and, by God's decree, the earth belongs to him—while he lives, and when he dies his body *returns to the earth of which it is formed.* Man cannot live in the air

above the earth, nor *under* the earth; but if he lives at all he must live *on* the earth, and sustain life by feeding upon its production.

Then withhold not from thy brother what God had bestowed upon him before "thou wast."

Secondly. The foregoing quotations, with their contextures, prove man's *inalienable* connection with the earth. Consequently there is no retreating from the fact that man has an inalienable right to so much of the earth, at least, as will yield him and his household all the necessaries and comforts of life, by industry and application; just as man has a right to life, to the air, the rays of the sun, or the water from the earth. It would be insolent mockery to say to a man live, while you deny him the means of life; to say to him pursue happiness, while you bind him hand and foot, and put a gag in his mouth. And a government, a congress, an administration that withholds this right to the soil—a right conferred by God himself on *all*, "high and low, rich and poor"—from any portion of the people, is guilty of usurpation, tyranny, and fraud.

Moses prophetically declares that "the land shall not always be sold"; and this prophecy will be fulfilled on this continent sooner or later.

There was an excuse, an apology for our venerable sages and heroes of our Revolution in selling the lands. They had involved themselves in a debt of many millions; the people were destitute of everything except patriotism, honor, and virtue. The general Congress could devise no means by which that ponderous debt could be paid. The people of the States—the proprietors of the unappropriated lands, ever true to themselves, came to the rescue, and ceded *their* lands to the general Government, *in trust*, for the purpose of paying *that* debt. In other words: they gave to the creditors, through "the Congress," a mortgage—a lien—upon the domain, as a guaranty that the debt should be paid—that the creditors might be easy. The last dollar of that debt was paid off under the wise administration of the heroic Jackson, and the mortgage lifted. The lands being thus released from incumbrances, the whole system should then have been changed, as the patriot Jackson recommended. But, *no!*—the *demon*—usurpation, fraud, speculation, and ignorance—held dominion in these halls, to stifle justice and insult humanity.

Jefferson, the immortal Jefferson, and his compatriots—that *August Council of Rebels*, on the 4th of July, 1776, declared that *"all* just powers of government are derived from the con-

sent of the governed." The people, from whom emanate all just powers of this Government, ask the recognition of their right to "life, liberty, and the pursuit of happiness," in a grant of homes and independence upon *their own soil*—soil upon which they had given only a lien to secure a debt—no more!

The science of free government teaches that *there is no acquired or incidental right of any stability or virtue that is not based upon or does not flow upon a natural right.* Hence, if it be claimed that the people have not a natural right to the soil, then, indeed, they could not bestow or confer, through their agent, the government, any title to the purchase of land. To repeat, if you destroy man's natural, inalienable right to the soil, you also destroy the virtue and stability of your land titles. This is an important point that should not be overlooked or be treated lightly; especially by those of large estates. For, when you strike a blow at the natural, the inalienable right of the people to the public domain, you destroy the basis and virtue of the tenure by which you hold title thereto; and strike a more deadly blow at your *acquired* rights to your own possessions. The one follows or flows from the other; and, as the former is denied, the latter is weakened. But when you admit the plain fact of the one you make secure the other. Thus have we quoted and referred to authority, which must be conclusive to many, from the *Father of all* to Adam, Moses, Vattel, Jefferson, Adams, and Jackson. Who can war against all this authority, with Blackstone and a cloud of other witnesses corroborating?

Notwithstanding the people's right to the soil is unquestionable—notwithstanding they have paid for these lands *once, twice,* or *thrice*—yet sage statesmen gravely tell us the people must pay again; the Government must not lose the price; as though *government* was something separate and apart from the people! —above the people!—or that there is an ever-continuing strife between the people and the Government! Nothing could be more absurdly ridiculous than an attempt to separate the people and their government. Such statesmen have only mistaken one thing in their philosophy; and that is—like Jeshurun who "waxed fat and kicked"—they have forgotten the God who made them, and remind me of Milton's fallen angels, fighting against the power that made them all they were while in a state of innocence and virtue.

The only objection to the freedom of the public lands to actual settlers, which has come to my ear, is, that "we have paid for our lands, and others should be required to do the

same." To this envious objection it is only deemed necessary to remark that if you have oppressed our fathers to pay off a heavy national debt, which they did pay, *cease* unjustly to oppress their sons. Besides, there is a great deal too much money annually collected and paid into the treasury. If there was no more than half the amount of revenue collected, there would be less corruption, less peculation and speculation, while the administration of the Government might be reduced to one-half of its present expenditures, and those who do the labor and drudgery thereof could be better paid, and still have funds on hand.

Having said thus much of the right of *labor* to fell the forest and tame the wild lands, it may be proper to offer a few thoughts upon the utility and beneficial results flowing from the passage of this bill. How many young men and maidens are there in this country, who have been raised to farming —whose parents, with their aid, have felled your forests, reaped your fields—who have been burdened so as to be "kept back" by opening up the country and paying the enormous expenses of governments, and who are unable to give each of their children a farm at speculator's prices "to begin the world upon"—would be benefited by the privilege of locating and cultivating one hundred and sixty acres—*acres,* too, which are their natural birthright, and thereby add to the general welfare. It would relieve them from the necessity of wearing out their best days to feed up the luxurious banquets of the wine-bibber and the taskmaster, while their own children go barefooted, unclad, and upon scanty food. For it is now understood that he who rents or crops a farm only realizes *twenty-five per cent.* of what he earns. One-half goes to the landlord, a moiety of the other half in the way of taxes, tariffs, and for charitable purposes—all this, too, while you rob him of his natural right to the soil.

By the passage of this bill, how many would be drawn away from your cities, towns, and villages, whose children have continually before them every allurement to vice and temptation to folly, intemperance, and crime, and who, by a removal to a forest life, would be "snatched as brands from eternal burnings!" How many, I ask, of such would be led "to green pastures, the quiet waters by," and become ornaments to society, the bulwark of government, and finally take their places, with the patriarchs of old, in a world of happified and glorified spirits?

Pass this bill, and by the close of the present generation the

destitution, misery, groans, and starvation of your *"Bonus Courts"*—the pollution, crimes, and prostitution of your *"Dandy Halls,"* of your large cities, would almost entirely disappear; for it is want, oppression, despair, and imposition in consequence thereof that "feed up" these caldrons of human dissolution.

Pass this bill, and you bring millions of acres of land annually on the tax list, and thousands of dollars to the treasuries of the States and Territories, from that which is now aiding no one. Would it not open up new and increasing demands for iron, steel, and all kinds of utensils for felling the forest and cultivating the soil? Would it not increase the demand for cotton and woolen goods, with every species of merchandise? It most certainly would; and give encouragement to every kind of mechanism and manufactures. While you all admit that when the agriculture of the country flourishes all other branches of industry prosper, yet you obstruct the agricultural prosperity by denying to it the fertile soil.

The fact should ever be kept in view that there are but two sources of wealth in this country—the hand of *labor* and the *bowels* of the earth. The child of toil and mother earth produce *all* the wealth of this vast country; and, consequently, they pay *all* the expenses of government, State and national. From these two sources, the Shylock, the stock jobber, the banker, the speculator draw all their profits and dividends. From these two sources, much as some men seem to despise them, your army, your navy, the Congress, the Executive, the judiciary, throughout all their various departments, are supported, and all your cities are built up. Yes, from these sources supplies are furnished *indirectly* to the general, and *directly* to the State treasury, whence all officers are paid for their services. How important it is, then, that you withdraw the *clogs* from the mechanical and agricultural interests of the country. While other classes are asking, are invoking the power of this Government to enable *them*, under the plea of protection and tariffs, to *abstract* still more and more from the *reward of labor*, the mechanics, artisans, laborers, and farmers only ask you to remove your *clogs*, which hang upon their rights like an incubus upon the slumbers of an irregular system. They only ask the recognition of their unquestionable rights, that they may be the better *enabled to produce the wealth* of which this Government is so lavish. To ask the producers to raise these vast sums of money, which keep the non-producers in pomp and luxury, to meet all the expenditures of

government, proper and improper, necessary and unnecessary, while you withhold from them the very means—*the soil*—necessary to enable them to produce the money, is both unjust and tyrannical; it is gross usurpation.

We ask not the derangement of society or its organizations. We would deprecate anything tending to disorder or anarchy. For, in any such events, it is the producers under free government that suffer most. We seek not to strike down the exalted, but to exalt the lowly. We only ask the recognition of our rights—rights with which God and nature have endowed all; and that, too, only in the way secured by the Constitution of our common country; and alone in the way it prescribes. And why shall we be denied? Again—I insist upon it—while you demand such heavy amounts of revenue to keep the wheels of government in motion, and support "the *dignity* of official station," withhold not from us the only means by which we can be enabled *to dig it up!* Turn out all your "loose floating population" upon the wild lands, and soon they will become virtuous, industrious, independent, and a bulwark to the country. A forest life is free from the contaminating influences of cities; inspires virtue; and will restore the fallen to usefulness, if not to innocence. And while you complain of poor taxes and almshouses—of jails and penitentiaries—you contribute greatly to the number of inmates by usurping their rights, and by denying to them the very means of life—"Thou shalt till the earth until thou return to it."

The Eternal Fiat has gone forth that *this* country shall be the *redemption of labor.* Here, labor must be redeemed from that thralldom which now drags it down and robs the toiling millions of their just reward, while they are burdened with heavy taxes, tariffs, and denied, *by their servants,* the means to produce the money they demand of them. Then, sir, let us unite our aid, our votes, and all our energies to accomplish this great event—*homes and independence for all!* Let us not lose our golden hours, but aid the ushering in of that day—that glorious dawn of an immortal day (Oh, the happifying thought!), *"when every man shall sit under his own vine and fig tree, where no one dare molest nor make afraid."*

MR. FULLER.—I regard the bill as *unconstitutional, partial,* and *unjust* in its provisions. I deny that this Government holds the public domain by such a *tenure* as that it is susceptible of any such severance and partition as is prayed for by the bill. I ask by what right—by what warrant—by what title deeds—a certain class of persons, aliens and foreigners, or citizens of a

limited age—of a particular condition in their domestic relations—of a particular condition in their pecunary affairs—as they chanced to be, on the 1st day of January, 1852, appear here and claim that all, or any portion of the public lands—the common property of the whole people of the United States—shall gratuitously be set off to them, by metes and bounds, and thereafter be held and owned in severalty, to the exclusion of a much greater portion of the people, possessing equal rights and equal privileges.

Sir, in support of the position that our present land system is better than any other, I wish to read an abstract from a report made by Lord Durham, in the year 1839, to the British Parliament. It seems a commission was sent out by the home Government to examine into the Crown-land system, existing in the British North American provinces. I presume it is well known to the members of this House that *Crown lands* are donated to actual settlers, for a mere nominal sum, barely paying the expense of survey. These lands are as fine and productive soil as can be found on this continent in the same latitude. Within a year past I have had occasion to travel through such a settlement, and observed its condition—contrasting it with other sections in the same region. The settlement upon which the Government bestowed its patronage appeared to be struck with blight and mildew, compared with other settlements, whose inhabitants relied upon their own unaided energies. The idea is an erroneous one, and proceeds from false notions, that the Government, by any system of bounties, can build up a substantial and independent yeomanry. Men must rely upon their own resources, and when they do so success crowns their efforts.

It was a matter of great surprise to the British Government that the better portion of the emigrants, particularly the English and Scotch, as they passed up the St. Lawrence to Canada West, where fine choice settling lands can be had for the mere expense of survey, should prefer to pass into the United States and pay $1.25 per acre for land not in any way superior to that upon the north side of the great lakes. Some have ascribed the cause to be a preference for our institutions; but I think not. The Scotch and English are very loyal in their attachment to their own institutions. And nowhere do the burdens of government rest lighter upon the shoulders of the subject than in the colonies.

Comparing the colonial crown-land office system with ours, Lord Durham remarks:

"The system of the United States appears to combine all the chief requisites of the greatest efficiency. It is uniform throughout the vast confederation; it is unchangeable save by Congress, and never has been materially altered; it renders the acquisition of new land easy, and yet, by means of a price, restricts appropriation to the actual wants of the settlers; it is so simple as to be easily understood; it provides for accurate surveys, and against needless delays; it gives an instant and secure title; and it admits of no favoritism, but distributes the public property among all classes and persons upon precisely equal terms. That system has promoted an amount of immigration and settlement of which the history of the world affords no other example, and it has produced to the United States a revenue which has averaged about half a million sterling per annum, and has amounted in one twelvemonth to about £4,000,000, or more than the whole expenditure of the Government."

This is the opinion of one who ought not to be considered as possessing any partiality for our system over that of his own government.

Now, sir, I come to the main subject of my argument, and I affirm these three positions as applicable to our public lands:

1. That the public lands shall be *disposed of* for the use and common benefit of all the people of the United States, as a whole.

2. That each State shall participate in that common benefit, according to its respective and proper proportion in the general charge and expenditure.

3. That they shall not be disposed of for any other use or purpose whatsoever.

Now, sir, this bill proposes to divert these lands from the *general charge and expenditure,* and to bestow them, not upon all the people, but upon a *select favored few.* Is this honestly executing the trust? The seven States from whom the United States derived its title, and all its claim, are now represented upon this floor by eighty-seven Representatives. I ask you if you can sit quietly by and witness so gross and palpable a violation of the objects and purposes for which these grants were made—yea, more—be instrumental in thus violating the sacred compact? From the perusal of these deeds of cessions it will be noticed that four of them, New York, Massachusetts, Connecticut, and South Carolina, contain the language that the cessions were made.

The deeds of Virginia, North Carolina, and Georgia contain not only the same language, but go further, and prescribe how the common benefit is to be realized, and *in what proportion* each State shall share in this common fund, *viz.:* according "to *the respective and usual proportion in the general charge and*

expenditure." What is this general charge? Has it ceased to exist? Your common treasury has a continual drain and charge upon it—increasing most fearfully within the past few years. And yet you propose to divert from it a portion of its accustomed supply.

These conveyances are in terms perpetual; no change in the destination of the funds, arising from their *disposal,* is contemplated. It is for the payment of no particular debt, to which they stand pledged, but for the "*common benefit*"—"*common use*" of the United States, so long as a charge remains upon the treasury. These donors or grantors, for the purpose of preventing themselves at any future day from being deprived of their "*share,*" or *proportion,* and to clinch the nail, so far as confidence could be reposed in the integrity of man, added the words, "*to be faithfully and bona fide applied for that purpose, and for no other use or purpose whatsoever.*" Such, sir, is the language of the deeds under which you hold your title in trust, which trust appears on their face; and I submit whether, from these deeds, I have not made good my three propositions.

But, it may be said, the deeds from the seven old States cover but a small portion of the territory of the United States. Now, the fact is that a consideration in money was actually paid by the United States in each of the three treaties made with France, Spain, and Mexico—thirty-five millions in the aggregate—besides the accumulating interest, and the yielding up of Texas to Spain, and the expense of two wars, which formed only a part of the consideration for the acquisition of the remaining territory. Can the Government do that *indirectly* which it cannot constitutionally do *directly*? This territory represents money to the extent it has been paid for it—the land cannot be appropriated to any other object than the money could have been before it was turned into land. If this reasoning be incorrect, the Government is without limitation as to the purposes for which it may appropriate money. All it has to do is to turn money into "*stocks*" or "*lands,*" and then it may make appropriations for any conceivable object, and thus accomplish by indirect means what it cannot and ought not to accomplish by direct means. If the land States, by reason of the public domain being within their exterior limits, have superior rights to, or claims over, this "*common property,*" so have the old States to the custom houses, forts, arsenals, and other public property situated within *their* limits. Where is the distinction? In the latter case the old States

ceded their jurisdiction—in the former case the new States, in quite as solemn and formal a manner, pledged their faith not to assert property or jurisdiction over the public domain.

I will not deny that, by giving away land to actual settlers, it may serve, in some degree, to check the tide of emigration from these new land States; and I really felt, upon reading these remarks of the honorable Senator, that I could sympathize with him at the state of things in Michigan. How is it, sir, in my own State, in reference to emigration? Maine is almost reeling by the depletory effect of constant emigration. Her stalwart sons march away by scores and hundreds to the "piny forests" of the Northwest or to the Pacific shore; and though we who remain regret to part with them, if they must and will go, let prosperity attend them. And all I can say is, most fortunate is that State or Territory which shall receive the largest accession of them; for, like the renowned men of the olden time, "*they are famous for lifting up the axes upon the thick trees.*"

Our present system is, in my opinion, just and equal toward all sections and interests of the country. I seek no change—I desire none. I ask nothing for my own section of country that I am unwilling to extend to every other section. I disclaim all sectional feeling. I believe our past growth has been greatly promoted by the existing policy. If it shall be materially changed, it cannot fail to produce gloomy apprehensions for the future growth and prosperity of the people. Our present land system operates like a great balance wheel upon our political institutions. It regulates the value of real property; it controls the wages of labor; and so long as one day's work will purchase an acre of productive land, and secure a certain and sure title, directly from the Government—Eastern manufacturers can never control the wages of labor. The value of real property in the agricultural regions of the older States is adjusted, in a great measure, by this system. As our population increases and becomes more dense, they will emigrate to this broad domain, occupy and cultivate the soil, establish schools and churches, and form settlements, and thereby avoid those evils incident to a more dense and thickly settled country. But offering extraordinary and unusual inducements for settlement will not increase the number of good and reliable settlers. Such settlers multiply only by time and the natural course of events. I trust, sir, that our public domain may be long so held, and that our children, and our children's children, may always have the privilege of resorting to it for set-

tlement and support, and at an unvarying price, with a certainty of title, until the almost countless acres of our unoccupied domain shall be covered with a virtuous, industrious, and happy people.

MR. SKELTON.—The great difficulty under which laborers suffer in our part of the country is that there is too much competition. They enter into our market and underbid each other, and reduce the remuneration of labor, until they are compelled to work for a pittance which is not sufficient to sustain nature in the condition in which it ought to be sustained. But what will be the effect of throwing open these public lands upon this excess of labor in the Eastern States, and upon the men there who are bowed down in the dust, and who, by competition with each other, have reduced the price of their labor to the lowest possible point? I say that, by throwing open these public lands, you not only fertilize and improve the West, but you relieve us of the Eastern States of an evil that is pressing us into the earth. I ask you how a man getting fifty cents a day can support a wife and six children and pay a heavy rent? And yet that is the pay that many of the laboring men get in my part of the country. I appeal to any honorable gentleman here if it is possible for such a man ever to acquire sufficient to purchase a farm in the West, and take his family out there?

When men are compelled to work sixteen or seventeen hours per day for a mere pittance, how it is to be expected that any attention should be paid to the culture of the mind? It is true that in the East we have done something to provide for this class of our citizens. It is true that we have recently levied a direct tax upon all the property holders in the State for the purpose of supporting schools and providing the means of education to every child, whether poor or rich. I recollect hearing it said that some one in passing through one of the Eastern States, and seeing the barren and stony hills of Massachusetts, said, "What do you raise here?" The Yankee, with that acuteness which is peculiar to the well-educated and well-trained citizens of that State, replied, "We raise men, sir." Sir, we raise men in New Jersey; and we have a few of them to spare occasionally to people the great West. And now, is it not best that we should throw open this great West to our citizens, and place the means in their power to educate their children, rather than to force them into our crowded cities? Is it not best that our farmers' sons and mechanics' sons, who cannot again divide their fathers' farms, because they are already perhaps too much divided, should be enabled to provide themselves homes in the

great West, rather than that they should be driven into the closely confined and illy ventilated workshops of our cities, there to remain until their energies are broken down, until they become debilitated and prostrated by want of exercise and wholesome air and sunshine? This is a question which involves not only the increase of the wealth and happiness of the nation, but also involves the morals of the rising generation. Talk about dollars and cents! Let us take care of the human energy of our country. Now, shall we build up our large cities—sinkholes of licentiousness—or shall we enable our citizens to become worthy, intelligent freemen, qualified to defend our country from foreign invasion? Talk about hoarding up dollars and cents at the expense of human sacrifice! Why, I saw a statement not long since that twenty thousand females in the city of New York were earning their living by their needles—toiling on, day after day, and not receiving more than a quarter of a dollar per day. Why is this? Is there not something wrong in our social condition?

A MEMBER.—Why not give the land to them?

MR. SKELTON.—I tell the gentleman that, had we given the land to their fathers and grandfathers, they would not have been found there.

In my professional avocation in the city of Philadelphia I have attended many cases where the person was physically and intellectually prostrated by extreme application and want of air and sunshine.

I recollect some time since visiting one of these cases. He had a package of medicine by his side. I said to him, "Do not touch it. What you want is air and sunshine. This will restore you." "But, sir," said he, "my family must be fed and clothed. I cannot work out of doors, because my health is so much impaired. I can work at my light avocation—that of making shoes." "But," said I, "if you continue to do so, you will go down a martyr to the grave." Said he, "I have no other remedy."

Let the Christian blush when he hears of it from the halls of the nation, that America is a nation where human sacrifices are offered to the god of mammon. I call upon every honorable member here to-day to remedy these evils. Is it possible that a nation can exist for any series of ages where labor is degraded and the laborer trodden down to the earth? Our great prosperity consists in elevating labor to the highest standard.

But, sir, I am not one of those levelers that wish to pull down elevated men. I honor and respect the man who has ac-

cumulated property by his energy and industry. I would not pull one farthing from his pocket; but this I would do: I would elevate the laborer to the same standard of intelligence, if I could not elevate him to the same position in wealth. I would like to see him receive a just compensation for his labor, and placed in a position where he could maintain his family in respectability—supply all their wants, and feed, clothe, and educate his children, as they rise up around him.

The gentleman from Maine [Mr. Fuller] tells us that he protests against this scheme as illegal in the first place, and in the next unjust. How, sir, is it illegal? The public lands are placed in the hands of the representatives of this country, to be disposed of to the best advantage of the citizens of the nation. So far, then, for the illegality of this scheme. Then, for the injustice: How are these lands situated, and who are the owners of them? I contend, sir, that the people of this country own those lands—those vacant lands. The people, the whole people, hold those lands, and every man has an inherent right, as an American citizen, to those lands. And how much of those lands have we got, sir? Why, there is enough there to supply, three times over, every citizen of the United States, after you have given all you propose to give; hence, the individual who takes possession of one hundred and sixty acres does not get his full share of the public lands of the country. Is there any injustice in that?

The gentleman from Maine says that men must rely upon their own resources; let them take their money and go there and cultivate the lands. Now, I would like to ask the gentleman if the man who goes into the Western wilderness, that wild, uncultivated forest, where there is no habitation, no cultivation, no fences, and faces not only the savages and the savage beasts, but the inclement seasons and storms, and takes his axe upon his shoulder, and fells the forest trees, and digs the ground to plant his cornfield, and prepare his potato patch, whether he does not rely upon his own energies? Yes, sir, that is a noble reliance; it is what I want. I want to give every man a chance to rely upon his own energies. But can a man, in a crowded State, where he is compelled to beg leave to toil, depend upon his own energies? No, sir, there is no field of labor for him. There is no employment. I have myself, as a mechanic, gone for three months around the streets of Philadelphia, when not a dollar's worth of work could be obtained. Is that a place for a man to depend upon his own resources? Place him where he can get no labor, no land to cultivate, shut him off from the

public domain, and then insult him by telling him, "Sir, depend upon your own resources." What sort of resources are these? The only resource is beggary, theft, or starvation.

The gentleman from Maine further states that we prefer to see the proceeds of these lands devoted to the promotion of commercial purposes. Now, look at this proposition. We vote the proceeds of these lands to the encouragement of commerce. Now, what is commerce? It is merely an interchange of commodities between one nation and another; and if we have no industry—and I place industry, agricultural, mechanical, and the manufacturing arts before commerce, because commerce is based upon them, and is stimulated and kept in existence by them—I say, if we have no industry, what will be our commerce? But look at the patronage commerce has received. What are we doing for commerce? We are spending for our navy some $7,000,000 or $8,000,000 annually. Is not this sufficient for the support of commerce? How much do you spend for the promotion of agricultural pursuits? Not one cent. And yet honorable gentlemen come here to say they want not only the revenues derived from the duties on imported goods devoted to the promotion of commerce, but they want the proceeds of the sales of the public lands devoted to the same object. I would like the honorable gentleman to say, in the name of common sense, whether commerce is not already sufficiently patronized.

Let us turn our attention to the true wants of civilized life, and commerce will take care of itself. If we have commodities to exchange with foreign nations for their productions, we will readily find avenues by which to conduct those exchanges. If we have not these commodities to exchange, commerce fails of course, and we cannot sustain it. Hence the most effectual way to sustain commerce is to sustain and patronize agriculture, manufactures, and the mechanic arts. This is the true system upon which commerce is to be based, and made a source from whence we derive our revenue.

The honorable gentleman observed that these lands are the balance wheel that regulates the labor of our country. Now, if this is the balance wheel which regulates the liberty of our country—if this is the asylum to which the oppressed are to flee for refuge—if this is the place where the intelligent, the industrious, and worthy may go to get themselves homes, I would like to know why every man, a citizen of this country, should not have a plat of ground which he may call his home? We have given our public domain to our soldiers who have nobly breasted

our enemy on the battlefield, which meets my hearty concurrence. But who has built up the prosperity of this country? We have another class of soldiers—the laborers. If a man goes to the Western frontier of our country, fells the forest, makes the wilderness blossom like a rose, and by his courage and address repels the savages without charging the Government one cent, is not he equally entitled to the land of our country as the soldier who only for three or four months, and that for hire, stands up and faces the common foe?

MR. DUNHAM.—It seems to me, Mr. Chairman, that, of all the propositions which have been made here for the disposition of the public lands, this is certainly the best. Grant the lands to actual settlers—encourage population—stimulate enterprise in your new States, and the surplus productions that will follow will create a necessity for railroads as an outlet to your markets, as well as ability to build them, and, at the same time, the same necessity will exist in your commercial towns to dispose of their commercial materials in exchange for that surplus, so that a double interest will be brought to bear that will carry through these works of improvement.

But there is another point of view in which, as a great question of political economy, I wish to present this subject. It is this: These lands are a portion of the capital of the country. When I speak of capital, I do not use the word in that limited and technical sense in which it is used in the books merely, but I use it rather in the sense of material; for there is no real capital in the country except its natural material. What is technically called capital—the money of the country—is but the medium through which the labor is applied to the real capital, the material; and there is no way of increasing the wealth of a country except by the application of the labor of it to that material. There can be no other way. There is no man, however ingenious, under the broad canopy of heaven, who can devise any other way for producing wealth but by bringing labor to act upon material. These public lands are a part of the material of the country. Here is, then, a part of the capital of the country lying in a state of unproductiveness because uncultivated. Now, sir, go into your older and more thickly populated States, and you will find a surplus of labor which, if not absolutely idle, is but partially employed, or, at least, not as profitably employed as it would be if it had the material to work upon. In the West is the material—these lands lying unemployed and unproductive. If this labor, then, was employed upon this material, it would not only be itself more profitably

employed, but that profit would be increased by the use or income of this material beneficially used and developed by it.

The difference is precisely this: One mechanic starts out in the world to make his fortune by his own unaided toil; another starts out with a capital or material of his own to work upon. The one receives the income derived from his labor alone, while the other receives the income derived from his labor and capital combined. I submit, then, to the committee, whether it would not be better that the unemployed, or the unprofitably employed, labor of the country should be applied to this unemployed material, and it developed, improved, and made to yield, than that it should remain unproductive, and the labor but partially occupied, and partially remunerated? As a question of political economy, would it not be better that this capital of the country should be brought into a state of productiveness? Here are millions upon millions of capital lying idle, while you have the labor to make it productive, and which, if applied to it, would add to the wealth, the comfort, and the happiness of the people of the nation. But you say you will not allow this labor to be applied to this material unless the laborer will pay you for the privilege of thus adding to the wealth and welfare of your country. And this you call statesmanship; and this policy of mine, which would bring the toil of the country to add to its wealth and happiness, you call demagogism! Yours is statesmanship, though you are deriving no benefit from the immense amount of material. Mine is demagogism, because I desire to employ the means to improve that material—to develop it and make it productive to the country and to the world. Judge ye between the two! I repeat, this land is capital. Yet it is only when labor is applied to it that it becomes productive—that it becomes valuable. It is only when you bring the toil of the husbandman to bear upon it, to stir its turbid bosom, and open it up to the sun and the dews of heaven, that it begins to yield something for the support, the comfort, and the happiness of man, and to add to the wealth of the country and of the world. But you will not allow your citizens to toil to add to your wealth, your power, and your greatness, unless they pay you tribute. You are like the miser, who, if he cannot get ten per cent. for his money, hoards it up, and gloats over it, day after day and year after year, and it yields him nothing, when he could, perhaps, have profitably and safely invested it at a smaller per cent., to the benefit alike of himself and his fellow men. It seems to me that there is little or no difference between the policy of hoarding money and

hoarding land. In the one case, as in the other, you add nothing to either individual or national wealth; it pays no taxes, and yields no revenue to the State or nation. The capital, in both cases, lies idle, waste, and useless; it seems to me in violation of every maxim of good policy and sound sense.

But it is said that this measure of granting public lands is entirely selfish, and that the measure is exclusively for the benefit of the new States. But is this so? I undertake to say, sir, that so far as legislation removes restraint from the free labor of the country, or from the free enjoyment of the natural material of the country, just so far you add not only to the wealth of the country, but you benefit all classes of citizens of every section. Now, I will illustrate it by the question of the tariff, which we have been discussing for so many years. When you reduce the tariff, you add to the common welfare of all classes of community equally. Why? Because you remove the unnatural restraint from the enjoyment of the labor and the materials of the country, and allow your citizens to seek the best market for the disposal of their surplus and for the supply of their wants. Apply the same principle to your public lands. Just so far as you remove the restraints, you add to the wealth and to the welfare of every portion of this nation. But place the poor and humble man who now, by unremitting toil, is able to make enough to support his family, and barely make the ends meet at the close of the year—place him upon one of these farms of the West, now lying idle, and he will be thenceforth adding to the capital of the country. He increases his wealth, sends his produce to market, and receives its return. That return is the comforts of life, which are manufactured goods. The manufacturer is benefited by having the farmer in a position where he can furnish something for commerce and is able to buy and consume his manufactures.

Mr. Fuller [Maine] (interrupting).—My own little town consumes seventy thousand bushels of corn, twenty thousand bushels of wheat, and ten thousand barrels of pork. If all our population should remove to the West, where will the growers of the West find a market?

Mr. Dunham.—If there was any objection on that score, it ought not to come from gentlemen from New England. It ought to come from Western men. And I tell that gentleman that we are not afraid of a competition in this respect. Even if you will send out all the surplus population of New England, and settle them upon our uncultivated land, and bring them into immediate competition with us, we fear not that competi-

tion. We feel, at least, that your people, when they are planted upon the virgin soil of the great West, cultivated under the nourishing dews of heaven, are supplying themselves and their families with plenty. That, at least, is something. Nor do I think, sir, that any portion of the gentleman's constituents will go to the West, unless they are convinced it will be for their interest. Surely, then, the gentleman, as a faithful Representative, ought not to oppose a measure so well calculated to secure the welfare and happiness of any portion of those whom he represents.

There is another class that will reap the benefits of this measure. It is the commercial class. Your ships find their employ in transporting the agricultural products of the West, and by importing such articles as are received in exchange for them. It cannot, then, be otherwise than as you increase those products you increase that commerce, and, in increasing it, you furnish these abundant supplies to the starving nations of Europe, taking in return the productions of their labor, to minister to the comforts and pleasures of our own people. It is like the circling wave, which spreads broader and broader until it loses itself upon the most distant shore.

I need not speak more of what such a system would add to the national wealth of this country. I need not tell intelligent men that a quarter section of land in cultivation, with its buildings and improvements upon it, is worth much more to the nation than in its uncultivated state. I need not say that a man will save more of the proceeds of his labor when he is located upon that land, and can constantly lay out that labor, or its earnings, in its improvement, than if he were living with no fixed home and no fixed purpose. You, therefore, in thus bestowing land upon those who will occupy and improve it, add more to the individual and national wealth of the country than by any other disposition of it.

But another objection to this bill, and it is one to which I have perhaps already incidentally alluded, is: that it takes the proceeds of the sales of these lands from the public revenues, and it is alleged that we shall thereby decrease these revenues; but I think not; for, if it be true (and no one will controvert it) that, by giving these lands, as this bill proposes, to men of limited means, you augment the income of their labor, you increase their ability to purchase, and consequently their desire to consume those articles of commerce upon which a tariff is levied, and from which our revenues are derived; this will increase the importation of them, and, as a matter of course, the

resulting revenue; and this increase, I doubt not, will equal, if not exceed, the revenue now derived from the sales of these lands. If it should not, the deficiency will be supplied by the tariff; and, as the articles upon which that is imposed are mostly consumed by our agricultural population, those who enjoy the benefits of the provisions of this bill will also bear the increased burdens resulting therefrom—for, as the people of the West are mainly engaged in agricultural pursuits, and can reap little or no benefit from the tariff, and being the largest consumers of those articles taxed through our custom houses, it is, as a necessary consequence, they who must make up, as consumers of imports, any deficiency in the revenue which may be occasioned by this bill.

But, sir, I had like to have forgotten the question of the gentleman from Maine [Mr. Fuller]. He asks me if the individual who emigrates from the New England States and settles in the West consumes anything more than he did before he removed from the East? I answer yes, because he betters his condition, adds to his wealth, and hence to his ability to indulge in the gratification of his taste and comfort—and ability always begets desire to enjoy—and this increased gratification increases consumption. And if the consumers of New England shall emigrate to and settle upon these lands, others will take their places—the annual increase of her own citizens and the many coming every year from the various parts of Europe, which is sending us not its pauper population, as we are often told, but its thriving and industrious laborers.

Another of the objections urged to this bill is that it grants land to foreigners. I must confess that if the proposition be true, that labor properly applied increases wealth, and is an advantage to the country, and that this land unemployed yields nothing to increase that wealth, I cannot see how it should be injurious to us that the honest, industrious, and hard-working German should come here and settle upon a quarter section of this unemployed land, and make that which is now worthless valuable and productive—that which is a wilderness to blossom as the rose. I cannot see how the nation has lost anything by it. I cannot see how humanity has lost anything by it. I know something of the German and Irish who come to settle upon our soil. There is not a better, a more industrious, nor a more loyal population anywhere. They may come here with a little exuberance of republicanism, if you please, just as they have escaped from the shackles of tyranny, which have fettered their spirits and restrained their energies; but give them land to

cultivate, and labor will soon sober down their judgments, and teach them the important lesson that that only is true liberty which is regulated by law.

But suppose gentlemen differ with me, and consider that this immigration of foreigners is an evil? Yet, evil or no evil, its increased momentum every year is a fixed fact, and cannot be prevented. We cannot, if we would, adopt the Chinese policy of national isolation. No one, at this day, will think of preventing the oppressed victims of the tyranny of the Old World from seeking an asylum upon our shores. No one can be so selfish as to desire to prevent others from partaking of these blessings of liberty which have been showered upon us with so bountiful a hand, and especially when their enjoyment cannot diminish our own. So long, then, as your country maintains its superiority, so long as your institutions are worth enjoying—in short, so long as your liberties remain, this immigration will continue. It were better, then, to cease to inveigh against it, and endeavor to make it useful; to consider how we shall diminish its evils and augment its benefits. You can in no way so well accomplish this as by holding out such inducements as shall prevent these people from congregating in your towns and cities, as shall take them out upon your soil, where their labor can be profitably employed, and where, at the same time, they can obtain a permanent interest in that soil. There is something in the nature of man which makes him cling to the spot of earth he can call his own, and to the government that protects him in its enjoyment.

From whence came we? Your fathers and mine were of those very foreigners who heretofore came to this country, whose glory and prosperity you have so much at heart. Did they ruin it when they came? No, sir; our liberties, as you all know, and as our history will demonstrate, were won by emigrants, or the immediate descendants of emigrants. With no example before them, they established this Government and its institutions; and shall we, at this day, fear to trust a similar people, who have fled from the same oppressions of the Old World, to enjoy the liberties of the New—when, too, they have these institutions and their glorious results before them, as also the example of the millions who have been born beneath them, and who understand and have enjoyed them? Let us not, sir, by a narrow policy, in effect say that the countries from whence sprung the progenitors of the Washingtons, Jeffersons, Lafayettes, Montgomeries, and DeKalbs have exhausted "the breed of noble bloods"; and that henceforth nothing distinguished by talent,

or exalted in patriotism, can spring from the countries of our own ancestors.

I cannot, Mr. Chairman, abide the narrow-minded, cold-hearted policy that wraps itself in the cloak of its own selfishness, and says, It is well with me, let others take care of themselves. Nor can I appreciate this vaunting philanthropy, which talks of going forth to right the wrongs of other lands,[1] yet would refuse a home to the oppressed in our own; would refuse to allow them to occupy what we cannot use or enjoy; and especially when by doing so they add to our wealth and greatness, and help us to bear our burdens. If we take too much of your population from the old States, supply yourselves from those daily seeking homes upon our shores; and, in doing this, we shall be accomplishing the great mission for which we were sent—to relieve mankind, and restore to them liberty and happiness. I believe, Mr. Chairman, that we were placed here for wise and glorious purposes—to restore poor, downtrodden humanity to its long-lost dignity; to overthrow despots, and shed abroad the genial influence of freedom; to break the bonds of the oppressed, and bid the captive go free; to liberate, to elevate, and restore—not by going abroad, sword in hand, conquering and to conquer, as did Mahomet—but our destiny is to be accomplished by peaceful means, by the sword of the spirit, by the genius of our institutions. And this very bill will do more to extend the influence of those institutions and make them popular; more to break the chains of tyranny, and give an impetus to freedom, than anything else you possibly could do. What has given the people of Europe the ideas they possess of our system of popular government? Is it the mere right of your citizen to go to the ballot box and vote? Why, sir, the late example in France shows us that the most downtrodden wretch under the iron heel of tyranny has been permitted to do the same. No! it is not that; it is something more. It is the spirit of our institutions; it is the fact that, wherever the American flag has been borne, the people have been taught that here men enjoy the rights of men; that they stand up in the image of their God, responsible to none but Him for their action, not only morally and physically, but politically. It is this that has given *éclat* to the Government of our country; and, in no way can you add to that *éclat* more effectually than to let the world see that your citizens are in the enjoyment of the greatest blessings and benefits under it. I am sometimes reproached here

[1] Intervention in behalf of Hungarian and Irish patriots was a question of the hour. See Volume II, chapter X.

for my refusal to vote for appropriations for your magnificent public buildings and your other public works; that I am penurious in regard to appropriations of public money. I will acknowledge the charge to a certain extent, and I will give my motive for it. We are frequently pointed to the public buildings and the public works of the nations of Europe as examples, and it is said that we must, like them, have magnificent public buildings; a magnificent army, and a magnificent navy. I tell you that we never can rival her in matters of this kind, nor do I desire that we should.

It is not these which strike the attention of the European traveler when he visits our shores and passes among our people; but it is your home firesides scattered all over the land; the fact that, wherever he finds a hearthstone, it is almost always the happy consolation of him who rests by it that the little roof that shelters him and his family, protecting them from the storms of heaven, belongs to himself, and not to some mercenary landlord, and that it has been improved and beautified by his own honest industry.

Our public works I would make convenient but plain, simple, and unostentatious. The Government I would administer on principles of the strictest economy. I can never forget that every dollar uselessly expended has been earned by the labor of the citizen, and takes so much for empty show of what would otherwise be employed to add to the pleasures and comforts of a home. I can never forget that we are but the servants and agents of the people, clothed with their power and dispensing their means, and that we should exercise that power and dispense those means only for their good. I can never forget that these magnificent public works are like the bright and brilliant blaze of some burning city that flashes upward to the *skies*, but which consumes and destroys. I much prefer to light the many cheerful blazes upon the home hearthstones, which, like the stars above us, speak of hope, of happiness, of heaven.

I have spoken of this measure merely as one of political economy. I want now to speak of it as a great question of moral right. I am no red republican. I do not desire to take a man's home from him, because he may have a little more land than he needs or can properly cultivate; but this Government of ours is a peculiar one—a very peculiar one. It is a government of the people. It has not one single dollar in its public treasury; it has not one single dollar invested in its public works; it has not one single dollar invested in its public lands, but what has been paid from the earnings of the people, and

which does not belong to the people. It can, then, *give* nothing to them. It may restore that which they have contributed, and which belongs to them, as it ought, when their interests will thereby be better subserved. I, then, submit this question to the committee and to the country: Is it right for such a government to hoard up what belongs to the people, so that it cannot be used by them, especially when its use would be for the common benefit of all—to let these lands lie waste when your citizens need them for their support and sustenance? I do not believe it is. I do not believe that we are accomplishing the purposes for which this Government was ordained. I do not believe that we are faithful to the trust of our citizens in keeping in idleness these immense resources of wealth and happiness, doing no good to the people or to the country. I have often admired that lofty expression of the great Tecumseh—for he was great, though a savage; he was one of Nature's great men, made in God's own image, he spoke God's own language—the voice of nature—who, when General Harrison was negotiating a treaty with him and the Indians under his command, ordered his interpreter to set the great chief a chair, and to tell him that his father desired him to take a seat. He drew himself up, only as can he who feels the dignity of a man, and replied: "My father! The Great Spirit is *my* father, the earth is my mother, and upon her bosom will I repose." And he stretched himself upon the bosom of our common mother. But you, in your wisdom—in your statesmanship—as intelligent American legislators, refuse to allow your fellow men to repose upon that bosom, and to draw sustenance therefrom.

Sir, if this measure will add to the revenues of the Government, to the wealth of the country, to the happiness of our citizens, shall we not do more by adopting it to diffuse the spirit of liberty throughout the world than by going forth, sword in hand, to accomplish such a result? Our mission is one of peace. The principles of liberty must be disseminated in the still small voice of moral and peaceful influences; not proclaimed by the roar of cannon and the clangor of arms. War is anti-republican in its tendencies. It concentrates power in the hands of those who administer the government. It destroys the people, and consumes their substance. If we would keep the fires of liberty burning brightly upon her altars, we must cultivate the arts of peace, we must add to the prosperity, the virtue, the intelligence, and the happiness of the people. You will thus give an influence to the cause of freedom that armies and navies cannot restrain. Tyrants may attempt to beat it back, but it

will overleap their embattled walls, and break the serried hosts of their steel-clad soldiers, and find its way to the hearts of their oppressed people. It will kindle a love, a burning love, of liberty which cannot be restrained until oppression shall be swept away as with the bosom of destruction.

MR. GROW.—It is neither just nor sound policy to hold the public lands for revenue. As long ago as 1832, General Jackson, whose sympathies were ever with the sons of toil, and whose heart was as warm as his will was stern or his intellect penetrating, said in his annual message to Congress on this subject:

"It cannot be doubted that the speedy settlement of these lands constitutes the true interest of the Republic. The wealth and strength of a country are its population, and the best part of the population are the cultivators of the soil. Independent farmers are everywhere the basis of society, and true friends of liberty." . . . "To put an end forever to all partial and interested legislation on this subject, and to afford to every American citizen of enterprise the opportunity of securing an independent freehold, it seems to me, therefore, best to abandon the idea of raising a future revenue out of the public lands."

But, aside from the question of sound policy, the Government has no right founded in reason and the nature of things to make the public lands a source of revenue.

It is well sometimes to go back of the authority of books and treatises—composed by men reared and educated under monarchical institutions, whose opinions and habits of thought consequently were more or less shaped and molded by their influence—and examine, by the light of reason and of nature, the true foundation of government and the inherent rights of men.

The fundamental rights of man may be summed up in two words, life and happiness. The first is the gift of the Creator, and may be bestowed at his pleasure; but it is not consistent with his character for benevolence that it should be bestowed for any other purpose than to be enjoyed, and that we call happiness. Therefore, whatever nature has provided for preserving the one, or promoting the other, belongs alike to the whole race, and each may, of right, appropriate to his own use so much as is necessary to supply his rational wants. And, as the means of sustaining life are derived almost entirely from the soil, every person has a right to so much of the earth's surface as is necessary for his support. To whatever unoccupied portion of it, therefore, he shall apply his labor for that purpose, from that time forth it becomes appropriated to his own exclusive use; and whatever improvements he may make by his

industry become his property and subject to his disposal. For the only true foundation of any right to property is man's labor. That is property, and that alone which the labor of man has made such. What rights, then, can the Government have in the soil of a wild and uncultivated wilderness? Or what right has one man more than another to an acre of uncultivated land to which not a day nor hour's labor has been applied, to make it more productive, and answer the end for which it was created, the support and happiness of the race?

It is said by the great expounder of the common law [Blackstone] in his "Commentaries" that "there is no foundation in nature or natural law why a set of words upon parchment should convey the dominion of land." The use and occupancy alone give to man, in the language of the "Commentaries," "an exclusive right to retain, in a permanent manner, that specific land which before belonged generally to everybody but particularly to nobody."

As property is the only proper subject of taxation, nor should the Government look to aught else for its support, it has no right to hold the public lands as a source of revenue. It may be said, True, such would be man's right to the soil in a state of nature; but when he entered into society he gave up a part of his natural rights, in order to enjoy the advantages of an organized community.

This is a doctrine, I am aware, of the books and treatises on society and government; but it is a doctrine of despotism, and belongs not to enlightened statesmen in a liberal age. It is the excuse of the despot in encroaching upon the rights of the subject. He admits the encroachment, but claims that the citizen gave up part of his natural rights when he entered into society; and who is to judge what ones he relinquished but the ruling power? It was not necessary that any of man's natural rights should be yielded to the state in the formation of society. He yielded no right but the right to do wrong, and that he never had by nature. All he yielded in entering into society was a portion of his unrestrained liberty, and that was that he would submit his conduct, that before was subject to the control of no living being, to the tribunals to be established by the state, and with the tacit consent that society, or the Government, might regulate the mode and manner of the exercise of his rights; but why should he consent to be deprived of them? It is upon this ground that we justify resistance to tyrants. And, whenever the ruling power so far encroaches upon the natural rights of men that an appeal to arms becomes preferable to submission, they

appeal from human to divine laws, and plead the natural rights of man in their justification. That government, and that alone, is just which enforces and defends all of man's natural rights, and protects him against the wrongs of his fellow man.

But, it may be said, although such might be the rights of men, yet the Government has a right to these lands, and may use them as a source of revenue, under the doctrine of eminent domain. This claim by government had its origin in the maxim that whatever was capable of ownership must have a legal and determinate owner. Therefore, whatever was not appropriated by individuals, as it belonged in common to the whole state, was vested in the king as its head. Not only was this true of forests, waste grounds, and wrecks, but he was also the sole proprietor of the soil of his empire, and he might deal it out in manors to the favorites of his court. But it is not necessary for me to spend time in noticing the origin of this doctrine of eminent domain, or the wrongs inflicted on man under it; for the claim of this Government, so far as this point is concerned, is embraced in the right of discovery. This is a claim, also, upon which the books vest a right to the soil in the king, or ruling power, under whose patronage land is discovered not before known to civilized man. It might be proper that a nation that has sent forth a fleet, and discovered land, should have the direction of the legislation for the government of the men who should settle it—have jurisdiction of the laws of the territory; but how can it acquire rights which man himself cannot acquire by the same process? It is a reasonable supposition that a man is attached to the government and institutions of his fatherland; and, if the men who first discover a country were to settle in it and enact a system of laws, the presumption is that they would be similar to those of the land of their kindred. Therefore, there is a propriety in giving to nations jurisdiction over the men and property of the country they may discover, but not a proprietorship to its soil.

France, England, and Spain claimed by right of discovery various parts of the North American continent; and by conquest and parchment this Government has taken their title to the territory now composing the United States. We became vested, it is true, with all their rights, but they had nothing to convey, save that a subject of theirs was the first to discover land never before, in their own quaint language, "looked upon by Christian eyes." What kind of a foundation is that upon which to base a right affecting the happiness of man and the destiny of the race? What is there in the constitution of

things giving to one individual the sole and exclusive right to any of the bounties provided by nature for the benefit and support of the whole race, because, perchance, he was the first to look upon a mere fragment of the creation? By the same process of reasoning, he who should first discover the source or mouth of a river would be entitled to a monopoly of the waters that flow in its channel. Or he who should first look upon one of the rills or fountains of the earth might prevent fainting man from quenching there his thirst, unless his right was first secured by parchment. Why has this claim of man to monopolize any of the gifts of God to man been confined, by legal codes, to the soil alone? Is there any other reason than that it is a right which, having its origin in feudal times—under a system that regarded man but as an appendage of the soil that he tilled, and whose life, liberty, and happiness were but means of increasing the pleasures, pampering the passions and appetites of his liege lord—and, having once found a place in the books, it has been retained by the reverence which man is wont to pay to the past and to time-honored precedents. The human mind is so constituted that it is prone to regard as right what has come down to us approved by long usage and hallowed by gray age. It is a claim that had its origin with the kindred idea that royal blood flows only in the veins of an exclusive few, whose souls are more ethereal, because born amid the glitter of court, and cradled amid the pomp of lords and courtiers; and therefore they are to be installed as rulers and lawgivers of the race. Most of the evils that afflict society have had their origin in violence and wrong enacted into law by the experience of the past and retained by the prejudices of the present.

Is it not time you swept from your statute book its still lingering relics of feudalism, wiped out the principles ingrafted upon it by the narrow-minded policy of other times, and adapted the legislation of the country to the spirit of the age, and to the true ideas of man's rights and relations to his government?

For if a man has a right on earth he has a right to land enough to rear a habitation on. If he has a right to live, he has a right to the free use of whatever nature has provided for his sustenance—air to breathe, water to drink, and land enough to cultivate for his subsistence. For these are the necessary and indispensable means for the enjoyment of his inalienable rights, of "life, liberty, and the pursuit of happiness." And is it for a government that claims to dispense equal and exact justice to all classes of men, and that has laid down correct principles in its great chart of human rights, to violate those

principles and its solemn declarations in its legislative enactments?

The struggle between capital and labor is an unequal one at best. It is a struggle between the bones and sinews of men and dollars and cents, and in that struggle it needs no prophet's ken to foretell the issue. And, in that struggle, is it for this Government to stretch forth its arm to aid the strong against the weak? Shall it continue, by its legislation, to elevate and enrich idleness on the wail and the woe of industry?

For if the rule be correct, as applied to governments as well as individuals, that whatever a person permits another to do, having the right and means to prevent it, he does himself, then indeed is the Government responsible for all the evils that may result from speculation and land monopoly in your public domain. For it is not denied that Congress has the power to make any regulations for the disposal of these lands not injurious to the general welfare. Now, when a new tract is surveyed, and you open your land office and expose it to sale, the man with the most money is the largest purchaser. The most desirable and available locations are seized upon by the capitalists of the country who seek that kind of investment. Your settler who chances not to have a preëmption right, or to be there at the time of sale, when he comes to seek a home for himself and his family, must pay the speculator three or four hundred per cent. on his investment, or encounter the trials and hardships of a still more remote border life. And thus, under the operation of laws that you call equal and just, you take from the settler three or four dollars per acre, and put it in the pocket of the speculator. But not upon the capitalist or the speculator alone is it proper that the blame should fall? The laws and the lawmakers are responsible for whatever evils necessarily grow out of their enactments.

While the public lands are exposed to indiscriminate sale, as they have been since the organization of the Government, it opens the door to the wildest system of land monopoly—one of the direst, deadliest curses that ever paralyzed the energies of a nation, or palsied the arm of industry. It needs no lengthy dissertation to portray its evils. Its history in the Old World is written in sighs and tears. Under its influence, you behold, in England, the proudest and most splendid aristocracy, side by side with the most abject and debased people; vast manors hemmed in by hedges as a sporting-ground for her

nobility, while men are dying beside the inclosure for the want of land to till. Thirty thousand proprietors hold the title-deeds to the soil of Great Britain, while in Ireland alone there are two and a half millions of tenants that own no part of

BUILDING ASSOCIATIONS!!

The slumbering mechanic while dreaming of a homestead loses his last loaf

From the collection of the New York Historical Society

the land they cultivate, nor can they ever acquire a title to a foot of it; yet they pay annually from their hard earnings $20,000,000 to absentee landlords for the privilege of dying on their soil. Under its blighting influence you behold industry in rags, and patience in despair. Such are some of the fruits of land monopoly in the Old World; and shall we plant its seeds in the virgin soil of the New? Our system is subject to like evils, not so great in magnitude, perhaps, but similar in kind. Let the public domain, then, be set apart as the patrimony of labor, by preventing its being absorbed by capital, and thus, instead of blessing the race, becoming its curse.

If you would raise fallen man from his degradation, elevate the servile from their groveling pursuits to the rights and dignity of men, you must first place within their reach the means for supplying their pressing physical wants so that religion may

exert its influence on the soul and soothe the weary pilgrim in his pathway to the tomb. For it is in vain you talk of the goodness and benevolence of an Omniscient Ruler to him whose life, from the cradle to the grave, is but one continued scene of pain, misery, and want. Talk not of free agency to him whose only freedom is to choose his own method to die. In vain you entreat him to cultivate the intellect and purify the heart whose days are dragged out in procuring a morsel to sustain life, and whose last prayer, as he falls broken-hearted into his kennel of straw, is that he may never behold the light of another day.

Riches, it is true, are not necessary to man's enjoyment, but the means to prevent starvation are. Nor is a splendid palace necessary to his real happiness, but a shelter against the storm and winter's blast is.

If you would lead the erring back from the paths of vice and crime to virtue and to honor, give him a home—give him a hearthstone, and he will surround it with household gods. If you would make men wiser and better, relieve your almshouses, close the doors of your penitentiaries, and break in pieces your gallows—purify the influences of the domestic fireside. For purifying the sentiments, elevating the thoughts, and developing the noblest impulses of man's nature, the influences of a rural fireside and agricultural life are the noblest and the best. In the obscurity of the cottage, far removed from the seductive influences of rank and affluence, are nourished the virtues that counteract the decay of human institutions—the courage that defends the national independence, and the industry that supports all classes of the state.

It was said by Lord Chatham, in his appeal to the House of Commons in 1775, to withdraw the British troops from Boston, that "trade, indeed, increases the glory and wealth of a country, but its true strength and stamina are to be looked for in the cultivators of the land. In the simplicity of their lives are found the simpleness of virtue, the integrity and courage of freedom. These true, genuine sons of the soil are invincible."

The history of American prowess has recorded these words as prophetic. Man, in defence of his hearthstone and fireside, is invincible against a world of mercenaries. In battling for his home, and all that is dear to him on earth, he never was conquered save with his life. In such a struggle every pass becomes a Thermopylæ, every plain a Marathon. With an independent yeomanry scattered over your vast domain, the

"young eagle" may bid defiance to the world in arms. And, even though the foe should devastate your seaboard, lay in ashes its cities, they have made not one single advance toward conquering the country. For, from the interior come up your hardy yeomanry, and, with their hearts of oak and their nerves of steel, they expel the invader. Their arms are the citadel of a nation's power, their hearts are the bulwarks of liberty.

You grant bounties to the soldier of the tented field. It is well. But there are soldiers of peace as well as of war, and, though no waving plume or floating ensign beckons them on to glory or to death, their dying scene is oft a crimson one. They fall, leading the van of civilization along untrodden paths, and are buried in the dust of its advancing columns. No clarion's note wafts the expiring spirit from earth to heaven; no monument marks the scene of deadly strife; and no stone their resting-place. The winds, sighing through the branches of the forest, alone sing their requiem. Yet they are the meritorious men of the Republic; the men who give it strength in war, and glory in peace. From the backwoods, the workshop, and the plow, came the men who gave victory to your arms in the struggles of the Revolution; that upheld your standard amid the canebrakes of Marion, and on the bayou of New Orleans; and that have borne it in triumph over the battlefields of your frontiers. The achievements of your pioneer army, from the day they first drove back the Indian tribes from your Atlantic seaboard to the present hour, have been the achievements of science and civilization over the elements, the wilderness, and the savage. All the settler asks of his country and his Government is to protect him against the cupidity of soulless capital and the iron grasp of the speculator. Upon his wild battlefield these are the only foes that his own stern heart and right arm cannot vanquish. While, then, the shield of this Government is thrown over the moneyed interests of the country, fostering, by your protective laws, its associated capital, withhold not justice from the men who go forth, single-handed and alone, to subdue the forest, tame the savage and the wild beast, and prepare, in the wilderness, a home for science and a pathway for civilization.

MR. BOWIE.—The public lands are a patrimony sufficient, for centuries to come, to combine and sustain the Union against foreign aggression and domestic dissension. While they remain common property, disposed of for the common welfare, they constitute capital, to strengthen public credit; they create a

sinking fund to extinguish the public debt; they furnish means whereby the Federal Government, exercising a wise discrimination, may promote the mutual and reciprocal prosperity of the East and West by extending means of communication, transportation, and population.

It is an unenviable and ungracious duty to oppose any proposition for the amelioration of the condition of those who feel "poverty's unconquerable bar," "the proud man's contumely," and "the oppressor's scorn"; but the general Government cannot act as the grand almoner of the States. Each State, each county, and each city must alleviate the sufferings of its unfortunate population.

The present bill is legislation, in my judgment, based entirely upon a new principle. It is legislation calculated to sap the foundations of our Government, and, if persevered in, must result in the most deplorable consequences.

Mr. Chairman, upon what principle is this bill based? Upon the principle of gratuity—a principle not ingrafted as a system before in our laws. This, if nothing else, is enough to wake up this Congress to the consequences of the bill. This, if nothing else, is sufficient to make us inquire, if we grant this boon, when and where are we to stop? What treasury will be ample enough to relieve the wants of the indigent who will crowd around us?

The bill is a direct appeal to the venality of voters. It assails the citadel of suffrage—the purity of the ballot box. It is calculated to divide society into two parties—those who are in favor of voting the public lands to the indigent, and those who are opposed to it; and who can doubt, when a motto of that kind is engraven upon their banners, which party will prevail? It constitutes a privileged class, to be pensioned on the Government.

I regret to say, Mr. Chairman, that the only precedent to be found for this legislation is to be found in the decay of the Roman Republic, and there we find it staring us in the face in its most formidable and revolting features. Yes, this bill is in principle but a repetition of that agrarian law which was reënacted by Caius Gracchus, but not carried to the same extent. Gracchus, after requiring there should be an annual distribution, also required that granaries should be established and the poor supplied with corn below the market price. He also obtained a decree by which the revenue of the estate bequeathed by the King of Pergamus to the Roman people should be allotted for the maintenance of the poorer citizens.

This, for a time, lifted the tribune above the Senate, and above the government. He won golden opinions of all sorts of men. These signs were portentous, Mr. Chairman. They preceded and foreshadowed that decline of the republic and that decay which ultimately resulted in the most formidable of empires, and the most odious despotism. Let us not fail to be instructed by history, though it be the history of the schools.

MR. CHANDLER.—I am indifferent about any remarks upon myself, but I ask that my old school friend, Tiberius Gracchus, may not be misrepresented. It will be found, if gentlemen will examine a little more carefully, that the Gracchi were not so censurable as they have been considered. When the aristocracy write history, woe to the plebeians. Tiberius Gracchus, if I remember correctly (and I am taken a little by surprise in this matter), never attempted any wrong upon the citizens of Rome. Tiberius Gracchus, sir, was a member of the House of Representatives of Rome. He found that horrible abuse had crept into the practices of the aristocracy, who, during the absence of the plebeians in the war, got possession of the public lands, of which, by law, no man could hold more than three hundred and thirty-three acres, and for that must pay a *usury*, or ground rent. But, in the absence of the soldiers, these grasping landholders refused to pay the rents, and Tiberius Gracchus, to prevent the civil and servile wars, sought to revive the Licinian law. He sought to prevent the accumulation of the public lands in the hands of those who could not plead preëmption rights, and would not pay for the use of them. And, sir, this attempt of Gracchus to restore the public land to public use would have gone on very well, but the aristocracy bribed one Octavius, one of the tribunes, to take part against the measure which he had approved, and this led to a disturbance. And, let me add, that the very consul (Opimus) who, under pretence of great purity and patriotism, made such a rumpus in Rome on account of the reforming influence of Gracchus, and of his homestead land bill exertions, was subsequently convicted of sacrificing the interests of his country for the gold of Jugurtha! Sir, let me say that this cry of "agrarian laws" and the Gracchi are inapposite. By agrarian laws, people are led to understand a legislative attempt forcibly to equalize the possession of lands. Sir, no such attempt is made in this bill—none, as far as I know, ever was made in Rome. Rome never had a law, I believe, that limited the individual possession of land—certainly she had none at the

time of the Gracchi. Every citizen might own as much as he could pay for, and might occupy besides that three hundred and thirty-three acres if he would pay the small rent. To this Tiberius Gracchus limited the operation of his law, and Caius Gracchus only undertook to divide the *public* lands among the soldiers and others who had aided to conquer them—bounty lands, sir, which the aristocracy were laying their hands on for their foreign slaves to cultivate, while they (the rich occupants) were holding in fee simple any amount of lands which they could purchase.

The honorable gentleman speaks of his schoolbook authority. Sir, authorities are to be found later and better than those he seems to have read. The honorable gentleman speaks of these attempts of Gracchus to correct the rapacity of the aristocracy as occurring in "the decay of Rome." Does my honorable friend think that Rome owed her decline and fall to the attempt of patriotic citizens to check the civil wars of the country, lessen the corruption of the nobles, and extend the comforts of the great mass of the people? Or was it the failure of the Gracchi to effect the remedial objects they proposed that hastened the catastrophe they foresaw and dreaded? Spare the Gracchi, and read Niebuhr.

MR. BOWIE.—I have no doubt the gentleman is accurate in his recollection, but I quote Plutarch and Ferguson for what I have said. The original law upon this subject was not proposed by either of the Gracchi. It was a law proposed by Licinius.

MR. CHANDLER.—That was a very old law, brought back by Tiberius Gracchus.

MR. BOWIE.—Yes, soon after the destruction of Rome by the Gauls, Licinius proposed a law which prohibited any citizen from holding more than a certain number of acres of land, and a certain number of cattle. But two hundred and fifty years after that, Tiberius Gracchus having disgraced himself in some measure in the wars, and subjected himself to the rebuke of the senate, returned to Rome and attempted to revive the law of Licinius, in order to reëstablish himself in favor of the people. I have taken care to provide myself with a report of the speech made before the people—not in the senate—by Tiberius Gracchus, and I propose to read it, to show the remarkable coincidence in the thoughts and expressions of two gentlemen—one living before the Christian era, Plutarch, and the other in the nineteenth century, my honorable friend [Mr. Chandler] from Pennsylvania. Since the honorable gen-

tleman has corrected my memory of history, I recite from Plutarch the remarks of Tiberius Gracchus:

> "Every wild beast in this happy land has a cover and place of retreat, but many valiant and respectable citizens, who have exposed their lives and who have shed their blood in the service of their country, have not a home to which they may retire. They wander with their wives and children, stripped of every possession but that of light and air. To such men the common exhortation to fight for their tombs and their altars is a mockery and a lie. They have no altars or monuments."

This is the language of Tiberius Gracchus. Now refer to the language of the honorable gentleman from Pennsylvania:

> "If we deny it (a home) to them, we deny what God has given to us; we deny what our fathers fought and bled for. We deny what your ancestors achieved, and sought to distribute among all men."

Much as I respect my learned friend, and highly as I regard his theology, I ask him to show any divine right for our lands in this country. I think it would puzzle him, as he said, not irreverently, "the earth is the Lord's, and all that therein is," or "the fullness thereof," according to another version. But we are bidden to earn all that we have by the sweat of our brow, and this is the only title sanctioned by divine authority that I know of to property of any kind. I ask the honorable gentleman to review the sentiments which he has offered in his speech, and I think in his calm and more deliberate moments he will acknowledge that he could have uttered nothing which would have a more direct tendency to weaken the bonds of society and shake the title of property throughout the world. Sir, we must guard against small things —"*obsta principiis.*" We must arrest the flood at the commencement, or not arrest it at all. Arrest it now, or the barriers which the Constitution and law designed to throw around this invaluable property will be swept away.

Ours is a government which lives and acts by public opinion. The honorable gentleman from Pennsylvania [Mr. Chandler] has gone so far as to intimate that the tenure of our lands has changed with public opinion; that legal rights and constitutional rights are dependent upon public opinion. I defy any man to assign a rational foundation for such an argument. It is the argument, not of one who has examined into the legal claims of the United States, but of a generous heart, borne away by superserviceable zeal. Ay, the milk of human kindness, which flowed so abundantly in his bosom, has drowned

his judgment. The tenure of the public lands can never change as long as there is any obligation in our oaths to support the Constitution, and as long as there is any force in the deeds which ceded them to the United States; if the hour shall ever come when these solemn sanctions are not to be observed, it is better that they be blotted out, for then there will be no ghost to rise up and remind us of their violation. It would be better, not that black lines be drawn around them, but that by common consent they be annulled. I would rather witness a solemn convention of the people of the United States absolving each and every man from his oath of allegiance to the Constitution than to see the principle adopted that the tenure of public property held under the Constitution should change with public opinion, for then *might* would be *right*.

MR. JOHNSON.—The opponents of this bill seemingly think that they have erected a rampart that is impregnable, and over which none can pass. This rampart, thus erected, seems to be sustained by three main barriers, or columns; on the center one they have written "*unconstitutional*"; on the right-hand column they have inscribed "*diminution of the revenue*"; on the left-hand one, "*rank demagogism and agrarianism.*"

Well, now, it is more in compliance with my nature than perhaps with my better judgment and discretion always to meet an enemy and fight him upon his own ground; and with their own weapons, therefore, instead of attacking the enemies of this bill in their weak points, I purpose to attack them in their strong ones.

The first column—the constitutional one—stands out in bold relief.

We find, when we turn to the Constitution of the United States, that there are certain powers contained in it. For instance, in article first, section eight, we find it is provided "that the Congress shall have power to lay and collect taxes, duties, imposts, and excises." Well, we will stop there. This is the vitalizing principle of the Constitution, for, without the exercise of the revenue, or taxing power, all other parts of the Constitution become torpid, and, I might say, dead. When this power is exercised, and revenue is collected, it passes into the treasury, and, being there, the Constitution points out the mode and manner of its application. After the revenue is collected, what then does the Constitution say in regard to it? It is, to "pay the debts, provide for the common defence and the general welfare of the United States." I shall not attempt here to enumerate all the objects to which Congress can ap-

propriate money, but shall content myself with making this distinction: that there are some objects to which Congress cannot appropriate money, but to which Congress can appropriate land. The power of Congress over territory is one thing, and that over taxes and money another thing.

Well, there is another provision in the Constitution, and although no lawyer, and not in the habit of public speaking, I want to address myself, as humble as I am, to the intellect and thinking powers of this House in relation to it. And what is that power? "The President, by and with the advice and consent of the Senate, can make treaties." By the exercise of the treaty-making power, territory can be acquired, and that without the payment of a dollar. Suppose that, in the acquisition of the Territory of California, we had acquired it without the payment of a single dollar. What was the object of the acquisition? It was for settlement and cultivation. It is one of the highest objects of government, whether democratic or monarchical, in the acquisition of territory, to have it peopled. This Territory was acquired for the purpose of settlement and cultivation. Now, we have the territory acquired by the treaty-making power. Then there comes another provision of the Constitution which bears immediately upon such an acquisition. What is it? "That Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States." Is not the passage of a law to induce settlement and cultivation carrying out one of the highest objects contemplated by the Constitution in regard to the acquisition of territory? Certainly. Is there any encroachment, any infringement in this? Is it not in strict compliance with the objects of the Constitution—the settlement and cultivation of the territory?

Well, we will now pass on from this constitutional point; and I think I may safely say that this column, placed at the center of the rampart, has been made to give way. It has fallen at the very touch of truth and sound reason.

Then let us go to the right-hand column: "Diminution of the treasury, diminution of the revenue," and see how they stand there. How does this proposition stand when you come to examine it? I say it is a revenue measure. I say it will increase the receipts into the treasury. And how increase the receipts? By the enhancement of the value of the remainder of your public domain. Let us take a case to illustrate: Take the laborer in society that has no profession, no trade, that has no sort of work of his own, and how much tax does he

pay to the support of your Government under the present system? How much? Scarcely anything. But take one of these men, transplant him in the West, upon one hundred and sixty acres of its fat, virgin soil, and in a few years, when he clears a few acres around him, gets a horse and a mule or two, and some fat, thrifty hogs, which come grunting up to his log cabin, through the bushes, and a few milch cows, lowing at the barnyard, with their udders distended with rich milk, at once, you have increased his ability—to do what? To purchase a considerable amount of foreign imports or goods of domestic manufacture, when previously he could have bought little or nothing. I could show how much the Government will lose under the present system, and the length of time it will require to bring this public domain into cultivation, considering the time it has already been in market. It would be some seven hundred years at the present rate of disposition. I could show, upon the principle of time operating upon value, what a great advantage it would be to the Government to give the land away, and thereby induce its settlement and cultivation.

Well, then, Mr. Chairman, I think it is pretty near time to pull down from this right-hand column those words, that you would have "a diminution of the revenue."

Now, what comes next upon the left, the weakest, and based upon the least principle, but upon broad and presumptuous assertion? You have up there "agrarianism and rank demagogism." Is it demagogism to comply with the requirements of the Constitution? Is it agrarianism to permit a man to take that which is his own? They say, when you come to the principle of agrarianism, you take that which belongs to one man to give it to another. Such is not the principle of this bill. We have 9,000,000 quarter sections, and 3,000,000 qualified voters. Suppose we were going to make a *pro rata* distribution; there would be three quarter sections for each qualified voter in the United States.

Now, the bill provides for everybody, rich or poor, high or low, to come forward and take a quarter section. By permitting one man to take part of what belongs to him, it does no one else injustice. We see there is no agrarianism in that. What does agrarianism mean? Property which had been accumulated by the labor, industry—by the sweat of the brow of you, me, or anybody else, taken and divided with some one who had not made use of a corresponding industry, I would call agrarianism. Agrarianism is the division of property among those who did not participate in or contribute to its accumula-

tion. This proposition does no such thing. By permitting a man to come forward and take one-third of his own, is anything taken away from you? Does it diminish your estate? Does it make you worth one cent less than you were before? Not at all. Then where is the agrarianism? Where is the demagogism—the injustice? It pulls none down, but elevates all. It takes the poor by the hand and lifts them up—taking nothing from the rich. What now becomes of the left-hand column of the rampart? It topples and falls to the ground with the other two. It is time for the enemy to make an unconditional surrender.

While the Homestead Law was not enacted for many years, a bill was passed in the session of 1853-4, and approved by President Pierce on August 4, 1854, by which the price of public lands was fixed in accordance with the number of years which they had already been in the market, and with a sliding scale down to twelve and one-half cents per acre.

Mr. Grow then became the chief advocate of the original measure, introducing it in varied forms at each session. It gradually assumed the aspect of a party measure, the Republicans being its advocates and the Democrats opposing it, ostensibly on the ground that the Graduating Act had settled the land question, but really because the act would augment the preponderance of the free States over the slave States.

Andrew Johnson, advanced to the Senate, introduced the bill in that Chamber in 1857. It was passed by the Senate and the House, but vetoed by President Buchanan upon the ground that, by a strange oversight, persons of foreign birth might enter lands without being the heads of families, though this was a condition of entries by native citizens.

The same bill, with this defect remedied, was introduced in the next Congress and passed the House by 107 votes to 16, and the Senate by 33 votes to 7, and was approved by President Lincoln on May 20, 1862.

CHAPTER II

Land-Value Taxation

[the single tax]

Herbert Spencer and Patrick Edward Dove (1850) Deny Rightfulness of Property in Land—Edwin Burgess [Wis.], in 1859, Proposes to Restore the Land to the People by Limiting All Taxation to That on the Value of Land Exclusive of Improvements: His Letters to the Racine *Advocate* on the Subject, Including a Controversy with "S. S."—Henry George [Cal.] Arrives Independently at Burgess's Theory: His "Progress and Poverty" and Other Books upon the Doctrine: His Career—Tom L. Johnson [O.] and Other Representatives "Frank" George's "Protection and Free Trade" Throughout the Union—Speech of Johnson in the House: "Free Trade and the Single Tax", Quoting from "Protection and Free Trade" on "Restoration of the Land to the People"—Charles E. Belknap [Mich.], in Reply, Quotes from "Progress from Poverty" by Giles B. Stebbins [Mich.]—The Single Tax Platform—History of the Movement—Speech of Representative Henry George, Jr., on "The Road to Freedom"; Questions and Objections by George W. Norris [Neb.], Swagar Shirley [Ky.], Edward L. Hamilton [Mich.], Benjamin K. Focht [Pa.], John E. Raker [Cal.], Philip P. Campbell [Kan.], Rufus Hardy [Tex.], James M. Graham [Ill.]

IN the decade following the introduction of the Homestead Act, and preceding the Civil War, the question of private property in land was seriously pondered in America, although not to the same extent as it was in Great Britain, owing to its obscuration here by the absorbing issue of private property in man (chattel slavery).

Herbert Spencer, the English philosopher, in chapter IX of his "Social Statics" (1850), demonstrated with Euclidean clearness and cogency the common right of all men to the use of the earth. This work made a profound impression on a number of progressive thinkers in America, although it was not until the close of the

Civil War that the philosophy of the author, expressed in this and succeeding works, became generally known and appreciated here.

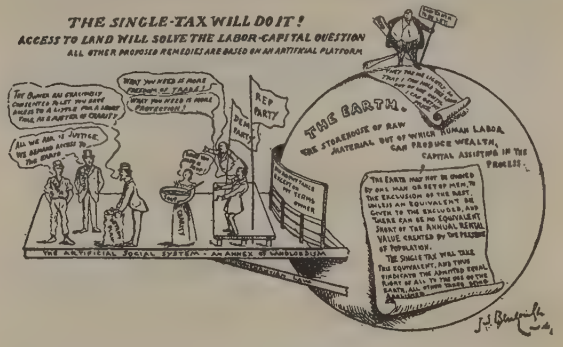
Even in the days of youth (Spencer was thirty years of age when he published "Social Statics," after several years' cogitation on the subject) when, if ever, a man is optimistic, Herbert Spencer had little hope that the restoration of the land to the people would be accomplished, in view of the fact that the institution of private property in land, by law and custom, had permeated every fiber of the social system. Therefore it was little wonder that in advancing years he repudiated chapter IX of his early work, claiming that, in view of the vested private interest in land, the appropriation of rent by the public would be unethical unless the landowners were compensated. On this point Henry George replied to him in his "A Perplexed Philosopher" (1892).

In the same year which saw the publication of "Social Statics" (1850), Patrick Edward Dove, a Scots philosopher, published "A Theory of Human Progression," in which he came independently to the same philosophic conclusion reached by Spencer, but, in opposition to the despair of the English philosopher, he proclaimed that the restoration of the land to the people would be the next great step in democratic government. He further declared that when the land was taken there would be no compensation to the owners, since this would be no advance in civilization, the people becoming slaves to the debt incurred (literally "bond" slaves) instead of to the land. His conclusions were drawn from the compensated emancipation of the slaves in the British West Indies. By what right, he asked, do you tax the English white laborer to pay the Jamaica man-owner for foregoing an unnatural and unjust privilege in the labor of a black man? When the land question is settled, said he, it will be upon no such inequitable basis.

Dove's book was little read in this country, only the Abolitionists, to whom it was highly recommended by Senator Charles Sumner, being interested in it, and that chiefly because of its position on slavery—Dove's highly

optimistic, but yet true, prophecy, that this barbaric institution was doomed to perish within a very few years, being most encouraging to the little band of advanced thinkers who were fighting against forces apparently indomitable.

Neither Spencer nor Dove presented a practical program for the restoration of the land to the people. This remained for political thinkers in America—at that period the most prolific of all countries in invention, which is the adoption and utilization of existing forces and instrumentalities for the accomplishment of new


THE SINGLE-TAX WILL DO IT!
ACCESS TO LAND WILL SOLVE THE LABOR-CAPITAL QUESTION
ALL OTHER PROPOSED REMEDIES ARE BASED ON AN ARTIFICIAL PLATFORM
THE EARTH.
THE ARTIFICIAL SOCIAL SYSTEM - AN ANNEX OF WORLDDOM

ends in every field of human activity, political and social, as well as industrial. These thinkers, being inheritors of the mental slant of the Revolutionary patriots who had revolted from an empire and founded a republic on the basic democratic idea of the control of the taxing power by the people, naturally turned at once to taxation as the instrument for maintaining that republic by abolishing abuses which had been permitted to remain in the Government at its foundation, either because it was thought that the abuse would die out of itself (as in the case of slavery), or because the abuse had not made itself felt at the time (as in the case of land monopoly).

Now the Constitution, by forbidding the Federal Government to interfere with the domestic institutions of the States, and by recognizing slavery in compelling the return of fugitive slaves, and in counting five slaves as three freemen in apportioning the basis of representation in the popular house of Congress, compelled a *political* solution for the first great abuse, the private ownership of man (chattel slavery), which had to be abolished before the promise of the Declaration of Independence could be fulfilled and this country become a land where all men had equal rights to "life, liberty, and the pursuit of happiness." No economic solution was possible, although economic arguments were presented by anti-slavery men to induce the slave States *voluntarily* to abolish the institution which gave them their evil distinction.

But the second great abuse, private ownership of land, or industrial slavery, as the thinkers regarded it, had been left a purely *economic* question, and so the instrumentality of taxation could here come freely into play.

Indeed, the use of this instrumentality was invited by the Constitution itself, which expressly gave the Federal Government the power to tax the value of land in the States in ratio to population. Furthermore, the opinion of the Supreme Court, delivered by Chief Justice John Marshall, that "the power to tax involves the power to destroy,"[1] permitted the use of this grant to

[1] The case in which Chief Justice Marshall said that "the power to tax involves the power to destroy," was McCulloch *vs.* Maryland, reported in 4 Wheaton, 316, in the year 1819.

The question before the Court was the validity of a statute of Maryland requiring the notes of the branch of the United States Bank established in that State to be issued upon stamped paper, subject to a stamp tax levied by the State. There was at issue not only the constitutional power of Congress to establish the bank, and the bank to establish its branches, but, also, the power of the State to tax such branches. After holding that Congress had the constitutional power to establish the bank, and the bank the right to establish its branches in the State, it was held further that the State, within which the branch was located, could not, without violating the Constitution, tax that branch. The State government had no right to tax any of the constitutional means employed by the government to execute its constitutional powers, and no power by taxation

the practical destruction of private ownership of land, and the practical creation of public ownership thereof. Whatever be the nature of a tax, and however small its rate, it accomplishes this conversion or redistribution of property in some manner and to some degree, and is essentially confiscatory in that the principle of compensation to the loser in cases of changes in taxation is not recognized in our laws as obligatory.

Thus the American philosophers who belonged to the class of Spencer and Dove (although they developed their theories independently of these, and, indeed, of each other) made a great advance on the British philosophers, who never thought of taxation as the means of restoring the land to the people.

The first of these American economic revolutionists was Edwin Burgess.

Edwin Burgess (born in London in 1807, died in Racine, Wis., in 1869) emigrated to the United States in the middle 40s, locating in Racine and engaging in his trade as tailor. Acquiring a modest competence and failing in health, he retired from business shortly before the breaking out of the Civil War, and thereafter devoted himself to advancing his theory of restoring the land to the people through the instrumentality of

or otherwise to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into effect the powers vested in the national government.

At page 431 the Court says: "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring upon one government the power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which it exerts the control, are propositions not to be denied. . . . If the State may tax one instrument, employed by the Government in the execution of its powers, they may tax every other instrument. They may tax the mail; they may tax the mints; they may tax patent rights; they may tax the paper of a customs house; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States . . . The question is, in truth, a question of supremacy; and if the right of the State to tax the means employed by the General Government be conceded, the declaration that the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is an empty and unmeaning declaration."

taxation. A series of letters from him on this subject were published in the Racine *Advocate* during 1859-60. They have been republished in 1912 in pamphlet form by Hyland Raymond and William S. Buffham, Racine, Wis. Say his publishers:

We who were young at that time remember him as a man of liberal ideas in both politics and religion, yet most kindly, moderate, and thoughtful in all things, but in the overshadowing presence of the anti-slavery campaign and the impending Civil War these letters of his were passed over as the irrelevent dreams of a crank, and at the time excited but little note or comment.

Yet here was a man who probably never read the writings of any of the great political economists, yet who, out of a heart overflowing with sympathy for his fellowmen, and especially for the masses of his fellow-countrymen and a wonderful keenness of intellect, evolved practically the whole theory of the single tax as set forth and elaborated twenty years later by Henry George.

Letters on Taxation

By Edwin Burgess

In his first and second letters Mr. Burgess showed the evils which arose from the existing use of the powerful instrument of taxation and the good which would result from confining it to its sole beneficent purpose, the destruction of monopoly.

Being in the county clerk's room of the court house, I saw a large pile of papers headed "Statement of Property," to be filled out and sworn to by every resident owner. "The number and value of horses and cattle, mules, and asses, sheep, hogs, pleasure carriages of every description, watches, moneys and credits, merchant's stock, manufacturer's stock and other articles of personal property," which is everything that one person could sue another for stealing.

Now I could not help thinking somewhat on the cost as well as consequence of such a method of taxing people for the support of government.

1. Taxing people for their personal property—on their oath—is a premium on perjury, because those who lie the most

pay the least taxes, and children born under such influences will be famous for lying—if there is any connection between cause and effect in the condition of parent and offspring.

2. The means of valuing or assessing are very expensive, thus increasing the cost of government as well as the cost of corruption.

3. Taxing personal property prevents production, because the tax being added to the article for sale increases its price in proportion to the means of buying. Hence, less is sold and less is made, and the makers are less employed; and, having consequently less with which to buy, the makers of other things will be less employed also—till the surplus workers will become paupers and suffer much misery in consequence; many will become hopeless and reckless because hopeless. Some will be tempted to commit crime for the temporary alleviation of their misery, which, repeated, soon becomes a habit; thus the tax on personal property, or the product of industry, increases the amount of paupers and criminals, while the cost of keeping paupers and criminals, officers and legislators, increases the amount of tax and the cost of government, of course. If any person puts up a new fence, or makes any visible improvement which employs the unemployed and beautifies the city—he is taxed annually in proportion to the evil he prevents and the good he does.

4. Taxing personal property is inquisitorial, burdensome, and aggressive against our right to labor and enjoy the fruit of our toil unmolested; so long as we injure no one, we should be protected against aggression instead of suffering aggression.

5. Taxing people in proportion to their industry prevents industry, because when an industrious person labors twelve hours per day successfully he must pay twelve times as much taxes because he has made twelve times as much property to be taxed as if he had worked only one hour per day, and besides the limit of his means to pay the tax, whether in a watch, a piano, or a horse, no one likes to be taxed for the idleness of others, and he feels the injustice also, and improvements are thus prevented which would profitably employ the idle.

6. Taxing personal property raises the price of land, and thus promotes its monopoly by the rich, because land being the source of our subsistence, which labor develops or increases, from which, and on which, all must live, and money instead of manhood being the qualification for owning land, it follows that, in proportion as the taxes are on personal property, the land will be exempt, and it will be thus comparatively cheap

or easy for the rich to monopolize; so that if all the taxes were on the land it would sell for the lowest price and would be most difficult to monopolize, but, if all the taxes were on personal property and none on the land, then the land would sell for the highest price, and labor would sell for the lowest price because of the excessive competition of the landless and destitute workers, who, by selling their labor for the smallest portion of its produce, would keep the land at the highest possible price; so, when you want land to be low and wages high, put all the taxes on the land, but, if you prefer labor to be low and land high, you have only to put all the taxes on personal property. All articles of productive industry cost the keeping of the maker and contriver, but the land costs nothing for either. It is the natural inheritance of all, for all time, and all should be protected in their possession, and those who own all the land should certainly pay all the taxes for keeping them in possession and their neighbors out of it.

7. Taxing personal property promotes the monopoly of capital (as well as land) because whenever labor can be bought for a small portion of its produce the larger portion (or the unpaid labor) is owned by the capitalist in the name of profit, with which he can starve the landless workers into worse terms as long as they continue landless in proportion to their numbers and necessities.

8. Taxing personal property by preventing production and promoting the monopoly of land and its products makes the means of living the most precarious, especially for the landless, because there is less produced in proportion to the wants of the community, and as the land is high and labor low (from the taxes on industry and competition of the landless), it is proportionally beyond the means of the cheaply paid laborer to purchase the land, or even to rent it; and, when the means of living are the most precarious, the greatest anxiety is suffered by the landless, and the continuance of that anxiety causes nervousness, sleeplessness, misery, and insanity, which is transmitted to the offspring with increased force, and thus is insanity made hereditary.

9. Taxing personal property promotes intemperance by making labor so cheap that the labor must toil excessively for a living, thus causing bodily exhaustion as well as mental anxiety to the landless workers, and indolence also on the part of those who live on the labor of others. Those whose bodies are exhausted by excessive toil, and whose minds are suffering from mental anxiety, crave stimulants to recruit the body and

make the mind forget its care, while those who live in idleness on others' toil crave stimulants to quicken the circulation which should be sustained by honest, temperate toil, carrying with it the moral satisfaction that for all they enjoy no one suffers. Then, and not till then, will the good be transmitted to the offspring instead of the evil as now.

10. Taxing personal property by making land dear and labor cheap promotes prostitution and disease to a fearful extent. Is not woman more sensitive and weaker physically than man, and when she can get no just reward for her labor, and frequently no right to labor, need we wonder that she sells herself legally or illegally for the means of living? Are not the high price of land and the low price of labor, or the no right of land and consequently no right of labor, the main causes? And thus is woman driven by injustice, poverty, and misery into temptation, and prayed out occasionally in revivals.

> Pray folks out of temptation, while driving them in,
> Is the usual way to atone for the sin;
> To fight the effect, while feeding the cause,
> You will find the foundation of most of our laws.

11. Taxing personal property is the main cause of rent, interest, and usury, for rent of land is but interest on the price, so that when the land is high the rent will be in proportion, and all the wages of the landless are required for their support; they cannot buy land or build houses, or have capital for business, but must pay rent or interest for all. Usury is but interest or rent of money—more than the law allows—which is sustained by the extremes of rich and poor, caused by land monopoly and its causes. Do we really want permanent prosperity and the interest of all to be honest and live on their own labor instead of speculating on the unpaid labor of others? Do we desire purity and truth instead of corruption and perjury to prevail? Then repeal all taxes on industry, and let the monopolists of land, the source of our living and the rightful inheritance of all, pay taxes in proportion to the value of what they monopolize, then poverty, prostitution, and intemperance will soon be among the things that were.

Letters III and IV criticized the Wisconsin tax laws. In Letter IV he used a term which has become the accepted definition of the single tax. It is a pity that Mr. Burgess's definitive phrase, the "*ad valorem* land tax",

has not also been adopted in place of the present meaningless title.

Mr. Burgess said:

I would not tax any personal property or product of industry in any form, but the land alone, according to its market value, irrespective of all improvements.

In Letter V Mr. Burgess wrote of merchants shifting their stocks of goods from one State to another to escape taxation; of rich men "swearing off" their personal property assessments. He doubted if one-half the personal property in the country were taxed, the conscientious paying, therefore, not only for themselves but for the unscrupulous.

Returning to the "*ad valorem* land tax" he said:

If all taxes were on the land, would railroad monopolists want to steal the land (the birthright of all) by millions of acres while they deny to the landless and moneyless any land on which to get their "daily bread," while they hire ministers to open their robbery meetings in Congress by prayer? Do they not know well that it is only by keeping the workers landless that they can buy their labor for the smallest portion of its produce, and if all had what land they needed their plundered land would be almost valueless for sale, though its value for production and human sustenance would be undiminished?

If all the taxes were on the land, and none on improvements, then there would be the greatest encouragement for improvements and industry; then farmers and merchants would not turn land speculators, and run all over creation to buy land at ten shillings per acre with the produce of their toil, but make and enjoy the comforts of life with their families at home instead of being a curse to the landless and their families elsewhere; they could then have no fear that their children would suffer for want of land whenever they might need it.

Were all the taxes on the land and the people's land free to the landless, then none would be driven into the wilderness to suffer the changes of climate and want of society, but those who desired could then settle nearer to their kindred and friends and enjoy the blessings of friendship, love, and home with much less cost and inconvenience.

Were all the taxes on the land and the people's land free, then the hitherto landless could soon build their own homes on their own land and raise all they needed to consume or exchange, and no longer need the land, houses, or capital of others; then rent, interest, and even usury would cease for want of poverty to sustain them, for, the curse, land monopoly, being removed, the effect would cease with the cause. Thus would the happiness of mankind be immeasurably increased and misery be proportionately diminished; then would earth be redeemed from the giant sin of land robbery, and the Paradise of the present or future be as far above that of the past as the intelligence of the philosopher is beyond the ignorance of the child.

In Letter VI Mr. Burgess attacked the tariff, even in the mild form of tariff for revenue only, as set forth in the report of Howell Cobb, Secretary of the Treasury, December 6, 1858.

Does not all such taxation go directly to promote the profit of land monopoly and man monopoly (or slavery)? Does it not take the taxes out of the pockets of the toiling consumers, and, by exempting the land from so much taxes, enable the landlord to sell or rent his land for so much more? Do people buy these imported goods in proportion to the land they hold, or in proportion to the slaves they hold? If not, who pay the taxes and make landholding and slaveholding profitable?

He then discussed the relation of land monopoly to slavery.

Land monopoly is really the parent of chattel slavery, for if no persons owned the land of others, or more land than they needed to cultivate by their own labor for their own support, they would not covet their fellow-men as slaves; but, having obtained the land of others by legal or illegal robbery, they crave their fellow-men as slaves to work it for them, and Africa must be robbed, and slaves must be bred, and men and women and children reduced to bondage to maintain in luxury and idleness a land-robbing and man-robbing aristocracy, a nobility forsooth, based on the lasso, the manacles, and the lash; the gag, the fetter, and the thumbscrew; the whipping-post, the chain and ball, the man-stealer, and the bloodhound.

The law might sanction slavery to all eternity if it was

unprofitable and no law worshipers would be patriotic enough to hold slaves any more than they would carry white men to Africa for slaves at a loss. Let us, then, remove this cause or temptation which is the profit by putting all the taxes on the land, and the effect will assuredly cease.

Letter VII was devoted to the arguments for free trade. In place of deriving revenue from taxes on consumption he would do so from taxes on monopoly, that is, land.

To illustrate the relative merits of the tariff and the land tax, let us suppose, for example, that Racine exempted all merchants' and manufacturers' goods from taxes, and all grain, farm produce, etc., and all improvements from taxes, and put all the taxes on the land, and at the same time Milwaukee exempted all land from taxes and put all the taxes on the farm produce and merchants' and manufacturers' goods and improvements, where would the mechanics, merchants, and manufacturers settle? Where would the farmers go to sell their produce and buy their goods? Would not Racine grow rapidly while Milwaukee dwindled? And will not this be true of any city, town, county, State, or nation?

The land tax, unlike the tariff, would require no extra officers for assessing and collecting revenue for the general Government, as the expenses would be defrayed by a percentage on the assessment for State purposes, which would be transmitted to the general Government in the best manner.

Think what a saving that would be over the old feudal system of barbarian despots! No buying Cuba or any other country on the plea of the benefits of free trade, but free trade without buying the country for it; no custom houses and officers; no revenue service to diminish our liberties, increase our expenses, and rob us of our right of free trade on the plea of protection; no commercial treaties abroad for special monopolies or vexatious litigation on tariff violations at home; more producers and fewer destroyers; standing armies and navies being no longer needed while our commercial motto shall be "Free Trade with All the World."

In Letter VIII Mr. Burgess spoke of the present tax system as depopulating the country districts and crowding the cities until these became "cess-pools of pauperism, prostitution, misery, disease, and crime."

But the land tax would abolish land monopoly and make the means of living honestly the most easy and certain for all, and make it unprofitable to keep land idle; then people would settle near each other for convenience, comfort, society, and profit, and farmers would not need to send their children to cities for education. We should save millions weekly in cost of local government, in rents, interest, and usury, besides diminishing pauperism, prostitution, disease, and crime.

Letter IX continued the comparison of the *ad valorem* land tax with the tariff. The former had the advantage not only in defraying all governmental expense, but in increasing, instead of decreasing, the productive power of the country to pay it. With cheaper land there would result cheaper food. Rents would diminish, the saving being distributed among the manufacturer, the laborer, the merchant, and the consumer.

For, with all the taxes on the land, it would not pay to keep it idle, therefore speculation in land would soon cease and be transferred to untaxed manufactures or labor, which would increase the demand and raise the wages of labor and reduce the profits of capital and speculation, and at the same time we should create and sustain the most permanent and profitable home market for produce and manufactures. For, when farmers desire to settle near factories for the benefit of market and exchange, they may be sure the land will never be high nor manufactures either; because the tax is on the land and not on the manufactures, which keeps the landlord's rent and the speculator's profit from the land, and the robber tariff from the manufactures also.

Letter X amplified the former suggestion of the intimate relation between slavery and land monopoly.

By the operation of the *ad valorem* land tax the poor white man in the South as well as in the North will possess and cultivate land now held for speculation. As slave cultivation is always poor and exhausting, slave farms surrounded by free farms and slave States surrounded by free States could not commercially compete with either in their surplus productions, and thus the profit of slaveholding would be diminished or destroyed.

Were all the taxes on the land, it would not pay to keep it idle; the result would be cultivation to make it pay, which would cause an abundance of produce for which manufactures would be made to exchange. And as the land would be free or cheap, the wages of labor would rise, because, whenever manufacturing paid less than farming, many more would farm the land, and thus equalize the wages of labor between farming and manufacturing.

With cheap free land, with the aid of machinery, we could easily produce a super-abundance of all that is best for mankind, and have an abundance of leisure for the cultivation of our physical, mental, and moral faculties, and thus produce that physical, mental, and moral elevation which slavery, either wages slavery or chattel, must inevitably dwarf instead of develop.

Letter XI was in rebuttal to a reply to Mr. Burgess's letters which had been made in the Racine *Advocate* by one who signed himself "S. S."

"S. S." thinks it wrong that the farmers, who, he says, "make the least cost of government," should pay in proportion to the land which they own. I think if the farmers do make the least cost of government it is because they enjoy their right of land and are less exposed to the destitution, privation, and temptations of the landless, and this is one of the reasons why I put all taxes on the land. With the high price of land caused by the labor tax, the landless and moneyless have no choice but to labor for others if they can get the work, or beg, steal, or starve. So that it is not the honest and thrifty, but the lazy and greedy farmers and land monopolists who own vast quantities of land and cultivate but little, who make paupers, drunkards, and criminals of the landless which "S. S." charges on the citizens, and would fain make the citizens support all the drunkards, paupers, and criminals whom the land monopolies have made. Why, he might as well buy up and monopolize the breasts of the mother and then blame the babe for crying for its food, for the land is to mankind what the breast is to the babe—the source of subsistence.

believe that no one has a moral right to land because he has bought it and paid for it any more than the slaveholder has a moral right to the man, woman, or child he has bought and paid for, because no one can have a moral right to sell the land which belongs equally to all, or to sell the man,

woman, and child whose persons, liberty, and labor belong to themselves.

Mr. Burgess showed that the *ad valorem* land tax was a "single" tax, in that it was paid only once, while all other kinds of taxes were liable to be laid again and again on the same property in its varying aspects.

"S. S." says the whole system of balances and averages would be changed, and this to the detriment and pecuniary ruin of the present and future farmers. Now, the farmers, as well as mechanics, could change their occupation if they found manufacturing more profitable, and much more easily than at present, because the land for the factory would cost probably nothing, and there would be no inquisitorial, pauperizing "labor tax" on manufactures to prevent them. So also it would be easier to commence farming because the land would cost less, and every implement and machine needed for cultivation would cost less also, and there would be no tax on the stock of the farmer or manufacturer, or on the improvements of either, so that the changes in values would be good for farming and manufacturing, and no "ruin" could result to present or future farmers or manufacturers from the land tax, but permanent prosperity to both.

"S. S." says: "If the great burden of the land tax causes one to sell out, the same cause will prevent others buying." I contend that the taxes will be much less and consequently less burdensome, because, the land being priceless, any persons, or, at least, many, could till the lands for themselves, whom we now keep as paupers and criminals. This would diminish the cost of government (or taxes), which will be less burdensome in proportion to the cheapness of land, and only the land kept idle or badly cultivated would be obliged to be sold because it would not pay the tax. And none can rightly keep land idle and make others suffer for their indolence, else, if one man could buy all the land he might keep all of it idle except enough to support himself and starve every one else to death.

"S. S." says: "At the low price of produce resulting from an increase of producers and a decrease of consumers, the farmer cannot sustain himself and pay his increased and increasing tax." This is the old fallacy of supposing that cheap land would compel people to farm while manufacturing paid better.

"S. S." says: "But, supposing the prices remain relatively the same, what better is a man off by paying a large tax to a government than paying the same amount in rent to a landlord?" I reply: Not only would the taxes be diminished by all the cost of the revenue service, but by that of every pauper and criminal who ceased to be landless because of the free or cheap land, also by that of every pauper and criminal who found labor in manufacturing for the increased supply of the produce of the land, while the very rent to which "S. S." refers would be saved also by any houses that were placed on the free or cheap land by their owners, and all interest and usury would cease also, as all could easily own their own homes and make all the capital they needed. Then bankers, brokers, and usurers would soon die out from the universal prosperity of mankind.

"S. S." complains that the land tax would change the actual and relative value of land. The actual value is its productive power which it would not change except by encouraging its use and making its idleness unprofitable. Its relative or money value might be changed by the Homestead bill which "S. S." might charge with destroying the hard-earned property of millions of monopolies by giving their birthright to millions of mankind. Let us remember that when we trade in the rights of others in buying risk, and not at the cost of the innocent or the wronged.

"S. S." says: "No man can have any more right to the soil another has bought than to the food that another has raised from it, or to the clothing or other products that he has earned by its cultivation." "S. S." still fails to distinguish between the land, which naturally and morally belongs to all, and the produce of the land, which naturally belongs to the producer. Suppose one man or many could buy all the land, who has the right to sell it? Would the buyers have the right to starve all the rest of mankind and entail the land to their children with the eternal power of starving all other children? I think not, and therefore think the right of land is as inalienable as our existence, and that everyone who buys the land of others ought to lose it, just as the slaveholder who buys a man, woman, or child ought to lose what he paid for his covetous villainy.

It is interesting to note in this last opinion the unyielding opposition to "compensation" which distinguished Patrick Edward Dove and Henry George.

Henry George

From twelve to twenty years after Mr. Burgess wrote his "Letters on Taxation," Henry George, a compositor and journalist of San Francisco, developed the same theory and program. The vast fortunes acquired in California through the sudden and great increase of values in land and in properties, such as railroads, dependent on franchises in land, and the increase, at the same time, in poverty, not merely relative but absolute, as shown in constantly diminishing wages, had called his attention to the land question as the fundamental problem of government.

He published his views on the subjects in 1871 in a pamphlet entitled "Our Land and Land Policy." The basic principle was that private appropriation of the value of land is a monopoly.

The germinal idea of this book George developed into a treatise which he published in 1879. This was "Progress and Poverty."

In this, his greatest work, Mr. George attacked the "wages fund theory" of John Stuart Mill, which, though Mill had abandoned it in the last years of his life, was generally accepted, forming, indeed, the basis of the trades union movement and the doctrine of protection. According to this theory wages are paid out of capital. George held that wages are directly labor's own creation, and therefore that there is no essential conflict between labor and capital, but that both should coöperate in destroying the common enemy, monopoly, which in all its forms rests upon absorption of public revenues by private persons through special privileges granted them by the State and protected by law.

"Progress and Poverty" became recognized within a few years after publication as an epoch-making work in economic and social science. It elicited many replies from persons of greater or less eminence and ability, among which may be mentioned "The Prophet of San Francisco" [1884], by George J. D. Campbell, the eighth Duke of Argyle, and "Property and Progress" [1884] by

Henry George

W. H. Mallock, a leading English writer on social and economic matters.

In 1881 Mr. George wrote a book specially applying his philosophy to the burning issue of the day in British politics, which he called at first "The Irish Land Question," and, later, simply "The Land Question," since its principles were applicable to the solution of the problem in all countries. He visited Great Britain several times in the early eighties in the interest of his doctrines, promoting a "Land Restoration League," which steadily grew in influence in the Liberal party, until in 1909 David Lloyd George, Secretary of the Exchequer, embodied the land value tax in the national budget.

In 1886 George became the Labor candidate for mayor of New York against Abram S. Hewitt, Democrat, and Theodore Roosevelt, Republican. Mr. Hewitt was elected, George running a close second. Believing that there had been an agreement between the Democrats and Republican managers, whereby sufficient Republican votes were counted for Mr. Hewitt toward the close of the poll to secure Mr. Hewitt's election, Mr. George devoted from that time forward much of his energies to secure ballot reform. For this, in connection with the propaganda of the single tax, he visited Australia, where the secret ballot was used. To the exertions of himself and his followers is largely due the general adoption of this system throughout the United States.

In 1886 Mr. George wrote a work called "Protection and Free Trade," in which he made special application of his philosophy to the tariff.

In 1892, when the discussion on the McKinley bill had made the tariff the leading political question of the hour, Tom L. Johnson [O.], who was the leading Single-Taxer in Congress, and who knew the self-sacrificing devotion of Mr. George to his cause, secured his consent that the entire contents of the book be incorporated in speeches to be delivered in Congress by Mr. Johnson and others, and, being spread upon the *Record,* to be

"franked" in the form of reprints as public documents by these Congressmen to persons in every part of the country. There were 1,062,000 copies so circulated. Naturally the sales of the regular edition of the book were greatly impaired, to the author's financial loss. In the political campaign of 1912 a million more of these copies were sent out under franks of Representative Henry George, Jr. [N. Y.], and other Congressmen friendly to free trade and the single tax.

The Congressmen who joined with Mr. Johnson in 1892 in incorporating the book in their speeches were William J. Stone [Ky.], Joseph E. Washington [Tenn.], George W. Fithian [Ill.], Thomas Bowman [Ia.], and Jerry Simpson [Kan.].

Mr. Johnson introduced his quotation with the following speech (March 31, 1892):

Free Trade and the Single Tax

Tom L. Johnson, M. C.

I am for free trade, not merely as a matter of wise policy, but as a matter of natural right. I hold that the right freely to trade with whomever one pleases and on whatever terms he pleases is one of the most important of those natural rights asserted by our Declaration of Independence, and that to deny this to the American citizen is to that extent to enslave and rob him. To the open enunciation of this clear principle I hope to see the Democratic party come. When it does it will be invincible.

I hope to see this Congress, before we adjourn, pass a bill putting lumber, coal, and iron ore on the free list, and, to show that as a manufacturer I am ready to take just what I propose, I am willing to put steel rails also on the free list.

Michael D. Harter [O.].—And agricultural implements?

Mr. Johnson.—Yes, and agricultural implements. My colleague, who is one of the largest of agricultural implement makers, has, too, the spirit of true free trade, and stands ready, and more than ready, to vote for the abolition of every duty that applies to what he makes.

I was very much interested, a few days ago, at the explanation of the gentleman from Iowa [Walt H. Butler] of

what he meant by free trade.[1] Let me say frankly that I am not that kind of a free trader. As a Democrat I am here simply to enter my protest against that part of the tariff that is protective, for that is as far as party divisions yet go, both Democrats and Republicans agreeing that we shall continue to raise the revenue by a tariff. But in my humble opinion in this matter, both are wrong.

Speaking for myself, and speaking too for a large and rapidly increasing body of men within the Democratic party, I wish to say that what I mean by free trade is not a tariff for revenue only, but nothing less than free trade itself; the abolition of all custom houses and the same freedom to trade with all the world that we now have between our States.

Though the Democratic party has not yet got so far, I hope some day to see it advocating that principle. The discussion now going on must broaden till it brings up the whole question of taxation, and it is in this that the real solution of the labor question is to be sought.

We talk of taxing things—as taxing sugar, or taxing iron, or taxing wool. But inanimate things cannot pay taxes. At last taxes are levied on men. Discussions of taxation are in reality discussions of how burdens shall be levied, not on merchandise, but on men. Already the discussion of the tariff question is bringing out this fact, and as it goes on we constantly hear expressions that show that it is working in the minds of the people.

In discussing the question of taxation what we are really discussing is how men shall be taxed for the support of the Government. A poll tax taxes men by the head. An income tax taxes men in accordance with their incomes—or aims at doing so. A property tax taxes men in accordance with their property. A tax on land values taxes men according to the value of the land they hold, irrespective of the improvements on it. So a tariff tax taxes men in accordance with their consumption. And I protest that it is therefore a most unjust mode of taxation.

It is in some respects even worse than a poll tax, for that would not tax the married man more than the bachelor, the man who rears children more than the man who supports only himself. It is really a system that taxes men according to their necessities, and therefore much worse by comparison than our State taxes on property. It is fairer to tax men on what they have than on what they consume, and therefore the

[1] Mr. Butler had defined free trade as a tariff for revenue only.

general property tax of our States is very much better than the tariff taxes, even when imposed for revenue only, and without the sheer robbery of some to enrich others that is involved in protective taxes. Even an income tax, which is open to so many objections, which makes a nation of liars, and opens so many avenues to fraud, and is a miserable tax, is still a great deal better than a duty on sugar.

But if we abolish the tariff how can we get our revenue? Mr. Chairman, it would have been better for the country if that question, How can we get revenue? had been oftener asked in this House. The question for years heretofore has been, How can we spend our revenue? And if there were nothing else to damn the system of raising revenue by custom house taxation, the manner in which this imposing of taxes for the sake of taxation—this pouring of taxes into the treasury for the sake of giving monopolists opportunity to levy additional taxes on the people—has demoralized our Government and debauched our politics is enough to do so.

So long as you have a system of taxation dictated by private interests that wish to use it to make the people pay them more for what they have to sell, and where similar interests band together to prevent every repeal or reduction, no number of watchdogs will be able to prevent the millions poured into the treasury by the robbery of the poor from slipping out again in extravagance and corruption. If the people want economy, if they want purity, if they want an end to the spectacle that we will see again this year of the money scraped from their hard earnings being used to influence their votes, they must insist on some system of taxation that will not foster private interests.

How shall we raise our national revenue? There is no way in which we could raise it that would be more unjust than our present system of raising it by tariff taxes that fall upon consumption, and most heavily on those articles of necessity and common luxury that are used by all. Any system of taxing men according to their means is better and fairer than the system of taxing according to what they use. For, since the poor must use far more of their incomes to live than do the rich, these taxes fall with heaviest weight on those who are least able to bear taxation and inevitably tend to make the rich richer and the poor poorer. They are taxes, not upon surplus earnings, but upon life, upon comfort, upon decency, upon the accumulation of the little capital that enables a man to get a start, upon marrying and having children.

Is it not certain that we can find some better way than this; is it not time that we should at least make up our mind that tariff taxes must go?

Do not be afraid of the intelligence of the people. The American mechanic and the American farmer, the great mass of our people who find year after year of hard toil and close saving go by without leaving them a whit ahead, and who feel that in spite of all our wonderful advances in production it is getting no easier to live, are fast coming to the conclusion that there is something radically wrong with our system of taxation. Of the superstition of protection, of the notion that the capitalists who spend so much money and so much effort to put on and keep on tariff taxes do so simply out of their benevolent regard for the farmer and the laborer, there is really nothing left but the shell. And the moment the Democratic party have the courage of Democratic principle, and, stopping their paltering with six-penny measures of tariff reform, will boldly raise the banner of opposition to all protection, they will break that shell.

The Knights of Labor lodges, the Farmers' Alliance, the thoughtful men in all occupations, have been and are still doing a great deal of thinking about this matter of taxation. They are fast making up their minds that they want a system of taxation that will not bear on the millionaire like a feather and on the day laborer like a millstone; that will not fetter labor; that will not hamper industry; that will not fine enterprise; that will not muzzle the ox that grindeth out the corn and let the dog in the manger go free to monopolize and waste; a system that will not require a horde of officials; that will not provoke extravagance and engender corruption, but will take from each man for the use of the community the fair and just return of the special pecuniary benefits that he receives from the community.

That system is the single tax. All over the country it is steadily and swiftly making its way in the popular mind—nay, all over the English-speaking world. It won in the last New Zealand Parliament, and is already in large measure in force in that country. It carried the city of London by a tremendous majority in the municipal elections a few weeks ago. It is on the verge of practical politics here. It may be too soon yet to ask this House to consider it, but we shall move toward it as we move toward free trade. And I am a free trader because I believe free trade leads to the single tax. [Loud applause.]

I desire to have printed with my remarks the following,

being an extract from Henry George's book, "Protection or Free Trade." This book, written by a man who views the matter from the standpoint of the interests of the great laboring masses, and who is acknowledged through the civilized world as the foremost of political economists, is the clearest, most thorough exposition of the whole subject ever yet made.

One of the quotations from Mr. George's book, which presented his philosophy, was as follows:

Restoration of the Land to the People

Henry George

To make either the abolition of protection or any other reform beneficial to the working class we must abolish the inequality of legal rights to land, and restore to all their natural and equal rights in the common heritage.

How can this be done?

Consider for a moment precisely what it is that needs to be done, for it is here that confusion sometimes arises. To secure to each of the people of a country his equal right to the land of that country does not mean to secure to each an equal piece of land. Save in an extremely primitive society, where population was sparse, the division of labor had made little progress, and family groups lived and worked in common, a division of land into anything like equal pieces would indeed be impracticable. In a state of society such as exists in civilized countries to-day, it would be extremely difficult, if not altogether impossible, to make an equal division of land.

Nor would one such division suffice. With the first division the difficulty would only begin. Where population is increasing and its centers are constantly changing; where different vocations make different uses of lands and require different qualities and amounts of it; where improvements and discoveries and inventions are constantly bringing out new uses, and changing relative values, a division that should be equal to-day would soon become very unequal, and to maintain equality a redivision every year would be necessary.

But to make a redivision every year, or to treat land as a common, where no one could claim the exclusive use of any particular piece, would only be practicable where men lived in movable tents and made no permanent improvements, and would effectually prevent any advance beyond such a state.

No one would sow a crop or build a house, or open a mine, or plant an orchard, or cut a drain, so long as anyone else could come in and turn him out of the land in which or on which such improvements must be fixed. Thus it is absolutely necessary to the proper use and improvement of land that society should secure to the user and improver safe possession.

This point is constantly raised by those who resent any questioning of our present treatment of land. They seek to befog the issue by persistently treating every proposition to secure equal rights to land as though it were a proposition to secure an equal division of land, and attempt to defend private property in land by setting forth the necessity of securing safe possession to the improver.

But the two things are essentially different.

In the first place equal rights to land could not be secured by the equal division of land, and in the second place it is not necessary to make land the private property of individuals in order to secure to improvers that safe possession of their improvements that is needed to induce men to make improvements. On the contrary, private property in land, as we may see in any country where it exists, enables mere dogs-in-the-manger to levy blackmail upon improvers. It enables the mere owner of land to compel the improver to pay him for the privilege of making improvements, and in many cases it enables him to confiscate the improvements.

Here are two simple principles, both of which are self-evident:

1. That all men have equal rights to the use and enjoyment of the elements provided by nature.

2. That each man has an exclusive right to the use and enjoyment of what is produced by his own labor.

There is no conflict between these principles. On the con..ary, they are correlative. To fully secure the individual right of property in the produce of labor we must treat the elements of nature as common property. If anyone could claim the sunlight as his property and could compel me to pay him for the agency of the sun in the growth of crops I had planted, it would necessarily lessen my right of property in the produce of my labor. And conversely, where everyone is secured the full right of property in the produce of his labor, no one can have any right of property in what is not the produce of labor.

No matter how complex the industrial organization, nor how highly developed the civilization, there is no real difficulty in carrying out these principles. All we have to do is to

treat the land as the joint property of the whole people, just as a railway is treated as the joint property of many shareholders, or as a ship is treated as the joint property of several owners.

In other words, we can leave land now being used in the secure possession of those using it, and leave land now unused to be taken possession of by those who wish to make use of it, on condition that those who thus hold land shall pay to the community a fair rent for the exclusive privilege they enjoy—that is to say, a rent based on the value of the privilege the individual receives from the community in being accorded the exclusive use of this much of the common property, and which should have no reference to any improvement he had made in or on it, or to any property due to the use of his labor and capital. In this way all would be placed upon an equality in regard to the use and enjoyment of those natural elements which are clearly the common heritage, and that value which attaches to land, not because of what the individual user does, but because of the growth of the community, would accrue to the community, and could be used for purposes of common benefit. As Herbert Spencer has said of it:

"Such a doctrine is consistent with the highest state of civilization; may be carried out without involving a community of goods, and need cause no very serious revolution in existing arrangements. The change required would be simply a change of landlords. Separate ownership would merge into the joint stock ownership of the public. Instead of being in the possession of individuals, the country would be held by the great corporate body—society. . . . A state of things so ordered would be in perfect harmony with the moral law. Under it all men would be equally landlords, all men would be alike free to become tenants. Clearly, therefore, on such a system the earth might be inclosed, occupied, and cultivated, in entire subordination to the law of equal freedom."

That this simple change would, as Mr. Spencer says, involve no serious revolution in existing arrangements is in many cases not perceived by those who think of it for the first time. It is sometimes said that while this principle is manifestly just, and while it would be easy to apply it to a new country just being settled, it would be exceedingly difficult to apply it to an already settled country where land had already been divided as private property, since, in such a country, to take possession of the land as common property and let it out to individuals would involve a sudden revolution of the greatest magnitude.

This objection, however, is founded upon the mistaken idea that it is necessary to do everything at once. But it often happens that a precipice we could not hope to climb, and that we might well despair of making a ladder long enough and strong enough to scale, may be surmounted by a gentle road. And there is in this case a gentle road open to us, which will lead us so far that the rest will be but an easy step. To make land virtually the common property of the whole people, and to appropriate ground rent for public use, there is a much simpler and easier way than that of formally assuming the ownership of land and proceeding to rent it out in lots—a way that involves no shock, that will conform to present customs, and that, instead of requiring a great increase of governmental machinery, will permit of a great simplification of governmental machinery.

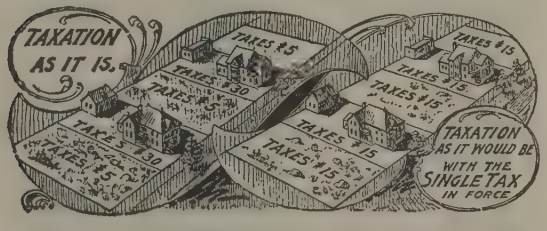
In every well-developed community large sums are needed for common purposes, and the sums thus needed increase with social growth, not merely in amount, but proportionately, since social progress tends steadily to devolve on the community as a whole functions which in a ruder stage are discharged by individuals. Now, while people are not used to paying rent to government, they are used to paying taxes to government. Some of these taxes are levied upon personal or movable property, some upon occupations or businesses or persons (as in the case of income taxes, which are in reality taxes on persons according to income); some upon the transportation or exchange of commodities, in which last category fall the taxes imposed by tariffs; and some, in the United States at least, on real estate—that is to say, on the value of land and of the improvements upon it taken together.

That part of the tax on real estate which is assessed on the value of land irrespective of improvements is, in its nature, not a tax, but a rent—a taking for the common use of the community of a part of the income that properly belongs to the community by reason of the equal right of all to the use of land.

Now it is evident that, in order to take for the use of the community the whole income arising from land, just as effectually as it could be taken by formally appropriating and letting out the land, it is only necessary to abolish, one after another, all other taxes now levied, and to increase the tax on land values till it reaches, as near as may be, the full annual value of the land.

Whenever this point of theoretical perfection is reached,

the selling value of land will entirely disappear, and the charge made to the individual by the community for the use of the common property will become in form what it is in fact—a rent. But, until that point is reached, this rent may be collected by the simple increase of a tax already levied in all our States, assessed (as direct taxes are now assessed) upon the selling



value of land irrespective of improvements—a value that can be ascertained more easily and more accurately than any other value.

For a full exposition of the effects of this change in the method of raising public revenues, I must refer the reader to the works in which I have treated this branch of the subject at greater length than is here possible. Briefly, they would be threefold.

In the first place, all taxes that now fall upon the exertion of labor or use of capital would be abolished. No one would be taxed for building a house or improving a farm or opening a mine, for bringing things in from foreign countries, or for adding in any way to the stock of things that satisfy human wants and constitute national wealth. Everyone would be free to make and save wealth; to buy, sell, give, or exchange, without let or hindrance, any article of human production the use of which did not involve any public injury.

All those taxes which increase prices as things pass from hand to hand, falling finally upon the consumer, would disappear. Buildings or other fixed improvements would be as secure as now, and could be bought and sold, as now, subject to the tax or ground rent due to the community for the ground on which they stood. Houses and the ground they stand on, or other improvements and the land they are made on, would also be rented as now. But the amount the tenant would have to pay would be less than now, since the taxes now levied on buildings

or improvements fall ultimately (save in decaying communities) on the user, and the tenant would therefore get the benefit of their abolition. And in this reduced rent the tenant would pay all those taxes that he now has to pay in addition to his rent—any remainder of what he paid on account of the ground going, not to increase the wealth of a landlord, but to add to a fund in which the tenant himself would be an equal sharer.

In the second place, a large and constantly increasing fund would be provided for common uses without any tax on the earnings of labor or on the returns of capital—a fund which in well-settled countries would not only suffice for all of what are now considered necessary expenses of government, but would leave a large surplus to be devoted to purposes of general benefit.

In the third place, and most important of all, the monopoly of land would be abolished, and land would be thrown open and kept open to the use of labor, since it would be unprofitable for anyone to hold land without putting it to its full use, and both the temptation and the power to speculate in natural opportunities would be gone.

The speculative value of land would be destroyed as soon as it was known that, no matter whether land was used or not, the tax would increase as fast as the value increased, and no one would want to hold land that he did not use. With the disappearance of the capitalized or selling value of land, the premium which must now be paid as purchase money by those who wish to use land would disappear, differences in the value of land being measured by what would have to be paid for it to the community, nominally in taxes but really in rent. So long as any unused land remained, those who wished to use it could obtain it, not only without the payment of any purchase price, but without the payment of any tax or rent.

Nothing would be required for the use of land till less advantageous land came into use, and possession thus gave an advance over and above the return to the labor and capital expended upon it, and, no matter how much the growth of population and the progress of society increased the value of land, this increase would go to the whole community, swelling that general fund in which the poorest would be an equal sharer with the richest.

Thus the great cause of the present unequal distribution of wealth would be destroyed, and that one-sided competition would cease which now deprives men who possess nothing but power to labor of the benefits of advancing civilization, and

forces wages to a minimum, no matter what the increase of wealth. Labor, free to the natural elements of production, would no longer be incapable of employing itself, and competition, acting as fully and freely between employers as between employed, would carry wages up to what is truly their natural rate—the full value of the produce of labor—and keep them there.

On April 6 Charles E. Belknap [Mich.] introduced in a speech on the free wool bill a reply to Henry George by Giles B. Stebbins, of Detroit.

In this book were "rounded up" other replies to George by more eminent persons than the collector, and it is for these that the work is chiefly valuable. The following are extracts:

Progress from Poverty

Giles B. Stebbins

Henry George has written a book, the title of which outlines its theory. Progress and poverty implies that wealth and want walk side by side, and that as the one thrives and grows fair the hideousness of the other grows more gaunt and grim—as the few go up the many are pushed lower down. If he is right, civilization is a failure, inventive genius and progress in mechanism must crush millions that a few may be "clad in purple and fine linen and fare sumptuously every day," and man's mastery over nature's forces by which wealth is won (which indeed is wealth) is a curse. The savage in his hut with his club and dugout, his helplessness against wind and tide, his alternate gorging and starving, his vacant thoughtlessness and brutish contest, has a better life than the modern workingman, whose poor existence, as Mr. George seems to think, tends downward with our progress in wealth and invention.

But he is not right. The highest civilization of each age is the flood tide of the thought and life of its time, and the last is the best, for the world runs in upward grooves. The last half century has been marked by an immense increase of the precious metals, by a wealth of varied mechanism and inventive skill, a boldness and power in engineering, a mastery of man over nature never before known. This has vastly increased our

power of productiveness, making the stroke of a great engine forge and weld more than a hundred hammers, or the click of curious machinery do the work of a hundred hands. It has increased the world's commerce and added vastly to the wealth of all civilized lands. It has tended to change the old methods of production and to put workmen into great shops and mills to make or to guide costly machines.

Capital moves in masses, and its coworker, labor, moves in masses also. The old way was one or two men working in their own little shop; the new way is a hundred or a thousand men working for a great corporation. The old method of transportation was the stagecoach and the freight wagon carrying a dozen passengers or a ton or two of freight; the new mode is the railway train of two hundred passengers or 200 tons of freight—more done and greater capital combined for the larger result.

The change has been so great and so sudden that we have not rightly adjusted the new order of things. Capital, grown greatly, feels its power and presses hard on labor, which has also grown stronger and able to push back against capital. The intelligent and humane among employers and employed are recognizing their common interest and aiming for unity and harmony; the domineering and ignorant are nursing the blind pride of power and the equally blind spirit of vengeful hate. How shall justice be done? Is to-day better or worse than yesterday? As wealth grows and productive power increases does labor gain or lose? These and other like questions are asked and answered in ways wise or otherwise by Henry George and others.

In his "Protection or Free Trade," page 284, the robbers, assailing and plundering labor, are described as follows:

> "Labor may be likened to a man who, as he carries home his earnings, is waylaid by a series of robbers. One demands this much, and another that much, but last of them all stands one who demands all that is left, save just enough to enable the victim to maintain his life and come forth next day to work. So long as this last robber remains, what will it benefit such a man to drive off any or all of the other robbers?
>
> "Such is the situation of labor to-day throughout the civilized world. And the robber that takes all that is left is private property in land."

While repudiating all lawless violence or crime as remedies for social wrongs, the writer of this gloomy view of the condition of labor helps to feed the fire wherein the anarchist forges his bombs for the fatal dynamite. If it be true, none need mar-

vel at the desperate sullenness of that forger; but it is not true. Even in England, where the "robber" protection is driven off, but where free trade and low wages bear rule, the deposits in savings banks, largely the savings of laborers, increased $350,000,000 in thirty-four years, up to 1880.

Still less is it true in this country. From 1860 to 1881 the savings bank deposits of nine States, all except California in the manufacturing Eastern section, increased $628,000,000, and reached a total of $787,000,000—the protection robber system having full sway all this time, and land being higher and wealth of capitalists greater than in other sections where the accumulated savings were far less.

Millions of dollars are invested in homes, owned and earned by working people in those States, and their value must be added to the savings bank deposits.

George Basil Dixwell, of Boston, wrote an admirable criticism of "Progress and Poverty," courteous yet searching. From it is this extract:

> "Mr. George describes eloquently the century's increase in wealth-producing power, and thinks that if a Franklin or a Priestley had seen it in a vision he would have expected the very poorest to be lifted above the possibility of want.
>
> "But Franklin and Priestley were far from rhapsodists. They were cool and wary thinkers and observers. They saw about them much vice, crime, ignorance, and brutality that were the cause of poverty, instead of being caused by poverty, as Mr. George assumes. They saw much poverty which need not then exist had the sufferers been as free from vice and ignorance as they might have been under the then conditions of society; they saw, indeed, much vice, crime, ignorance, and brutality which even then had not the apology of poverty; moreover, they would have foreseen a vast increase of cities where temptations are more numerous and restraints less powerful, where there is much wealth to be preyed upon and comparatively great opportunity of escaping detection, where charity rushes out eager to relieve the deserving and often carelessly giving to the undeserving the funds which should have been better bestowed, where there are a thousandfold more opportunities for self-indulgence than in the village where everyone knows and is known to all and each man and woman is a wholesome restraint upon the rest.
>
> "Franklin and Priestley, then, would hardly have expected as much as our author supposes, possibly not as much as has actually been accomplished. If they could have foreseen the condition of society to-day and compared it, class for class, with what existed in their times, they probably would have gone down to their graves with bright hopes for the future. They would have seen cities grow as healthy as the village was in their days, and they would have seen a great and general advance in the real wages of all classes of those willing and able to work. Wages, fees, salaries, emoluments of every kind, have risen every ten years from 1840 to 1880—at each period more to divide and every portion of the community obtaining a larger dividend.

> "The problem, then, for the solution of which Mr. George wrote his eloquent book, seems not to exist. It appears that wages do not tend to a minimum, but that, on the contrary, they are continually and steadily increasing. If we examine them at considerable intervals and under similar circumstances, it would appear that 'where population is the densest, wealth the greatest, and the machinery of production and exchange most highly developed' we do not find 'the deepest poverty, the sharpest struggle for existence, and the most enforced idleness.' His proposition is universal, and is demolished the moment we compare Ireland with England, Portugal with France, or the farmer of fifty years ago with the farmer now, or the domestic servant or 'longshoreman of those days with the same class to-day."

Mr. George sees in private ownership of land the great scourge which crushes and curses labor. Material progress, inventive genius, wealth, protective tariffs, and dense population are attendant evils, grinding to dust the poor workingman.

His sole remedy and panacea is: "To abolish all taxation save on land values," on the theory that no man has any right to own land. "To satisfy the law of justice," he says, would be "at one stroke to declare all land public property," but he would not suddenly shock our present arrangement to that extent, and he proposes a gradual appropriation of rent through taxation.

Land taxes would increase as taxes on the personal property of the rich were abolished. How would this operate in practice? Suppose the present tax on a farm of a hundred acres to be $50 a year, and that this scheme should raise it to $100, would that help the owner of the farm or enable him to pay higher wages to his workmen?

Suppose a cottage hired by a workingman now pays a tax on house and lot of $40, and the lot should pay $60 under this new plan, the owner would add the extra $20 to his rent, and the workingman, his tenant, would have to pay it. How would this added price of rent raise wages, or give remunerative employ, or do any of the fine things promised? This land tax would be as grinding a rack rent as ever Irish peasants, or Scotch crofters, or poor Hindoo ryots starved under or revolted against. Nor would it abolish rent, the evils of which are so constantly emphasized. Could a man afford to build houses on land which he did not own and not charge rent to tenants who occupied them? Plainly, he could not, and therefore landlords and tenants would still exist.

Mr. George gives warning of a growing tendency to hold land in larger quantities in this country. No doubt purchases of great tracts are more frequent than formerly, yet our census

shows that the average size of farms decreases instead of increasing. That average was 199 acres in 1860, 153 acres in 1870, and 134 acres in 1880.

The real evils that come from land monopoly are not to be ignored. With our broad domain and our freedom from the English usages and laws of primogeniture and entail, they are but little felt, yet their possible coming has been partly guarded against, and may well be guarded against anew and with more strength.

Our homestead and preëmption laws have greatly helped many industrious men to buy Government lands at low prices, and have secured to worthy settlers the first right to enter upon the full possession of farms they have opened. They have done much good in keeping the land divided into farms of moderate size.

Purchases of great tracts of Government land by syndicates of capitalists should be checked, and such purchases by foreign nonresidents even prohibited. We want the farmer on his own soil, not a great landlord and tenant system like that which is so grave an injury to Ireland and Great Britain. But to correct the abuses of a good thing is a far different matter from abolishing the good which is abused and putting a bad thing in its place. We want the fixed and settled feeling, the home and family unity and security, the sense of free citizenship and responsibility, the motive and stimulus to industry, the wise conservatism, the independent dignity which the ownership of our three million farms increases so much in the thought and life of their occupants.

To the millions of home owners in towns and cities come the same benefits—great and noble elements needed in our free civilization. Land ownership by the state, such as Henry George advocates, would be a bane and not a blessing.

We quote from the *Christian Union*, a journal especially fair and friendly to the labor movement, the words of Mr. George, as follows:

> "By the time the people of any such country as England or the United States are sufficiently aroused to the injustice and disadvantages of individual ownership of land to induce them to attempt its nationalization, they will be sufficiently aroused to nationalize it in a much more direct and easy way than by purchase. They will not trouble themselves about compensating the proprietors of land."

That journal is compelled to pronounce this utterance "immoral," as well it may.

George says:

> "God made the land; it is His bounty to the human race. Where does any man, or set of men, get the right to parcel out and sell this heritage of our Heavenly Father to all his children alike?"

God made iron and gold. What right has any man to sell these bounties to the human race? He made "the cattle on a thousand hills." What right has a farmer to sell an ox? Land and iron and cattle were created for us to use and improve. They will not support any human being who sits idly with folded hands. It is our task to mold and shape and make more productive. He who forges and fashions the iron owns the bar, as the fruit of his toil and skill. He has changed it from the useless ore to the useful bar. Wild land is as useless as iron ore. Make this earth a wilderness and the scanty fruit would not keep a quarter of the human race alive. Labor and skill have transfigured the wilderness with fruitful farms and gardens. Has the man who has done this, or have the generations of men who have wrought this beneficent result, no right to the soil they have improved? If not there can be no right to iron or gold or cattle—common property must rule, no man can own anything.

Henry C. Carey tells us the farm lands of New York and Pennsylvania were valued at $950,000,000 in 1860; and that, were they all put back in their wild state and their present estimated value given to a company of capitalists who should drain and clear and improve them up to their present condition, the money would not pay for a quarter of the great cost. The same showing could be made in regard to costly city lots even. To take these lands, which Mr. George holds is right, would be to rob men of the fruits of their toil.

Is it true that wages are relatively high where land is low, or low where land is high? Exactly the reverse is true. Let us first look at manufacturing wages as given in the United States census for 1880.

In Massachusetts and Rhode Island land is high, but in the first State the average yearly wages per head are $364; in the second, $340. In Michigan land is lower in price, and the wages average $326. Iowa, with land still lower, gives an average of $309; and North Carolina, with land least valuable, had an average of only $152 in its few manufactures.

These averages include both city and country. If we look at cities, where land and rent are highest and where, in accord with the "Progress and Poverty" theory, wages should be relatively lowest, we find by a report on labor from the State De-

partment at Washington in 1878 that the average weekly wage in seventeen trades—bricklayers, blacksmiths, shoemakers, etc.—was $12.70 in New York and $11.50 in Chicago. In the latter city it was said that the daily pay of the thousands of meat packers engaged in the late strikes was over $2.50. Relative to cost of living city wages in these leading trades are quite as good as those in the country, and both refute the assertion that wages are low where land is high.

How is it with the millions employed in agriculture? There wages, too, will be found highest where land is most valuable. The value of farm land increases in the vicinity of large mills and factories.

In the Eastern States, with land worth $40 per acre, the average farm wages were $26.61; Western States, with land about $30 and fewer manufactures, $23.63; Southern States, land $8.27 per acre and fewest manufactures, the lowest average was found, $15.30.

We are told that "wages are relatively the lowest where capital is most abundant," and that "wages constantly tend to a minimum which will give but a bare living." But we have shown wages twice as high in Massachusetts manufactories, where capital is larger, as in North Carolina, where there is less capital, and that, in our whole country, wages have increased and savings-bank deposits grown larger in the past twenty years.

There has been meanwhile a gradual decrease of the hours of work, sometimes by law and sometimes by change of custom —a fact noteworthy and important as showing the growth of a spirit of fraternity as well as the power and influence of labor.

All this shows progress from poverty. Want and weakness, pride and greed are painfully seen, but the increase of poverty is not wrought into the very heart and structure of our free civilization. The people's step is up, not down. Let us all join to clear the way, that the upward march may be peacefully triumphant.

Henry George died on October 29, 1897, in the midst of a campaign for the mayoralty of New York, in which he was candidate of an independent party called "The Democracy of Thomas Jefferson." His opponents were Benjamin F. Tracy [Republican], Seth Low [Citizens' Union], and Robert A. Van Wyck [Democrat]. Mr. Van Wyck was elected. Mr. Low's and Mr.

George's candidacies were in opposition to the two political machines, Republican and Democratic, and not to each other. Mr. George tersely summed up his position in a platform utterance as follows: "Mr. Low is a Republican reformer: he would help the people. I am a Democratic reformer: I would help the people to help themselves."[1]

During this campaign the present editor, who was secretary of his campaign committee, called Mr. George's attention to the "Letters on Taxation" by Edwin Burgess, showing him a manuscript copy of the letters which was the property of Joseph F. Darling, of New York City, who subsequently did much to secure the publication of the letters in England and Australia. Mr. George had not heard of Mr. Burgess, and was greatly delighted to learn that the single tax theory had been developed before his time and in a form so strikingly like his own, as this corroborated his claim that it was a fundamental philosophy. He asked to see the manuscript after the campaign was over. Two days later Mr. George died of apoplexy brought on by the labors of the campaign.

After Mr. George's death his son, Henry, published a work which his father was about completing when he entered the campaign. The book was broader than its title—"The Science of Political Economy"—being a treatise upon the author's entire philosophy, which he styled in the work as "The Philosophy of the Natural Order." The son also wrote a biography of the father, which was published in 1900.

The first national conference of single taxers, held in New York City on September 3, 1890, adopted the following platform, which, with minor alterations to suit the changing phases of politics, has been reaffirmed at the succeeding national conferences up to that held at Boston November 29–December 1, 1912.

Henry George drafted this platform.

[1] Another utterance of Mr. George showed his political kinship to Thomas Jefferson, the great opponent of paternalism; this was: "It is not a function of government to save a fool from the consequences of his folly."

The Single Tax Platform

We assert as our fundamental principle the self-evident truth enunciated in the Declaration of American Independence, that all men are created equal, and are endowed by their Creator with certain inalienable rights.

We hold that all men are equally entitled to the use and enjoyment of what God has created and of what is gained by the general growth and improvement of the community of which they are a part. Therefore, no one should be permitted to hold natural opportunities without a fair return to all for any special privilege thus accorded to him, and that value which the growth and improvement of the community attach to land should be taken for the use of the community.

We hold that each man is entitled to all that his labor produces. Therefore no tax should be levied on the products of labor.

To carry out these principles we are in favor of raising all public revenues for national, State, county, and municipal purposes, by a single tax upon land values, irrespective of improvements, and of the abolition of all forms of direct and indirect taxation.

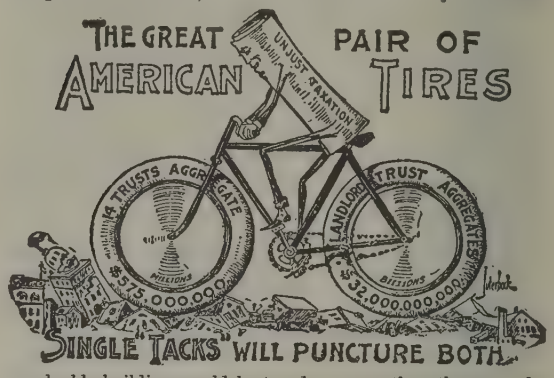
Since in all our States we now levy some tax on the value of land, the single tax can be instituted by the simple and easy way of abolishing, one after another, all other taxes now levied, and commensurately increasing the tax on land values, until we draw upon that one source for all expenses of government, the revenue being divided between local governments, State governments, and the general Government, as the revenue from direct taxes is now divided between the local and State governments; or a direct assessment being made by the general Government upon the States and paid by them from revenues collected in this manner.

The single tax we propose is not a tax on land, and therefore would not fall on the use of land and become a tax on labor.

It is a tax, not on land, but on the value of land. Thus it would not fall on all land, but only on valuable land, and on that not in proportion to the use made of it, but in proportion to its value—the premium which the user of land must pay to the owner, either in purchase money or rent, for permission to use valuable land. It would thus be a tax not on the use or improvement of land, but on the ownership of land, taking

what would otherwise go to the owner as owner, and not as user.

In assessments under the single tax all values created by individual use or improvement would be excluded, and the only value taken into consideration would be the value attaching to the bare land by reason of neighborhood, etc., to be determined by impartial periodical assessments. Thus the farmer would have no more taxes to pay than the speculator who held a similar piece of land idle, and the man who on a city lot erected



a valuable building would be taxed no more than the man who held a similar lot vacant.

The single tax, in short, would call upon men to contribute to the public revenues, not in proportion to what they produce or accumulate, but in proportion to the value of the natural opportunities they hold. It would compel them to pay just as much for holding land idle as for putting it to its fullest use.

The single tax therefore would—

1. Take the weight of taxation off of the agricultural districts where land has little or no value irrespective of improvements, and put it on towns and cities where bare land rises to a value of millions of dollars per acre.

2. Dispense with a multiplicity of taxes and a horde of tax gatherers, simplify government, and greatly reduce its cost.

3. Do away with the fraud, corruption, and gross inequality inseparable from our present methods of taxation, which allow the rich to escape while they grind the poor. Land cannot

be hid or carried off, and its value can be ascertained with greater ease and certainty than any other.

4. Give us with all the world as perfect freedom of trade as now exists between the States of our Union, thus enabling our people to share, through free exchanges, in all the advantages which nature has given to other countries, or which the peculiar skill of other peoples has enabled them to attain. It would destroy the trusts, monopolies, and corruptions which are the outgrowths of the tariff. It would do away with the fines and penalties now levied on anyone who improves a farm, erects a house, builds a machine, or in any way adds to the general stock of wealth. It would leave everyone free to apply labor or expend capital in production or exchange without fine or restriction, and would leave to each the full product of his exertion.

5. It would, on the other hand, by taking for public use that value which attaches to land by reason of the growth and improvement of the community, make the holding of land unprofitable to the mere owner, and profitable only to the user. It would thus make it impossible for speculators and monopolists to hold natural opportunities unused or only half used, and would throw open to labor the illimitable field of employment which the earth offers to man. It would thus solve the labor problem, do away with involuntary poverty, raise wages in all occupations to the full earnings of labor, make overproduction impossible until all human wants are satisfied, render labor-saving inventions a blessing to all, and cause such an enormous production and such an equitable distribution of wealth as would give to all comfort, leisure, and participation in the advantages of an advancing civilization.

With respect to monopolies other than the monopoly of land, we hold that where free competition becomes impossible, as in telegraphs, railroads, water and gas supplies, etc., such business becomes a proper social function, which should be controlled and managed by and for the whole people concerned, through their proper government, local, State, or national, as may be.

Beginning in the early nineties the Single-Taxers adopted the policy of securing their reform in separate States. Now the constitutions of the original thirteen States had a common provision which was, in essence, that all property should be taxed equally on the basis of

its money value, and this provision was incorporated in the constitutions of the States subsequently admitted into the Union. Until it was stricken out it was impossible to apply the single tax to a district within the State, and hence the advocates of the principle agitated for home rule in taxation, which would permit any municipality or county to abolish the tax on any form or forms of property that it chose. With home rule adopted they felt confident that they could persuade the majority of the citizens of at least one district to abolish all taxes on labor products, such as personal property and improvements on land. They were even more confident that, after such abolition, the community would prosper at the expense of its neighbors which continued the old system of taxation, drawing from them manufacturers and laborers, and so inducing them, in self-defence as well as emulation, to follow its example.

Thus far this policy has proved unsuccessful, except in inducing increasing minorities in each State to advocate the single tax. In 1912 a referendum on the subject was held in Oregon and Missouri, and the single tax was defeated by considerable majorities. The new constitution of Ohio, adopted in 1912, specifically excepted change in the principle of taxation from those matters to which the referendum could apply—which would seem to indicate a fear on the part of the present majority opposed to single tax principles that it might shortly become a minority.

On June 10, 1911, Henry George, Jr. [N. Y.], made a speech in the House on a bill to reduce the duties on wool and woolen manufactures, which developed into an exposition of single tax philosophy.

The Road to Freedom

Henry George, Jr., M. C.

Mr. George compared the Democratic assault upon the tariff by reducing the duties schedule by schedule to the Roman attack upon the Macedonian phalanx under Pyrrhus.

When the Roman soldier met the phalanx he had a new military problem on his hands: a gigantic oblong of spears bristled before him like a vast porcupine. How was he to get within arm's reach of the body of the Greek soldier, for do this he must to use his weapon—the short sword. Then was Roman genius called upon to invent a weapon that should destroy the phalanx. It was the pilum, a short spear that could be hurled with great force and accuracy fifty feet or more. Each Roman soldier marked out an individual behind the wall of spears. Watching for an exposed part, he hurled the pilum. If a spearman fell, he made confusion and a breach in the line of spears. That was the Roman chance. The legionaries ran in between the points and with their swords had the spearmen, helpless in heavy armor, at their mercy. One such breach made, there was a wedge-like rush from the Roman ranks and the whole phalanx was destroyed. Thus was Pyrrhus vanquished. The Roman with his broadsword and his *pilum* became the world's master.

Mr. Chairman, the tariff beneficiaries have been the economic and political phalanx for long years in the United States. They have formed one great compact united body. Realizing that they must stand together or be destroyed in detail, they have acted as a mass, their shields spread, their spears advanced; from time to time moving forward to new ground of vantage; making at all times a common bristling defence against all general attack.

And so it has been until this Congress. In this special session the method of attack on the tariff phalanx has changed. The *pilum* has now come into use in this Democratic House. This wool bill which we are now debating; the Canadian reciprocity bill and the free-list bill which we have passed; the other schedule bills that may hereafter pass are our Roman lances which we hurl at weak points in the tariff ranks. We break down the spears here, we break down the spears there, we make a breach and widen it with a rush, and then the cry in the tariff ranks is each for himself. Small and insignificant as these bills may appear, they carry destruction. Hurled by the Democratic side in this Congress, the tariff army line will at points be pierced and breached, and the monopoly phalanx, which, so long as it could stand intact, was invincible, will end in utter rout and destruction. [Applause on the Democratic side.]

Therefore, Mr. Chairman, I have great joy in voting for this wool bill. I do not regard it as much of a bill, but since

it unites the Democratic side in battle order it will do. I would have liked the bill to declare for free trade in wool and woolens. [Applause.] But, thank you, I shall take what I can get. [Applause.]

I believe that the gentleman from Georgia [William G. Brantley] is perfectly right in stating that any tariff at all involves protection. I am against any protection whatever, and therefore I am altogether against a tariff. [Applause.] I am against a tariff for revenue, for I regard it as one of the worst ways for raising revenue.

But, Mr. Chairman, suppose that we reach a revenue basis; suppose we cut out much of the tariff, how are we to supplement the revenue? Shall we go to an income tax? Some thirty States have approved of a change in the Constitution that will enable us to do that, and, some half dozen more States approving it, Congress will have authority to pass such an act. If I should be a member of this House at that time, I should take great pleasure in voting for it. [Applause.] It has one merit over a tariff tax; it is direct. You can see it; you know just exactly what you are paying. Who in the world knows what he is paying under a tariff tax?

A Member.—Or who gets it?

Mr. George.—Ay, or who gets it? For, as has been said of old, the tariff is a device for getting the most feathers with the least squawking. [Laughter and applause.]

But, while an income tax is better than a tariff tax, I am opposed to it. Why tax incomes? Men toil away their days in trying to get incomes. Why should they not keep them to spend as they please? Why should the Government tax any part into the public treasury? To support the Government, it is said. But to get support in that way is all a mistake. The British have had a high income tax, but they are now lowering it. The whole trend of taxation is away from that idea. The march of enlightenment opposes a tax of any kind upon production. It opposes personal property taxes. It opposes taxation upon the improvements on land—upon dwellings, stores, factories; upon the buildings of the farmer, his fences, ditches, drains—opposes the taxation of anything and everything that comes from human toil.

To him that produceth should go the fruits thereof. This is getting to be the current of thought. Consequently I believe that just so surely as this country shall establish an income tax that surely will the mass of those who pay it become active in quest of some substitute tax. They will be far more active

against an income tax than they may now be against a tariff tax, because an income tax is direct in its incidence. It can be seen plainly by the man who pays it. Therefore income-tax payers will rebel against this tax upon their industry. They will look for a tax that will raise revenue, but not tax thrift.

What tax will do that? A tax on land values will do it; do it absolutely. It will fall on privilege, and not any part of it on toil.

This brings us to a consideration of the single-tax philosophy. I am a single taxer. I do not believe in taxes upon any kind of industry, or upon anything that comes from industry. I believe the whole burden of taxation—Federal, State, and municipal—should fall upon monopoly. I believe it should fall upon the mother of all monopolies; upon the earth; upon that value which comes to any piece of land not by reason of the toil of its owner—for all improvements should be exempted—but from the development of the community; from social growth and social improvement.

That part of New York City known as Manhattan Borough, Manhattan Island, comprises land officially valued at more than three thousand million dollars. The island was bought from the Indians by Dutch traders in the seventeenth century for $24 worth of calico and glass beads. Yet now that same piece of land stands on the tax books at three thousand millions. That is the official value of the ground alone. It does not include the value of buildings or other improvements of any kind. Who made the increase in value from $24 to three thousand million dollars—who but all the people? The coming of population did part; the birth of babies did part; the laying out of streets, the making of great public improvements, the general toil, the building this island into a great center of production, of manufacturing and trade made parts. Social growth and social improvement brought the value to that piece of land. Why should it not be taken into the public treasury for social uses? Why not abolish all other taxes and take by taxation this publicly made value for the uses of government—municipal, State, and Federal?

Now, such action is not so far away. Bills are in the State legislature to abolish the personal-property tax and to reduce taxation on improvements on land. This would involve a corresponding increase in the tax now falling on the ground value.

To tax land values, ground values, alone is not a mere dream. It is not the utterance of a man so far in the advance of practical affairs as just to be listened to for a brief hour and

then be dismissed. My colleagues, it is a principle that is now and here. It is claiming the grave attention, shaping the legislation, of the advanced nations of the earth. It is in the Orient; it is in the Occident; it is in the Antipodes; it is among the progressive people to the north of us with whom we are seeking closer ties; it has made a momentous, convulsive drive forward in Great Britain.

George W. Norris [Neb.].—In fixing the value of the land for the purpose of taxation, you would not take into consideration any improvements?

Mr. George.—As though it had no improvement on it; what it would sell for in the open market. That market price is the sum of advantages in the situation; if there be public streets or other public improvements, for instance; if there be improvements on adjoining lots—all such considerations enter into value.

Mr. Norris.—So that you would not consider the improvement of the land you are fixing, but you would consider the other improvements on other land that had a tendency to put a value into that land which you were taxing?

Mr. George.—Yes; but you would not have to bother about that. You simply determine the selling value of the land.

Up north of us, in Vancouver, British Columbia, they have applied what is called the "single tax." So far as local revenues are concerned, it is a single tax; but it is not the single tax I am advocating, since it is very small in amount—not sufficient to check the great land "boom" now in progress there in consequence of the exemption of buildings and all other improvements from taxation.

The city began some years ago by exempting 25 per cent. of the value of improvements from taxation. That worked so well that 50 per cent. were exempted. Then they exempted 75 per cent.; and for two years, I think it is, they have entirely removed improvements from the tax rolls. The course of personal-property exemption was similar. No personalty tax now exists there. The sole source of revenue in that advancing city is the land value, ground value; the value called "economic rent" by the political economists.

As a result, Vancouver has increased in improvements faster than any city in the world. I was informed by Mayor Taylor during a visit there that the increase in Vancouver's improvements during the last year was 87 per cent. There being no tax on buildings or other things a man might put on his land, industry and thrift are encouraged.

Indeed, there is so much benefit from this policy that land values are rising. There is very active speculation in land. The advantage from the exemption of improvement is likely to be absorbed by land speculation. Against this the people of Vancouver will be compelled to defend themselves by increasing the tax rate on land values.

But, this aside, the idea of exempting improvements from taxation is spreading all through western Canada. Wherever tried, it is working most prosperously. And nowhere, in Canada, Australia, or anywhere else, is there the least disposition to go back to the old taxes. The people in Washington and Oregon, as you can find if you go out to those States, are looking with amazed eyes at Canada and her exemption of industry from any taxation. Attracted by that, many are going up over the border. Many more will most assuredly go unless those Western States shall adopt a similar policy of exempting improvements from taxation.

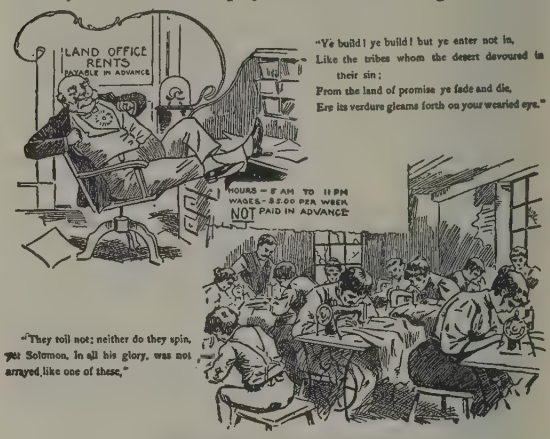
Some say the farmers would object to this single tax. But have we not seen in the newspapers how the Canadian farmers from the West went to the Dominion Parliament and asked for the adoption of the reciprocity treaty with us? They offered to make up any loss of revenue by submitting to a tax upon land values. They believed that they would get benefits from even that small measure of free trade with the United States, and were willing to pay for such benefit by accepting a tax upon ground values—on the ground values alone, of course, less all improvement value. Certainly, this is an answer to any who say that the farmers of this country would never bear such taxation. For, let me repeat, this tax is upon land values exclusively. When you come to consider the values in a farm you find that they are largely betterments—improvements the farmer's labor has wrought. Exempting them, the value that remains to be taxed is very much shrunk up. Moreover, speculative value in the land would lessen. Indeed, speculative value would disappear with heavy taxation of land values.

Why should we in this country not go to land values for all our revenues? We get part there; why not all? Abolish the tariff and other taxes on production and increase our present taxation on land values. If the older countries find it good, if the newer parts of the world, Australia and Canada, find it good, why should not this country find it good?

Is there in any part of the world a greater, more damaging, more damning kind of land monopoly than in this country? Can you find in any part of the world landlords so great, so

mighty? Where will you find, among the peerage of Europe, dukes or earls or counts or viscounts so powerful from their landed possessions as are simple citizens of our country?

A steel trust has vast possessions. Those possessions form the very core of its monopoly. An oil trust has great landed


LAND OFFICE
RENTS
PAYABLE IN ADVANCE
"Ye build! ye build! but ye enter not in,
Like the tribes whom the desert devoured in their sin;
From the land of promise ye fade and die,
Ere its verdure gleams forth on your wearied eye."
HOURS — 8 AM TO 11 PM
WAGES — $3.00 PER WEEK
NOT PAID IN ADVANCE
"They toil not; neither do they spin, yet Solomon, in all his glory, was not arrayed like one of these."

THE WORKER AND THE WORKED
From "The National Single Taxer"

possessions—vast possessions, of which it choses to use only a small part, shutting all the rest off from use by anybody. You will find the roots of most of the trusts in land monopoly. Why not apply the single tax? All the revenue raised in this country—Federal, State, local—amounts in round numbers to $2,000,000,000 a year. The ground-rent roll of the country probably approximates four thousand millions, so that there is an ample source of revenue for all needs.

Land monopolies such as find example only, if there be any comparison whatever, in the imperial days of Rome exist here. The great Warwick, the king maker, could go to Parliament with 600 liveried men. But a simple citizen, a Carnegie, or any one of a large number that any of us might name, could, if he chose, have not 600 but 6,000—we might say, in some instances, 60,000—retainers, should he choose to go abroad in such a style.

Whence comes all this? Primarily from ownership of the soil. That is the very essence of these monopoly fortunes. Given a condition where the few own the soil that all others there must use for their subsistence, the few are the masters of the many.

SWAGAR SHERLEY [Ky.].—The gentleman has alluded to Mr. Carnegie. Does he think he is accurate in giving the impression that Mr. Carnegie's fortune came as the result of the ownership of land?

MR. GEORGE.—Yes, I do; mainly.

In his most recent book, "Problems of To-day," Mr. Carnegie himself describes in exact terms and with precise instances the greatest factor in the production of the great combinations and great individual fortunes. He says it lies in the monopoly of land.

It was by holding a monopoly of the Connellsville coal fields, the best coking coal in the world, and subsequently by possession of practically all the best or most available iron and steel ore in the country that the United States Steel Corporation received material advantage over all competitors—which were sufficient, at any rate, to force a gentleman's agreement with competitors in America, while the tariff shut off competition from abroad.

MR. SHERLEY.—I would like to have the gentleman define just what he means by "land."

MR. GEORGE.—By "land" I do not mean mills, I do not mean railroad tracks, I do not mean anything made by labor. By "land" I mean the superficies of the earth. By "land" I mean the thing on which we stand, from which we came, to which we return.

MR. SHERLEY.—The gentleman says he means that which, if I may paraphrase his language, is the gift of nature and not the result of man's handiwork. Does he consider iron ore when it comes out of the land to be land within the meaning of his definition?

MR. GEORGE.—No; I do not.

MR. SHERLEY.—Then, to the extent that the general ownership of iron ore produced the fortune, it does not relate to land?

MR. GEORGE.—I call land that which nature offers to man before man has put his hand to it.

MR. SHERLEY.—In that sense there is practically nothing; there is no value at all until he puts his hand to it.

MR. GEORGE.—I can have a vacant lot here in Washington, and it may lie just as it was at the time the Indians occupied

it. I can sell it for a price. Yet not a stick or a stone has been touched upon it.

MR. SHERLEY.—Yes; it has a potential value.

MR. GEORGE.—It has an actual value, for value proceeds not only from labor, but also from a power to exact labor.

Now, Mr. Chairman, observe the Coal Trust. I do not believe that any amount of regulation, any amount of examination into financial accounts, any amount of acts here in Congress for the reorganization, if you please, of the Coal Trust will do any lasting good. You pass regulations and set up regulators, and then you have got to have somebody regulate the regulators. [Laughter.] The only way to hit a combination like the Coal Trust is to hit the monopoly principle underlying it.

Take the Anthracite Coal Trust in Pennsylvania. It possesses practically all of the hard-coal land of that State. Nature has put into eastern Pennsylvania a great deposit of hard coal. It has been the business of the anthracite railroad companies, beginning with the Reading Railroad years ago, to get possession of these deposits by purchase, by long lease, and by contract for the carriage of the coal. These railroads acting together have in these ways got control of the hard coal of all eastern Pennsylvania. The purpose has not been to mine coal. It has been, rather, *not* to mine coal. Their purpose has been to limit the output and to force up the price of coal—to work only part of their land, a small part, and to let the remainder lie idle, as though it did not exist, and to keep others from the use of it. Why could they do that? There was no tax upon it, no penalty on their doing it. The law does not discourage it; nor does even public opinion. People do not realize that it could and should be stopped; that it could be absolutely destroyed by the simple process of taxation. The law of Pennsylvania requires a tax on the market value of that land. The actual practice is not to assess at the market value, which would be as valuable mineral land. The practice is to assess it as inferior agricultural land. Then, the tax upon that preposterously low valuation is very small, so that these great coal barons go practically without taxation upon their holdings.

But if we were to make an absolute market value and put that upon the tax books, and then increase the tax upon that valuation, you would see whether the Anthracite Trust could hold its lands idle or keep the price of its coal high. Its purpose then would not be to make a scarcity in output in order to put up prices and keep down the wages of labor by limiting

opportunities for employment. A heavy tax upon the real market value of these lands would compel their use. Their use would mean more demand for labor. The price of labor would go up in the hard-coal regions. Because of the larger output of coal, the price of coal would go down. Consumers in the United States would get cheaper coal. Laborers in the coal regions would have higher wages, shorter hours, and God knows their little boys would not have to work in the breakers or their little girls go into the silk mills to help get the family subsistence. [Applause.]

EDWARD L. HAMILTON [Mich.].—The method of taxation which the gentleman is expounding so very ably would result in what is known as expropriation eventually, would it not, of the coal lands? That is to say, the title of the coal lands would pass to the State, would it not?

MR. GEORGE.—No, sir.

MR. HAMILTON.—You think that the corporations would be able to continue to pay the tax and to sell the coal?

MR. GEORGE.—Yes; the whole policy would be to use land, not to hold it out of use. Instead of high prices and small sales of the mined coal, there would be large sales at low prices.

BENJAMIN K. FOCHT [Pa.].—I will ask the gentleman two questions. The assertion was made by the gentleman from New York that under some changed conditions the boys would not be allowed to work in the breakers of Pennsylvania. Is the gentleman not aware of the statute there that prohibits boys from working in the breakers?

Second, with reference to the labor problem, does not the gentleman know that in the mining section there is a perfectly satisfactory agreement between the United Mine Workers of America and the producers of coal?

MR. GEORGE.—The law, not only in Pennsylvania, but in California, in New York, and in the South and all over the United States, forbids children under a certain age from working at all, but their parents, driven by poverty, have to lie about their children's ages. [Applause on the Democratic side.]

The gentleman asks me if I am not aware that there is a satisfactory relation between the United Mine Workers and the mine owners of Pennsylvania. I know that it is satisfactory in a state of war. I do not deny that. I am not talking about that. I am talking about a condition where men do not have to join labor organizations in order to get even a small measure of social justice. [Applause.] I stand for unions. I am the son of a trade unionist. I went to the printer's trade myself. If

I were working at a trade, I should certainly be an active trade unionist; but I do not consider that a natural condition. It is an unnatural condition. It is a condition where men who have nothing but their labor to sell must band themselves together into an organization, offensive and defensive, to make the best terms of sale they can in respect to price, to time, and the like. [Applause.] I do not regard that as natural. I regard it as unnatural. That is the kind of arrangement that has to be made by men in a state of industrial warfare. I am talking of men in a state of freedom, where every man can look every other man in the eye as a free man.

MR. SHERLEY.—Now, if the gentleman will permit, assuming the correctness of his statement, that a tax of this kind would result in the lowering of the price of coal because of the necessity to mine and sell it, does the gentleman also think that such a tax would help conservation of the natural resources?

MR. GEORGE.—Mr. Chairman, I do not care anything about this conservation of natural resources if I am permitted to apply the single tax. What do the conservationists want to do—keep the public lands out of the hands of monopolists and speculators? Well, if you hit land monopoly with taxation, no man will want to own land simply for monopoly's sake. Monopoly's profit would be gone. This single tax would tax land monopoly to death in the United States. Any value attaching to land would be taken into the public treasury and used by all. Therefore there would be no advantage in getting hold of farming land or mineral land or timber land or urban or suburban land unless to use it.

MR. SHERLEY.—Does the gentleman consider that there is any difference in principle as to the view that the Government should assume toward private property that consists of land and private property that consists of things other than land; and, if so, what is the basis for it?

MR. GEORGE.—Yes; a very great difference; for who made this world? God Almighty. And for whom did he make it? For all men, without any distinction whatsoever; and, if anything in man's laws belies that everlasting truth, it must in the end go down. But as to other things—this building, a newspaper, a book, glass, iron things that we see here about us, or any similar things outside—they have come from man's exertion. Their title springs originally from labor. I see a vast difference, for instance, in property in the ocean and in property in the fish taken by labor out of the ocean.

MR. SHERLEY.—Very well, but can the gentleman state any

condition of land ownership that does not have a value as the result of man's labor?

MR. GEORGE.—Does the gentleman mean the owner's labor only.

MR. SHERLEY.—Oh, we are not discusisng the labor of the owner. We are discussing man's labor. The gentleman undertakes to make the distinction between those things that are the gift of God and those things that are the result of man's labor. Now, it is a perfectly proper distinction if it exists, but, if it is applied artificially to things, then the whole fabric based upon it must fall.

MR. GEORGE.—I said that that value should be taken into the public treasury which was the consequence of social growth, meaning increase of population; and of social improvement, meaning the laying out of streets, the putting in of grades and bridges, the erection of public buildings, the watering, sewering, lighting, heating, the providing of transportation for the city, and matters of that sort. This value comes from the exertion of the community and the increase in numbers of the community. It is a public value, and should be so considered and be publicly taken.

MR. SHERLEY.—If the gentleman will permit me, I am not quarreling with that statement, that so far as an unearned increment is concerned it belongs more to the community than to the individual who is the fortunate possessor of it; but the proposition the gentleman announced in answer to my question was that he differentiated between private land ownership and private ownership of other property, and when I asked him why he said because he considered land to be the gift of God and private property to be the act of man's labor. When I asked him to further evolve that he brings me back to the proposition of unearned increment.

Now, the whole meat of the gentleman's position, as it was of his father's book—one of the most interesting and epoch-making books ever written—was that very question. It is the crux of the whole proposition, whether land, as he uses the word "land," represents something that belongs to the community at large any more than the other property.

MR. GEORGE.—Yes; the land was made by God, and the value that attaches to it may be quite apart from the owner's labor. The owner may do nothing. Any value that attaches to that particular piece of land is a public value. To illustrate: Here you have in the center of Washington a lot, a vacant piece of property. It has nothing whatever upon it. It

has never been improved in any way. Yet it has a selling value and will increase in price. Who made that value? Surely not the labor of the man owning the land. He did not turn a hand. He might have gone into the mountains as did Rip Van Winkle and slept for twenty years, and, returning, found a value in his land that he had nothing to do with making. Why should not such value be taken as a public value? I certainly separate it from any value that might be put upon that land in the way of a house or a machine. Such value perfectly clearly is a private value and belongs to labor.

Mr. Chairman, this land-value tax meets, as no other kind of a tax does, the four canons of taxation. First of all, as laid down by Adam Smith, the father of political economy, in his "Wealth of Nations," it is the most equal kind of a tax.

MR. HAMILTON.—Just a moment. A little while ago the gentleman stated that by the operation of the method of taxation which he is advocating monopoly would be destroyed, a monopoly of coal holdings, for illustration. I want to know where the title of the property would go when the monopoly is destroyed by this method of taxation.

MR. GEORGE.—The title of the land would stay where it is. We do not propose to change titles. You kill monopoly's powers by taxing the value of land. You force the land into use. The power of monopoly is the power to hold land out of use.

MR. HAMILTON.—But could not the monopoly, having to pay the increased tax, charge the increased tax upon the consumer?

MR. GEORGE.—I invite the gentleman to consider the political economists. This is one thing in political economy that is not in dispute.

MR. HAMILTON.—Might he not undertake to do that, as he does it now in coal properties?

MR. GEORGE.—No, sir. When you put a tax on production, you limit production. Men will not produce unless they can get compensation for the tax. They add the tax to the price of the product, and thereby they get recompensed for the tax. But not so when you tax land values. By putting a tax on land values you do not lessen the amount of land. You cannot lessen it by one grain. It is just the same in amount. But you will increase the available quantity. You will force land into use that has been kept out of use by speculation. This will put down the price of land, instead of putting it up.

MR. HAMILTON.—Precisely. Now, if I understand the gentleman, this coal monopoly which he is discussing is a monopoly which controls coal lands and is lying dormant so far as the

actual mining of a part of its lands is concerned. It is proposed, then, to tax it so as to compel it to dig all of its coal as rapidly as possible and put it upon the market, so as to be able to pay the increased tax, and that, failing to do this, the monopoly must die. But the gentleman denies the monopoly would actually die so far as the actual mining of coal is concerned. Am I right that it would have to be more active and mine more coal?

MR. GEORGE.—If the trust shall itself use the land it is now holding shut up, then it practically becomes broken as a trust, because the feature of monopoly has gone, the essential part of which is to withhold from use the natural resources and thereby make a higher price for the product from such parts as are used.

MR. HAMILTON.—Suppose the gentleman's theory, then, is correct, and the public refuses to pay the increased price of coal which the corporation has been obliged to impose in order to pay the increased tax, and then the monopoly is unable to pay the tax, does not the monopoly then lose its coal property, and does it not, then, go to the State?

MR. GEORGE.—No, sir. If the land contains valuable coal, and the trust will not pay the tax, then somebody will take the land who will. Valuable land does not run around without an owner. Somebody will use it. If the Coal Trust will not use that land, somebody else will, subject to the tax.

MR. HAMILTON.—The grantee himself takes it at the same rate as the original owner, does he?

MR. GEORGE.—If the owner does not want to use the land and yet, because the tax is too heavy he cannot afford to hold it idle, he will sell it for whatever he can get, subject to the tax by the State. I am not proposing to change titles. I am not a Socialist. I do not propose to put the land into the hands of the Government. I do not propose government management of land. I propose the plain application of the Thomas Jefferson principle of the least possible government. I propose to tax out speculators and monopolists and to throw land open to private initiative.

JOHN E. RAKER [Cal.]—Suppose the taxes were so high the man could not pay them; is it your idea, then, that this land should eventually go back to the State and then as the people wanted it the State would sell it back to some one who desired to put it into actual use?

MR. GEORGE.—No, sir. If a land owner did not pay the tax, he would get sold out for taxes. Whoever bought would buy

subject to taxation. Somebody will buy it if it has any value at all. The application of a single tax should not be a hundred per cent. application. It should fall short just enough to leave enough value in the land untaxed to make a basis for sales. This basis for sales will become the market basis for valuation and taxation. Now, if a man, we will say, who is a speculator, a monopolist, or who is "land poor" cannot or will not pay the tax imposed, he will have his land sold for taxes.

The land will go into the hands of a new man. That man will have to pay the tax. If the value of the land should fall, then the tax would correspondingly diminish. If the value should disappear, then there would be nothing to tax, and the owner would hold his land subject to no tax whatever.

The hope of speculation gone, it is probable that there would be an abundance of free land open to whoever might wish to use it. Instead of having to go away out to the remote fastnesses of our mountains to find free land, we could then find free land accessible to our city populations, and, some part of the people going out upon it, city congestion would be relieved.

MR. RAKER.—In California all the public sales under taxation are to the State. There are no private sales in the first instance.

MR. GEORGE.—The gentleman is asking me how the single tax would apply under the Torrens system. This Torrens system is an introduction from Australia. By it the government—in this instance California—at a transfer guarantees the title. That is to say, in the tranfer of land, the title must go through the hands of the government, which thereby guarantees the title. The application of the single tax would not change this. The present small tax on land values does not affect it. Why should a large tax? All I am proposing with respect to land is to increase the amount of the tax—now existing—now imposed on the ground, or what is at times called the "site" value of land.

PHILIP P. CAMPBELL [Kan.].—The gentleman from New York would break up the coal monopoly by taxing the land it owns in its mining enterprise. Suppose, instead of owning the land, it took a lease upon the land of other people, or of several other people, what effect would taxing the land have upon the monopoly in that instance?

MR. GEORGE.—It would fall upon the owner; and in the leasing of land the man who took the land would take it subject to the taxation condition.

MR. CAMPBELL.—But there are several owners in this instance, and the mining corporation simply owns the personal property, which is not taxed at all.

MR. GEORGE.—The mining corporation, like any individual, should not be taxed on its personal property; as to the land, it should pay on its market, its real selling, value. Idle land it would sell off; get rid of. It could not afford to pay taxes on valuable idle land.

RUFUS HARDY [Tex.].—We understand there is a vast carrying occupation in this country. All our coast-line vessels are engaged in transportation. Our railroads, likewise, are engaged in transportation. Now, I would like to know what solution there is in the gentleman's theory as to a monopoly of transportation, particularly on the ocean? What shipping line has to-day such a monopoly?

MR. GEORGE.—In the first place, the railroads have the most valuable kind of land. The terminals have a very great value. Besides, most railroads, especially the Western railroads, have very valuable lands: Ore beds, oil deposits, timber tracts, water rights, agricultural lands, lands in and about cities. The taxation of land values would fall upon that. But, as to railroads, I would go further, and this is beyond this taxation question. I would treat them as public highways. I think there is no getting away from that. The railroads must be taken into public hands as public highways, along with telegraphs and telephones and every function of a public highway. We must have them in our civilization. Yet it is impossible to have permanent competition in respect to them. Some individuals, getting the privilege to the exclusion of others to engage in the transportation business, will thereby get a serious advantage over others in the community. It therefore becomes a function of the State to perform.

MR. HARDY.—Mr. Chairman, I do not think the gentleman answered my question as to monopoly and water transportation. For instance, across the water the shipping company does not own the wharf, but the Government has made vast improvements in order to have a port. Now, there is a company organized that monopolizes the transportation from New York to Liverpool. Its property is all on the water. How would the gentleman's land tax affect that?

MR. GEORGE.—It would not affect it directly, assuming that the company itself owned no land; for instance, no wharf or warehouse privilege. But there would be a very material indirect effect. Removing taxation from steamships and steam-

ship building would tend to beget competition. Opening idle lands of every kind to production would increase demand for such shipping competition, and then, beyond this, changing railroads from private administration to public administration would be the greatest stimulus to competition; for now the railroads feed traffic to particular ocean carriers which they control.

JAMES M. GRAHAM [Ill.].—Would you tax the coal which would not be mined for many years to come so heavily that those who have possessed themselves of hundreds of thousands of acres of it could not hold it?

MR. GEORGE.—I should if the assessment were based on the market price. I should discover what such lands would sell for. That is easily obtainable.

MR. RAKER.—For instance, a man owned a good deal of coal land. You would tax it to the extent that he had to use it to make a profit out of it, and if he did not do that the land would be sold.

MR. GEORGE.—I would not pay any attention to whether he used it or not. I would tax it on its value. It is the owner's business to pay the tax and keep the land out of use or to use it. My belief is that a man who pays a heavy tax upon idle land would very rapidly discover that too much of a burden. He would use the land or get rid of it.

MR. RAKER.—How would you make the application to timber land?

MR. GEORGE.—I would put timber land on the tax roll for the price that it would sell for. If it has good trees on it it would sell for such and such a price; if poor trees, a less price. Do not men every day buy and sell timber lands? Take that price and tax the land on that.

MR. RAKER.—The owner can use but little of it as he goes along.

MR. GEORGE.—It does not matter whether he can use little or much. If he wants to monopolize it, he must pay the price. The price is the market price. Tax that.

Mr. George closed his speech by showing how the single tax fulfilled the four canons of taxation.

It is the most equal tax. It falls upon men according to the natural bounties they have in their possession. The man who has little pays little. The man who has much pays much, so that it is the most equal kind of a tax.

Then it is certain. It is not intermittent and wavering. It falls regularly, so that all dependent matters can be arranged accordingly.

In the next place, it is direct. It cannot be shifted. It stays where it falls. There can be no addition of this tax to the value of the land. The land owners are getting as much as they can get now. They are not waiting for taxation to put up the price of their land. On the contrary, any proposal to put a tax on values immediately causes a discouragement on the part of some owners who have idle lands, and the tendency is for the price of land to go down. This tax can be seen. It is not the kind of a tax that falls and no man knoweth how much or where. There lies the land and there lies the value and there falls the tax.

And then it is the most economical tax in its incidence. It lays no burden beyond the revenue received from it. It is cheap in the collection. This tax is not like a tariff tax. That falls upon things coming into the country. To the extent of the tax and the volume of the things so imported is the revenue that goes into the public treasury. But the tax on imports enables an increase in the price of similar commodities made in this country. There is not a cent of revenue from this home production. In the case of the tax on land values, the more the tax the less the speculation, and, therefore, the lower the price of land. So that in application it is the most economical of all taxes.

But, Mr. Chairman, I do not stop with the canons of taxation; for that, after all is said, is a fiscal question. This land tax means far more than that. It means the opening to the use of labor and capital the vast quantities of land now shut off by speculation.

There is no real scarcity of land anywhere. There is no scarcity even in the city of New York with its great population. Great areas are vacant on the outskirts, and you can go along Broadway and Fifth Avenue, the greatest and proudest thoroughfares on the whole hemisphere, and find vacant lots, and one and two-story shacks and shanties where there ought to be imperial buildings.

Why is this? Because the penalty of holding land out of use is so slight that men can pay the small tax and yet, owing to social growth and social improvement, and the consequent increase in value, realize handsome profits by the speculation. Some men acquire fortunes in a short time by simply getting hold of a piece of land, sitting down, and letting society do the rest.

This is so in every State; it is so in every village, town, and hamlet of our country. It is so throughout the agricultural regions; it is so throughout the mineral and timber regions. Apply this tax and you tax out the speculators, you tax in the users, you produce a new order in the United States.

We, of all the peoples of the world, ought to be the most advanced. We ought to be the greatest people, because we have the greatest possible opportunities. But what are we doing to rise to these opportunities? We have instituted a condition by which a few own the country. A few here, a few there, practically control villages, towns, cities, counties, and almost whole States. We have the greatest landlords that have ever been seen. Should we meet this condition, should we apply taxation to land values so as to break down land monopoly and throw open the soil of our country to our fast-growing population, a prosperity will come such as will dumfound mankind and give to America the glory of carrying civilization to a point higher than ever reached in the destinies of the race. [Applause.]

CHAPTER III

Conservation of Natural Resources

Theodore Roosevelt on "The Conservation of Natural Resources"—Speech of Gov. John F. Shafroth [Col.] in Favor of "State vs. National Conservation"—Speech of Sen. George E. Chamberlain [Ore.] in Favor of National Conservation, but against Abuses of Its Administration: Remarks by Reed Smoot [Utah], James P. Clarke [Ark.], Duncan U. Fletcher [Fla.], Knute Nelson [Minn.].

BEGINNING with the specific idea of the preservation of forests on the public domain, a subject which was referred to in the annual messages of the Presidents from Johnson to Taft, the idea of the conservation of all natural resources grew in the mind of our statesmen. In President Roosevelt it found its foremost champion. For a summary of his activities in the cause see the speech of Senator Chamberlain later in the chapter.

Mr. Roosevelt's ideas on the subject are summed up in his speech of August 6, 1912, before the national Progressive convention in Chicago.

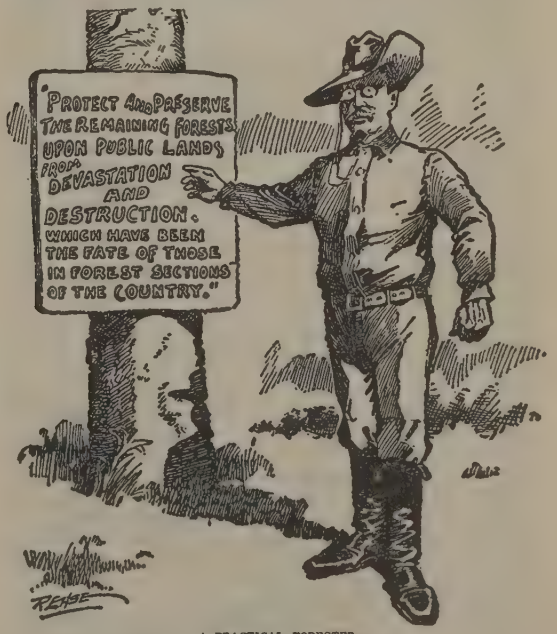
The Conservation of Natural Resources

President Roosevelt

There can be no greater issue than that of conservation in this country. Just as we must conserve our men, women, and children, so we must conserve the resources of the land on which they live. We must conserve the soil so that our children shall have a land that is more and not less fertile than that our fathers dwelt in.

We must conserve the forests, not by disuse, but by use, making them more valuable at the same time that we use them. We must conserve the mines. Moreover, we must insure so far

as possible the use of certain types of great natural resources for the benefit of the people as a whole. The public should not alienate its fee in the water power which will be of incalculable consequence as a source of power in the immediate future.


"PROTECT AND PRESERVE THE REMAINING FORESTS UPON PUBLIC LANDS FROM DEVASTATION AND DESTRUCTION, WHICH HAVE BEEN THE FATE OF THOSE IN FOREST SECTIONS OF THE COUNTRY."
REESE

A PRACTICAL FORESTER

From "A Cartoon History of Roosevelt's Career"

The nation and the States within their several spheres should by immediate legislation keep the fee of the water power, leasing its use only for a reasonable length of time on terms that will secure the interests of the public.

Just as the nation has gone into the work of irrigation in the West, so it should go into the work of helping reclaim the

swamp lands of the South. We should undertake the complete development and control of the Mississippi as a national work, just as we have undertaken the work of building the Panama Canal. We can use the plant, and we can use the human experience, left free by the completion of the Panama Canal in so developing the Mississippi as to make it a mighty highroad of commerce and a source of fructification and not of death to the rich and fertile lands lying along its lower length.

In the West, the forests, the grazing lands, the reserves of every kind should be so handled as to be in the interests of the actual settler, the actual homemaker. He should be encouraged to use them at once, but in such a way as to preserve and not exhaust them. We do not intend that our natural resources shall be exploited by the few against the interests of the many, nor do we intend to turn them over to any man who will wastefully use them by destruction and leave to those who come after us a heritage damaged by just so much.

The man in whose interests we are working is the small farmer and settler, the man who works with his own hands, who is working not only for himself, but for his children, and who wishes to leave to them the fruits of his labor.

His permanent welfare is the prime factor for consideration in developing the policy of conservation, for our aim is to preserve our natural resources for the public as a whole, for the average man and the average woman who make up the body of the American people.

Alaska should be developed at once, but in the interest of the actual settler. In Alaska the Government has an opportunity of starting in what is almost a fresh field to work out various problems by actual experience.

The Government should at once construct, own, and operate the railways in Alaska.

The Government should keep the fee of all the coal fields and allow them to be operated by lessees, with the condition in the lease that nonuse shall operate as a forfeit. Telegraph lines should be operated as the railways are. Moreover, it would be well in Alaska to try a system of land taxation which will, so far as possible, remove all the burdens from those who actually use the land, whether for building or for agricultural purposes, and will operate against any man who holds the land for speculation or derives an income from it based, not on his own exertions, but on the increase in value due to activities not his own. There is very real need that this nation shall seriously prepare itself for the task of remedying social injustice and meeting

social problems by well-considered governmental effort; and the best preparation for such wise action is to test by actual experiment under favorable conditions the devices which we have reason to believe will work well, but which it is difficult to apply in old settled communities without preliminary experiment.

A "Conservation Congress" of those interested in the subject was held at St. Paul, Minn., in September, 1910, at which considerable opposition developed to the plan of conservation by the nation rather than by the States which are immediately concerned.

This opposition grew until it formed the leading feature of the Trans-Mississippi Commercial Congress, held at Kansas City, Mo., on November 15, 1911.

Governor John F. Shafroth [Col.] spoke as follows:

State vs. National Conservation

Governor Shafroth

There has been a strong sentiment in the East in favor of conservation of the natural resources of the public domain. All rational people are in favor of such conservation, if by that term is meant prevention of waste. But the sentiment has gone further, and has assumed the meaning of making enormous forest reserves, and taxing the natural resources of the public domain by means of leases of grazing, oil, phosphate, asphaltum, coal, and mineral lands for the benefit of the Federal treasury, and of making water-power plants pay a royalty to the national Government for each horsepower generated by falling water. The recent Conservation Congress adopted resolutions indorsing such a policy.

Fifteen million acres of land in Colorado have been set aside as forest reserves and 9,425,239 acres of coal land have been withdrawn from entry until reclassified, and on reclassification there have been placed such enormous values upon the same (in some instances as high as $400 per acre), that it practically operates as an absolute withdrawal of all the coal lands from entry. This is an enormous area and is equal to that of Massachusetts, Connecticut, New Hampshire, and Rhode Island combined.

Most of these forest reserves are on the mountains, situate more than 7,500 feet above sea level, where nature has decreed

that large timber cannot grow, and many millions of acres are above timber line, where no timber whatever can grow.

It has been estimated that of the forest reserves in Colorado 30 per cent. contain good merchantable timber, 30 per cent. scrub timber, and 40 per cent. no timber at all. Thus 70 per cent. of the forest reserves in Colorado have no connection whatever with forestry. It is ridiculous to contend that these reserves can be reforested in Colorado, because, according to a report of the Agricultural Department, it takes in my State 200 years to grow a pine tree 19 6-10 inches in diameter at an altitude of 7,500 feet above sea level.

This is not a partisan question, as President Cleveland set aside 25,686,320 acres of forest reserves in the West, and President Taft, in his message to Congress of December 6, 1910, declared that these are not questions pertaining to partisan politics. Nine-tenths of the Senators and Representatives of these Rocky Mountain States, irrespective of political affiliations, are opposed to this policy. The total area of the forest reserves established by the Presidents up to this time amounts to 192,931,197 acres.

Congress, time and again in its acts, has referred to all of that property acquired by the national Government as the "public domain," and, in all references to the same, has never intimated that such lands should be retained in perpetuity by the Government. Until recently it has been held, as its name implies, in trust by the Federal Government for the benefit of those citizens of all the States who will settle upon, develop, and improve the same. Not even residence in the State is required in order to locate a gold, silver, or mineral mine, a claim under the coal, timber, or stone acts. Certain improvements and payments only are necessary, and the work can be done by hired men. The right to so locate claims constitutes the interest which every citizen of the United States has in the public domain. It is truly a domain for the public.

It has never been the policy of the United States to make money out of its lands. The sums charged are presumed to amount to very little more than sufficient to cover the expenses of properly regulating the disposition of the same.

It was not until during the last eight or ten years that we have heard people seriously contend that a revenue should be derived for the national treasury from the leasing of these lands.

This Rocky Mountain region was the least inviting to the pioneer. It was Daniel Webster who used this language as to the Western territory which we acquired from New Mexico:

"What do we want of that vast and worthless area, that region of savages and wild beasts, of deserts, of shifting sands and whirling wind, of dust, of cactus and prairie dogs? To what use could we ever hope to put those great deserts and those endless mountain ranges, impenetrable and covered to their very base with eternal snow? What can we ever do with the Western coast, a coast of 3,000 miles, rockbound, cheerless, and uninviting?"

The Government recognized that it was the explorers, settlers, and developers who made the value of everything in a wild and uninhabited country; that if the lands were not exploited and improved they would remain as worthless as they had been for 6,000 years.

Under this general policy of rewarding the pioneer citizens of the United States in the development of the natural resources of the public domain, thousands of people crossed the trackless desert for California, and there discovered the richest gold fields ever known in the history of the world. These gold mines were upon the public domain. There was no law providing for the location of mines. The miner locating gold fields in California could have been considered by the Government a trespasser and liable to refund to the Government the value of all the gold extracted; but, under the policy of the Government as to the settlement of lands in Ohio, Indiana, Illinois, and Missouri, no one ever suggested that the miner was not entitled to the fruits of his discovery; and the miners themselves proceeded to frame rules and regulations as to the manner of locating and developing the mines. These rules and regulations afterward were enacted into laws by Congress, not for profit to the national Government, but for the production of the greatest wealth to the nation and benefit to the citizens thereof.

Under that policy there has been a development of the Western country unparalleled in the history of the world. Three billions of dollars in the precious metals, produced at a cost of perhaps that amount of money, but, turned into the channels of trade, have contributed largely toward making this country the most prosperous nation on earth. It is the increase of basic money that has always given a quickening impulse to business and commerce. An enormous development has been produced in all the other industries of that region.

When the Rocky Mountain territories applied for admission to the Union, no power existed in the President or any other officer to permanently withdraw lands from entry or location either for agricultural, mining, timber, stone, or coal purposes. The laws providing for disposition of the lands had been fixed

for years, and no officer was vested with power to change those laws. The fact that all the laws provided for the settlement, location, development, and improvement of all the public domain and did not provide for the Government retaining any part thereof, excepting for military purposes and purely governmental uses, shows conclusively that the policy was intended to be fixed in favor of the disposition of the lands as against the perpetual ownership of the same by the Government.

The enabling act of each State, as did similar acts of all the States of the Mississippi Valley, provided that the property held by the nation until disposed of should be exempt from taxation. There had been no effort upon the part of the Government to hold in perpetuity lands in the Mississippi Valley, and the people of the Rocky Mountain region had a right to presume that the same policy would be pursued as to the new territory. Yea, more, this fixed policy would be pursued as to which the national Government had placed upon all enabling acts, inducing settlement and development, and thereby had made it an implied agreement with the Western States admitted thereafter into the Union that lands should not be held in perpetuity by the Government.

Now it is proposed, by bills introduced in Congress and advocated by the followers of Mr. Pinchot, to change this policy, to impose royalties upon powers generated by falling water and to lease the oil and phosphate lands and the coal and metalliferous mines upon a rental basis payable to the treasury of the United States. No other States have had their national resources taxed by the national Government, and we deem it is unfair that the people of the States which had all the products of their natural resources for themselves should now require, through their Senators and Representatives, these less-favored States in the West to not only undertake the development of the natural resources of these States, but to pay into the Federal treasury a tax upon the very development thereof.

What does the leasing of the natural resources of the mountain States mean? It means perpetual ownership residing in the national Government, and that means exemption from taxation forever.

Perpetual exemption from taxation of vast territory in a State is almost destructive of the development of that State. It is an injustice which it seems to me every fair-minded person must recognize. The State must maintain government for State, county, and school purposes over all the lands within its borders, whether reserved or not

In the West the taxes upon land for a period of thirty years, including reasonable interest upon each yearly payment, amount to the value of the land. Therefore, when the lands privately owned must pay all of the taxes for State, county, and school purposes it is equivalent to them paying every thirty years, in addition to their just taxes, an amount equal to the value of the public lands. Thus the people of these States must pay for these public lands every thirty years, and yet never own a foot of the same. Is that right; is it just; is it the way a parent would treat a child? Is it a compliance with the enabling acts, which provide that each State is "admitted into the Union upon an equal footing with the original States in all respects whatsoever"?

The national Government was formed for national affairs and the State governments for local control. It was a dual form of government, a partnership in which the people of each were interested in and a part of the other; both were necessary, and both must be supported by taxes. It would not have been right for the States alone to have the power of taxation, nor that the nation alone should possess that power, because, by this dual form of government, there were imposed upon each certain duties, the performance of which required revenues. Now, would it have been right for the States to cripple the national Government in the raising of revenue, or for the national Government to hamper the States in their exercise of such an indispensable power? The power of taxation is the most important of all governmental prerogatives. It is the very foundation upon which the administration of law is builded, and without it the superstructure must fall. It is the very law of its being.

In the constitutional distribution of the powers of taxation the Federal Government has obtained great advantage; its revenues have been so enormous that it has been difficult to devise ways of spending the amounts thus collected. It was Senator Aldrich who stated not long ago that he could curtail the expenses of the Government to the extent of $300,000,000 per annum without detriment to the public service. The States, being principally limited to taxation upon real and personal property, have always had scant amounts with which to maintain their administrations. Every State in the Union is now limited in its work by reason of the small revenue derived from direct taxation.

Here the governor enumerated the many expenses of State governments.

This new policy would not only deprive the States of the means of raising the necessary revenues to establish and maintain good government, but in addition to that injustice the advocates thereof propose to make revenue for the Federal treasury by taxing the natural resources of the West. By so doing they propose to make the Mountain States pay an undue proportion of the burdens of the national Government.

It has been estimated by the Geological Survey at Washington that there are contained within the boundaries of the State of Colorado 371,000,000,000 tons of coal. More than three-fourths of this coal is upon the public domain. If a rental of 10 cents a ton is to be imposed upon that natural resource of the State of Colorado it will mean ultimately that the citizens of our State must contribute $27,000,000,000 to the Federal treasury. This tax is advocated on the ground that it will prevent waste. According to this geological report, Colorado alone has sufficient coal to supply the world, at the present rate of consumption (of about one and a quarter billion tons per annum), for 300 years.

It has been estimated by the authorities at Washington that from 1,000,000 to 2,117,000 horsepower can be generated from falling water in the State of Colorado. If the Government is to charge $1 per horsepower as a rental for a temporary right of way for transmission lines, and conducting that water on Government land until it attains a height sufficient to generate power, it will mean, when this power is fully developed, a rental to the national Government from the inhabitants of Colorado of from $1,000,000 to $2,117,000 a year. It must be remembered that every horsepower generated by falling water saves the burning on the average of twenty-one tons of coal each year.

Is it equal or fair treatment to our commonwealth for the Government to impose any tax whatever upon our natural resources, which it has never imposed upon the older and richer States of the Union? It must be remembered that the act of Parliament of Great Britain, imposing duties upon goods shipped to the thirteen colonies, against which our forefathers rebelled, provided that the revenues derived therefrom should be expended in America for its protction and defence.

All taxes upon production must ultimately be paid by the consumer. Yea more, such policy means that the people will have to pay additional prices for such products far in excess of the royalties which will be obtained by the national Government. It will put our people at a disadvantage in the struggle for industrial supremacy.

The excuse for imposing a tax and terms upon the water-power plants of our States is that Congress will prevent monopoly, whereas the State governments will not; that they at Washington are better able to administer local affairs than the people of the States in which the lands and the resources are situate.

It has been my good fortune to represent my State in Congress for nine years, and I and all other members of Congress know that it is more difficult to pass through the United States Senate and House of Representatives an act which will prevent monopoly than it is to get through the general assemblies of the various States the same character of legislation.

When we realize that the National Government has given away in 43 different railroad grants lands aggregating 155,504,-994 acres, it comes with poor grace from the Federal offices to say that they can conserve and administer the lands better than the people of the States wherein the lands are situate. These railroad grants comprise an area equal to that of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, West Virginia, and Ohio combined. If the Western States had donated to railroads one-tenth of such grants, such action would have been looked upon as the most horrible example of waste and extravagance, if not corruption, that had ever occurred in the history of the world.

The Supreme Court of the United States has determined time and again that the waters belong to the States and not to the National Government. Congress has only jurisdiction over navigable streams, and it cannot interfere with the use of the waters of a State. In accordance with that belief, laws in every arid State in the Union have been enacted providing for the use of water for irrigation and for power purposes. The Supreme Court of the United States has sanctioned such laws and has held that they have always been in existence as laws of necessity.

The man who first applies the water to beneficial uses, either for irrigation or the generation of power, is entitled to priority of right to the flow of that water. We have a system of administering these waters. Water commissioners exist in 70 water districts of the State of Colorado. The water commissioners possess the power of turning water into ditches, according to their priority of right, and, when there is a scarcity of water, of shutting down the headgates of the ditches in the inverse order of their priority of appropriation.

The national officials now recognize the ownership of the water in the States, but in order to get some jurisdiction over the same they claim that inasmuch as the Government owns the lands lying along our streams they will not grant a permit or right of way to a power company to conduct the water along that land and by a steep descent send it back to the stream, thereby generating power, unless the owner of such power plant agrees to pay a royalty on the water which he uses and until he makes certain other terms which they may prescribe. This is simply doing indirectly what the Government cannot do directly. It is annulling that inherent power of sovereignty in the States called eminent domain, by which rights of way can be condemned for great public enterprises. It was Secretary of the Interior James R. Garfield who two days before he retired from office revoked 40 permits for power plants to transmit their electricity across public lands. In several instances the electric plants had cost hundreds of thousands of dollars and were being operated. He no doubt thought he was doing right, but we thought he was doing a most egregious wrong to our States.

The people living in these public land States are more interested in the development of their water powers than Congress or the officials at Washington. It is they who ultimately must pay the penalty if monopoly obtains possession of their water plants, and consequently they are sure to be more careful with respect to these water powers than the National Government.

The fact that water power plants can be operated every five or six miles of a mountain stream, and that in the Rocky Mountain States there can be generated by falling water 33,000,000 horsepower, makes it almost impossible to create a monopoly, even if there were no laws to prevent the same. But it is absurd, under the present State laws, to talk about a monopoly of the water powers.

The owners of these water power plants are simply public carriers, to transmit the power generated to be used for commercial purposes. They are expressly declared by statute in my State to be common carriers. They are identically in the same position as railroads. That the rates of railroads, or rates of power companies, can be made reasonable by the States has been settled too many times to need citation of authorities. It is absurd to say that the legislatures of the States will not curb and prevent excessive prices for the transmission of electrical power. If they should fail to do so, it is the right of

the people in my State to initiate statutes which will compel reasonable rates. These laws constitute the guaranty that no monopoly in charges for electricity could possibly become permanent in the State of Colorado.

The policy of the nation holding in perpetuity great forest reserves, and coal, gas, oil, phosphate, and mineral lands, and rights of way for water power plants, and controlling the same, is an interference with local affairs which, according to our theory of government, should belong to the States.

It was the late Justice John M. Harlan, of the Supreme Court of the United States, who said:

> "A National Government for national affairs and State governments for State affairs is the foundation rock upon which our institutions rest. Any serious departure from that principle would bring disaster upon the American system of free government."

The permanent administration of public lands in a State, sovereign as to all functions except those which were delegated to the National Government, is an interference with local affairs never before attempted in the history of this country. Such administration by a bureau at Washington, with its thousands of guards imported from other States patrolling these gigantic areas, can never be satisfactory to the people of the States in which such lands are situate. The bureau will always be controlled by officers who are not in sympathy with the people of such States. Carpetbag government of such local affairs is bound to follow, with its antagonism to everything that interferes with the National Government's control and use of these reserves, which control and use we think are so destructive of the development of our States.

The Federal bureau cannot want settlement of lands or location of mining claims upon these forest reserves, and its rules are and will be continuously harassing to those who desire to settle upon or locate mineral claims upon the same. I have no doubt the officers and employees of the Forestry Bureau are honest, but, representing the National Government, which has a policy antagonistic to the public land States, they naturally will favor its side, especially when they earnestly believe in that policy.

When timber reserves were first established it was the advocates of this forestry policy who contended that it was impossible to maintain forest reserves and yet permit the ownership of private property within the reservations; that the right of access to private lands through forest reserves for the owners

of horses, cattle, sheep, and other live stock would interfere with the Government's use of the same.

It was not until Congress, seeing the serious interference with the development of the Western States, enacted a law opening such forest reserves to homestead and mineral entry that the advocates of this forestry policy yielded upon that point. It is asserted in Congress that during the years 1907 and 1908 the number of homesteads allowed on reserves was only 1,563, while the number of reservations for rangers' lodges, with adjacent land, during that same period was 3,227.

While it was well known that Congress was going to forbid the creation of any more forest reserves in Colorado, Wyoming, Idaho, Montana, Washington, and Oregon without its consent, the Senate, having passed the measure on February 25, 1907, and the House, on March 3, 1907, having concurred in the same, it was the advocates of this forestry policy who circumvented the effect of that law by inducing a President, on March 1 and 2, 1907, before he signed the bill, to establish by proclamation forest reserves to the extent of over 30,000,000 acres.

The Forestry Bureau knew full well the antagonism of the people of the Western States to these large reserves, and yet, while that bill guarding the interests of the West was about to become a law, forest reserves, mapped out and described by this Federal bureau, were established at its request.

Every time these foresters see a tract of land which has been cleared of timber they repeat the poem, "Woodman, spare that tree," and expostulate over the great waste of that natural resource. They do not seem to realize that every stick of timber so cut was used in the mines, in the erection of houses, and in other improvements necessary to man, and that the use has been most beneficial in the development of our country.

The timber cut upon the public domain in my State is infinitesimal compared to the losses by fire. It is not profitable to cut timber except near streams, where the logs can be floated to market, or where a railroad exists, which is usually along the streams. The lands cleared of timber are mere threads through these gigantic reservations. The people of the Western States have endeavored in every way possible to prevent forest fires, but the most destructive fire we ever had occurred since the Forestry Bureau had full control of the reservations. Those catastrophes will happen, and it is not the fault of either the State or the forestry officials.

The discouragement to the prospector of mineral lands, by means of the rules adopted by the Forestry Bureau, has been

so great in my State that there are now practically no prospectors left. And yet we know that the hills of our State have hardly been scratched in prospecting for the minerals therein contained. It is impossible for these reserves to be managed to the best interest of our people by a bureau administered two to three thousand miles away.

The employees of the forest reservations of the West consist of 243 forest rangers, 1,050 assistant forest rangers, 558 forest guards, 2 game wardens, and 6 hunters and trappers. I have no doubt that three-fourths of those employees are not citizens of the commonwealth in which they do their work. I have heard it stated that the former chief of the Forestry Department said that when these reserves were scientifically managed it would require 100,000 employees. It must be remembered that in the Declaration of Independence our forefathers arraigned King George III in these words: "He has erected a multitude of new offices, and sent thither swarms of officers, to harass our people and eat out their substance." The people of the South have felt the effect of carpetbag government in a reign of misrule and corruption unequaled in the history of the world. It was that experience which brought the American people to a realization that home rule is to the best interest of a State.

Why impose upon the Western States a rule which interferes with what they think are the rights belonging to the States:

First. Which will make the people of those States, by taxation upon their own land for government over all the lands, pay for these reserves every 30 years without owning any of the same?

Second. Which, in addition to the burdens imposed upon those States for the support of the National Government, will compel them to pay millions of dollars into the Federal Treasury as taxes upon their natural resources, which no other States have been required to do? And

Third. Which must foist upon those States landlordism and a bureaucratic control of these great reserves, which policy in the administration of government has always proven a failure?

Heed the advice of the great justice of the Supreme Court—let our Government be "a National Government for national affairs and State governments for State affairs," and then there will follow a development of the resources of the Rocky Mountain region which will be the marvel and wonder of the world.

On May 16, 1912, George E. Chamberlain [Ore.] spoke in the Senate in connection with an appropriation bill for the Agricultural Department in defence of the conservation of natural resources by the nation, but against abuses that had grown up under it.

National Conservation and Its Abuses

Senator Chamberlain

This should not be considered as a political question or as a partisan question. Both the great political parties of this country are committed to the question of the conservation of our natural resources. I will read the plank of the Democratic party adopted at Denver in its last national convention on this subject, as well as the plank adopted by the Republican party in its national convention at Chicago.

REPUBLICAN PLATFORM, 1908—CONSERVATION OF FORESTS

We indorse the movement inaugurated by the Administration for the conservation of the natural resources. We approve of measures to prevent the waste of timber. We commend the work now going on for the reclamation of arid lands, and reaffirm the Republican policy of the free distribution of the available areas of the public domain to the landless settler. No obligation of the future is more insistent and none will result in greater blessings to posterity. In the line of this splendid undertaking is the future duty equally imperative to enter upon a systematic improvement upon a large and comprehensive plan just to all persons of the country of the waterways, harbors, and Great Lakes, whose natural adaptability to the increasing traffic of the land is one of the greatest gifts of benign Providence.

DEMOCRATIC PLATFORM, 1908—NATURAL RESOURCES

We repeat the demand for internal development and for the conservation of our natural resources contained in previous platforms, the enforcement of which Mr. Roosevelt has vainly sought from a reluctant party; and to that end we insist upon the preservation, protection, and replacement of needed forests, the preservation of the public domain of home seekers, the protection of the national resources in timber, coal, iron, and oil against monopolistic control, the development of our waterways for navigation, and every other useful purpose, including the irrigation of arid lands, the reclamation of swamp lands, the clarification of streams, the development of water power and the preservation of electric power generated by this natural force, from the control of monopoly; and to such end we urge the exercise of all powers—national, State, and municipal—both separately and in coöperation.

We insist upon a policy of administration of our forest reserves which shall relieve it of the abuses which have arisen thereunder, and which shall, as far as practicable, conform to the police regulations of the several

States wherein the reserves are located, which shall enable homesteaders as of right to occupy and acquire title to all portions thereof which are especially adapted to agriculture, and which shall furnish a system of timber sales available as well to the private citizen as to the large manufacturer and consumer.

I take the position, Mr. President, that the forest service has been criticized, and very severely criticized, for a condition of things for which it is not at all to blame. I am willing to admit that in the administration of the land laws of the United States not only are the subordinate officers sometimes too arbitrary, but this criticism applies as well to the heads of the land and many other departments. Technical and arbitrary rulings not infrequently make it impossible for a man to perfect his title to public lands, where he is making an honest endeavor to acquire a home.

I am also willing to agree with the Senator from Idaho [William E. Borah] when he repudiates the suggestion that every man who attempts to secure a home in the West is a thief, and I only differ from him in this respect, that I do not think that that charge is generally made. Whenever and wherever it is made it is usually by persons who do not understand the situation in the West.

An investigation will disclose that where individuals have been guilty of fraudulently acquiring lands under either the homestead or preëmption acts, and in a great many cases under the timber and stone act, they have been the homeless hirelings and agents of timber syndicates or others in the East who have been interested in acquiring a part of the public domain for speculative purposes.

Now, Mr. President, I make the broad statement that the Forestry Bureau and the Agricultural Department are not responsible in the first instance for the wrongs which have grown up under the forest reserve system. Congress itself is and has been responsible, and it is responsible now, wherever these evils exist, for it has it in its power to correct them, and it ought to correct them. As a matter of fact, there has not been a single piece of constructive or corrective legislation suggested except on the floor of the Senate in the heat of discussion, and that has not had the consideration it ought to have had when it affects so great a national question.

The act authorizing the President by proclamation to create forest reserves was passed March 3, 1891. The creation of these reserves was recognized as almost a necessity at that time, and the President proceeded, in pursuance of the power vested in

him, to create these reserves in order to protect the great wealth of timber and mineral resources against monopolization by those who wanted to acquire them for speculative purposes.

In the creation of these reserves it became necessary, Mr. President, to include lands that were owned by entrymen under the several Federal statutes, railroad and wagon road grants, and others who had acquired holdings before the reserve was created. Now, let us note the evolution and development of a great national wrong under an act that was beneficent in its purposes.

Occasionally there would be a homestead near the top of a mountain or on a mountainside or in an isolated valley at the time of an executive proclamation creating a reserve. These holdings were, of course, not extinguished by the creation of the reserves, but where there was one private holder or one entryman under the land laws there were hundreds of thousands of acres that belonged to railroad and wagon road grant companies and others who, through mesne conveyances, had acquired title from them.

Then began to be heard a plea in behalf of the poor entryman, who had a home in the center of a reserve without possibility of having any neighbors or churches or schools; that he ought to be protected, and allowed to surrender his little holding in the reserve, which could never be otherwise than isolated; and that he should be permitted to select in lieu thereof other lands outside of the reserve, where he would have the benefit of neighbors, schools, and churches. That was a plausible plea for the entryman, and nobody on earth could object to allowing that entryman to release his land to the Government of the United States and to select in lieu thereof an equal area in some other part of the public domain. The same plea is being made for the poor settler now as a reason for abandoning the forest reserve policy. It looks ominous, Mr. President. The unwritten history of that plea is that it originated, not by the fireside of the poor entryman, but in the office of a great railroad company in the Middle West; it was gotten up, not for the benefit of the small holder, but for the purpose of enabling the big grant corporations, railroads, and others, and their successors in interest to release their holdings within the forest reserves, and to take up in lieu thereof other vacant Government lands in other sections of the country, which were far more valuable for all purposes than were the lands within the reserves. This was the origin of the indemnity selection or lieu land law. It was conceived in iniquity and resulted

in robbing the people of untold millions in land and money. On June 4, 1897, Congress passed what was known as the indemnity selection law, ostensibly in the interest of the entryman who had his home within the forest reserve, allowing him and incidentally all others who had holdings within the reserves to release their holdings to the Government and to take up lands elsewhere in lieu of the lands which they might surrender to the Government.

Bear in mind that this law, ostensibly in the interest of the settler, was not confined to him. It would have been harmless with such a limitation. But it applied to the grant companies of all kinds and their successors in interest and millions of acres of land in these reserves, consisting of lava beds, denuded forests, and rugged peaks, were released under the act of 1897 to the United States, and lands valuable for agricultural purposes, for timber, for minerals, for coal, and for oil, surveyed and unsurveyed, were taken up in every State in the Union where there were vacant lands by these companies that hastened to surrender their holdings within the reserve and to take advantage of a law which it was pretended was in the interest of the settler.

Reed Smoot [Utah].—Mr. President, I know in some of the States, after the law was passed and was in operation perhaps for four years or more, there was a move made by men to enter lands and to make selections in forest reserves under State selections that were not agricultural in character, and the selections were made with no other view than to have them turned back to the Government, and in lieu of them to select lands outside.

James P. Clarke [Ark.].—I think it would tend to a clearer understanding of just how this abuse came about to repeat a brief statement made by the late Senator from Montana, Mr. Carter. He said that in the construction of the act of 1897 the Secretary of the Interior made a ruling that was obviously correct, that it never was the intention of Congress that the railroads holding arid lands under their early grants should be permitted to surrender them wholesale and to take certificates that would enable them to file on better lands elsewhere in the United States. That ruling was accepted by the railroads for a number of years. Subsequently, Mr. Hitchcock, of Missouri, came to be Secretary of the Interior, and, without any sort of foundation for his action, he reversed that ruling and permitted the surrender of the railroad grants and the selection of lands elsewhere. Arkansas fell a victim to the

extent of 270,000 acres of land to that ruling made by Mr. Secretary Hitchcock.

SENATOR CHAMBERLAIN.—This thing had become so notorious and so infamous in every Western State that a demand went up everywhere that this old indemnity selection law should be abolished and repealed. What happened? On the 3d of March, 1905—I want the Senate to notice the wording of this repealing clause—there was passed and approved "An act prohibiting the selection of timber lands in lieu of lands in forest reserves," which is as follows:

> *Be it enacted, etc.,* That the acts of June 4, 1897, June 6, 1900, and March 3, 1901, are hereby repealed so far as they provide for the relinquishment, selection, and patenting of lands in lieu of tracts covered by an unperfected *bona fide* claim or patent within a forest reserve.

If they had stopped there the act would have repealed the indemnity selection acts and would have stopped the looting of the public domain, but it goes on:

> But the validity of contracts entered into by the Secretary of the Interior prior to the passage of this act shall not be impaired: *Provided,* That selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issued therefor the same as though this act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for like quality of land may be made in lieu thereof.

Here was a qualified repeal of the indemnity selection acts that were on the statute books at that time, but it excepted from the effect of the repeal contracts which had been made by the Secretary of the Interior in the face of all sorts of protests, whereby the railroad and lumber companies and others surrendered to the Government of the United States lands which, in many instances, were absolutely denuded of timber, and got the right to select other lands out of the public domain in lieu thereof. The repealing clause did not name these companies. It would not have been policy to have named them in the repealing clause, because it would have aroused a protest in and out of Congress against legislation which had for its purpose the protection of the Santa Fe Railroad Co. and others instead of the protection of the citizens of the country.

DUNCAN U. FLETCHER [Fla.].—I think, under the circumstances, it would be a little bit enlightening at least to know who was Secretary of the Interior at that time, and whether

these protests were brought to the attention of the President at that time as well as to the attention of the Secretary of the Interior.

SENATOR CHAMBERLAIN.—The old Latin maxim, *de mortuis nil nisi bonum,*[1] appeals to me in this case. I want to observe it as far as it is possible consistent with the truth. It was Mr. E. A. Hitchcock who in his lifetime seems to have assumed that every man who undertook to acquire title to public land was a thief, and yet he was a party to the scheme to give away over a million acres of land by contracts he could have refused to make. Commissioner Hermann had called attention to these very dangers and he was removed from office at the instance of Mr. Hitchcock, as many believe, because he did not stand for these things, but for the interest of the people of this country in reference to these indemnity selections.

Mr. President, there are numerous other indemnity selection acts that I am not going to take up the time of the Senate in discussing. I have discussed them thus far for the purpose of showing conditions as they existed at the time this conservation movement had its origin. Lands in nearly all the States of the Union had been and were being taken up and placed under monopolistic control.

Mr. Gifford Pinchot, former forester, has been denounced here as a despoiler by one of the distinguished Senators who has discussed this subject. Mr. President, I say to you that, instead of criticising him as a despoiler, the American people ought to erect a monument in his honor and engrave his name upon it as the man who originated the idea of placing these resources of the Government—timber, coal, iron, and oil—beyond the reach of monopolistic control, and saving them, not only for the generous use of our own generation, but for generations yet unborn, because to him more largely than to any other individual in this country it is due that the people of America were first aroused to the fact that our public lands and the things under them, including the water powers and everything else, were being taken up and monopolized by selfish interests. He aroused an interest and created a public sentiment that has made Congress do something to protect these natural resources. Therefore, even if I do agree with some of the criticisms which have been indulged in against the administration of the forest reserves, and with others that have been indulged in against other governmental bureaus, I must state that, in its larger view, Mr. Pinchot and those who have succeeded him have done

[1] "Say nothing but good of the dead."

a work that entitles them to the everlasting gratitude of the people.

Mr. President, we can see, in view of the looting of the public domain by these big corporations, why the idea of the conservation of natural resources had such an impetus given to it from the start. Really, it sprung into importance only four years ago, in 1908, when the governors of the several States met here in Washington for the purpose of discussing the whole subject.

The growth of the conservation movement has been slow, but, involving, as it does, a great moral question, it will never be retired from political or economic discussion until it has been rightly solved, and the party or the individual who opposes it must eventually be crushed by an outraged public opinion. So well is this recognized that you can not find anyone in public life upon whom responsibility rests in this important matter who will not claim that he is in favor of the conservation of our natural resources, and some there are who, while professing to believe in the doctrine, are nevertheless willing, on one pretext or another, to oppose any measure looking to the advancement of the cause.

It may not be inappropriate to call attention briefly to the evolution of the movement. As early as 1903 President Roosevelt appointed the Public Lands Commission. The first partial report of this commission was presented to Congress in a message by the President March 7, 1904, and the last was presented in the same way February 13, 1905. These reports deal at length with the antiquated land laws, and the abuses which have grown up under them, the sale of timber on the public lands, grazing thereon, and other kindred subjects. They contained many valuable suggestions, such as the repeal of the timber and stone act and the commutation clause of the homestead act. Attention was called to the frauds which had been and were being perpetrated under these laws, and if the recommendations of the commission had been followed by Congress a long stride would have been taken toward saving the public domain for the homesteader instead of allowing it to pass into the hands of speculators.

In 1907, the President created the Inland Waterways Commission and charged it with the consideration of "the relations of the streams to the use of all the permanent natural resources, and their conservation for the making and maintenance of prosperous homes."

Acting upon the suggestion of the Inland Waterways Com-

mission, the President called a conference of governors[1] of all the States and Territories, which was held at the White House in May, 1908. For the first time in history the executives of the sovereign States met with the Executive of the United States, and the occasion for that gathering was the consideration of the important problem of conservation. Acting upon the recommendation of the governors, all of whom recognized the importance of the great question they were called upon to consider, the President, on the 8th of June, 1908, appointed the National Conservation Commission, which thereafter proceeded to take the first inventory of the natural resources made by any nation in the world. The results of that inventory are recorded in the report of the National Conservation Commission, which the President transmitted to Congress with a special message in January, 1909.

Not only did Congress not then see fit to enact any legislation therein recommended, but unfortunately declined to print the report in sufficient numbers for its adequate distribution among the people. More disastrous than this, however, was the congressional enactment forbidding this or other executive commissions from pursuing their important work in the service of the people. This action, plainly designed to wipe out the National Conservation Commission, accomplished its purpose. It put an end to the activities of that commission, removing the only national organization which was dealing with the conservation question as a whole. Thus was presented the strange spectacle of a nation-wide movement, inaugurated by the governors of the States, the presidents of great organizations of our national industries, and other distinguished citizens, and heartily indorsed by the people of the country, by legislative enactment denied not only an appropriation, but even permission to continue its work.

That the conservation work is going on to-day is due to the approval of the people, crystallized into an organization formed by patriotic men and supported by individual citizens, whose desire it is that the conservation movement, to which such uniformly popular approval has been given, shall not fail, but shall go on until the principles for which it stands have been carried into practical effect. I refer to the National Conservation Association, the patriotic service of which to the nation cannot be too strongly emphasized.

[1] This assembly (which has been held every year since 1908) is popularly known as "The House of Governors," the name given it by the originator of the idea, William George Jordan, of New York City.

Mr. President, if we should abandon the present policy it would not be three months until every acre of timber in this country would be taken up by agents and hirelings of those whose interest it is to get them under monopolistic control. This is not guesswork. I call your attention to the very able argument of my friend, the Senator from Minnesota [Knute Nelson], published in the annals of the American Academy of Political and Social Science a year or two ago.

> The mode in which these lumbermen have carried on their operations has been in the main, and in outline, this: They have in person or through agents and employees secured, by divers means, a large number of men and women in various parts of the country—people who knew nothing about such lands and who had no thought of acquiring the same—to apply to purchase and enter such lands, supplying them with money to travel from remote interior towns to examine and select the land and make the necessary application to purchase at the district land office, and supplying them with money to pay for the land, and then, after the purchase and entry were completed, procure a conveyance of the land to themselves for a moderate bonus.
>
> I remember how, a few years ago, a large number of lady school teachers in a Western city—the headquarters of some big lumbermen—were induced to "take up" timber and stone claims in Oregon, Washington, and California, more than 1,500 miles from where the teachers lived. Most of these lands afterwards passed into the hands of these lumbermen.

Instead of denouncing and criticising the Forestry Bureau officials and undertaking to defeat a proper appropriation, as has been attempted in the Senate, I think the American people ought to take their hats off to the men who have inaugurated this movement; they ought to take their hats off to Mr. Graves, the present Forester, who is here devoting the best energies of his life to the protection of the great interests of the public; they ought to take their hats off to the young men in all the States of the West who are risking their lives and doing all in their power to protect the public domain, not only for the interest of those living, but for the interest of those who are coming after us.

Mr. President, differing from the Administration in politics, as I do, I am yet willing to stand here and give them my support in every way possible, to defend them against unjust charges, to assist them to do their duty in the future as they have done it in the past; and I predict that the time is not far distant when the American people, with one accord, will extend to these men their appreciation of the efforts which they have made to protect the national resources of this country from the looting of monopolistic interests.

CHAPTER IV

Internal Improvements

[post-roads and canals]

Debate in the House on Federal Control over Post-roads: In Favor, Theodore Sedgwick [Mass.]; Opposed, John Vining [Del.], Thomas Fitzsimons [Pa.]; Opposition Wins—Surveys of Post-roads at Government Expense: In Favor, Abraham Baldwin [Ga.]—President Jefferson on Federal Aid to Education and Public Improvements—Speech of Sen. James A. Bayard, Sr., in Favor of Federal Investment in the Chesapeake Canal—President Madison's Message to Congress (December, 1815) Referring to Internal Improvements—John C. Calhoun [S. C.] Introduces in the House a Bill to Apply Profits of the National Bank to This Purpose—Debate on the Bill: In Favor (in Whole or Part), Mr. Calhoun, Timothy Pickering [Mass.], Erastus Root [N. Y.], Henry Clay [Ky.]; Opposed, Thomas B. Robertson [La.]—Bill Is Vetoed by the President—His Constitutional Objections—Debate in the House on Federal Administration of the Cumberland Road: In Favor, Tomlinson Fort [Ga.], Oliver H. Smith [Ind.]; Opposed, James Buchanan [Pa.], Philip P. Barbour [Va.]; Opposition Wins—President Jackson Vetoes Maysville [Ky.] Turnpike Bill on the Ground That Federal Operation of Public Works Is Unconstitutional—Speech on This Principle by Senator John Tyler [Va.]: "The First Entanglement of Government by Capital."

DURING the organization of the Government the question of the constitutional power of the Executive arose in connection with a bill to establish post-roads, in which discretion was given the Postmaster-General in choosing mail routes, in permitting mail stages to carry passengers, in granting the franking privilege, etc.

In the debate on the measure, which took place in the House at various times between December 6, 1791, and February 3, 1792, Theodore Sedgwick [Mass.] argued that Congress could *delegate* the constitutional requirement that it "establish post-offices and post-

roads," as it had done in borrowing money, which function also was given it by the Constitution, it being the office of Congress to determine the *principle* on which the business was to be done, and then delegate the *execution* of the work.

John Vining [Del.] argued that the assignment of the execution was explicit in the Constitution. He also doubted the expediency and safety of the amendment. The function assigned by it would be to a good President a burden, to a bad one a dangerous power of establishing offices and roads in those places only where his political interests would be promoted, and removing others of long standing in order to harass those persons whom he might suppose inimical to his ambitions.

The motion to delegate was negatived. Power, however, was given the Postmaster-General to form contracts for extending mail routes under certain restrictions.

In regard to the carriage of passengers by the mail it was argued by Thomas Fitzsimons [Pa.] that the clause of the Constitution which empowers the Federal Government to establish post-offices and post-roads cannot be understood to extend farther than the conveyance of intelligence, which is the proper subject of the post-office establishment: it gives no power to send men and baggage by post.

> If, by the construction of that clause of the Constitution which authorizes Congress to make all laws necessary for carrying into execution the several powers vested in them, they may proceed farther, and so regulate the post-roads as to prevent passengers from traveling on them; they may say what weights shall be carried on those roads, and at what seasons of the year; they may remove everything that stands in the way; they may level buildings to the ground, under the pretence of making more convenient roads; they may abolish tolls and turnpikes; they may, where an established ferry has been kept for a hundred years past in the most convenient place for crossing a river, give the post-rider authority to set up a new one beside it, and ruin the old establishment; they may say that the person who carries the mail shall participate in every privilege that is now exclusively enjoyed by any man or body of men,

> and allege, as a reason for these encroachments, that they are only necessary encouragements to carry the mail of the United States; in short, the ingenuity of man cannot devise any new proposition so strange and inconsistent as not to be reducible within the pale of the Constitution by such a mode of construction. If this were once admitted the Constitution would be a useless and dead letter, and it would be to no purpose that the States in convention assembled had framed that instrument to guide the steps of Congress. As well might they at once have said, "There shall be a Congress who shall have full power and authority to make all laws which to their wisdom will seem meet and proper."

The motion was voted down.

Four years later (on February 11, 1796) the temper of Congress had so changed that a resolution was carried ordering a survey, *at the expense of the Government,* of a system of post-roads. In support of this resolution Abraham Baldwin [Ga.] said:

> In many parts of the country there were no improved roads, nothing better than the original Indian track. Bridges and other improvements are always made with reluctance while roads remain in this State, because it is known, as the country increases in population and wealth, better and shorter roads will be made. All expense of this sort, indeed, is lost. It was properly the *business of the general Government to undertake the improvement of the roads,* for the different States are incompetent to the business, their different designs clashing with each other. It is enough for them to make good roads to the different seaports; the crossroads should be left to the government of the whole. The expense, he thought, would not be very great. Let a surveyor point out the shortest and best track, and the money will soon be raised. There was nothing in this country, he said, of which we ought to be more ashamed than our public roads.

This was the first step taken by the Government in making Federal internal improvements. The commonsense argument for doing so, which was presented by Representative Baldwin (who, though from Georgia, was born and bred a Connecticut Yankee), grew more cogent with the years, and now is unquestioned.

"THE MAN WOT PAYS NO POSTAGE"
[Hit at "Graft" in the Post-Office Department]
From the collection of the New York Historical Society

to the States were made for the purpose of establishing agricultural and mechanical colleges. Out of these have since been developed our great State universities.

Federal Investment in the Chesapeake Canal

The question of applying public revenue to internal improvements came up in the Senate on February 13, 1807, in the form of a resolution to invest a portion of the receipts from the sale of public lands in shares of the Chesapeake Canal. On this subject James A. Bayard, Sr. [Del.], said:

It is admitted that the Constitution does not expressly give the power to cut canals, but we possess, and are in the daily exercise of, the power to provide for the protection and safety of commerce, and the defence of the nation. It has never been contended that no power exists which has not been expressly delegated.

There is no express power given to erect a fort or magazine, though it is recognized in the delegation of exclusive legislative powers in certain cases. The power to erect lighthouses and piers, to survey and take the soundings on the coast, or to erect public buildings, is neither expressly given nor recognized in the Constitution, but it is embraced by a liberal and just interpretation of the clause in the Constitution which legitimates all laws necessary and proper for carrying into execution the powers expressly delegated. On a like principle the Bank of the United States was incorporated. Having a power to provide for the safety of commerce and the defence of the nation, we may fairly infer a power to cut a canal—a measure unquestionably proper with a view to either subject.

In his message to Congress on December 5, 1815, President Madison advised an amendment to the Constitution permitting the Federal Government to establish a system of national roads and canals.

"No objects," he said, "within the circle of political economy so richly repay the expense bestowed on them; there are none, the utility of which is more universally ascertained and acknowledged; none that do more honor to the government whose wise and enlarged patriotism duly appreciates

them. Nor is there any country which presents a field where nature invites more the art of man to complete her own work for his accommodation and benefit. These considerations are strengthened, moreover, by the political effect of these facilities for intercommunication in bringing and binding more closely together the various parts of our extended confederacy. While the States, individually, with a laudable enterprise and emulation, avail themselves of their local advantages, by new roads, by navigable canals, and by improving the streams susceptible of navigation, the general Government is the more urged to similar undertakings, requiring a national jurisdiction and national means, by the prospect of thus systematically completing so inestimable a work. And it is a happy reflection that any defect of constitutional authority which may be encountered can be supplied in a mode which the Constitution itself has providently pointed out."

Owing to the great need of building up the finances of the country, the subject was postponed until the next session of Congress.

On December 16, 1816, John C. Calhoun [S. C.] moved in the House of Representatives that a committee be appointed to consider the expediency of applying the profits of the National Bank to internal improvements.

After some opposition the committee was appointed, and he was made its chairman. On December 23 he reported a bill to this effect. The bill came up for discussion on February 4, 1817, and was debated until February 8, when it was passed by a vote of 86 to 84. The Senate passed it on February 27 by a vote of 22 to 16. The bill then went to the President, who vetoed it on March 3. His veto was sustained in the House, the vote being 60 to 56 in favor of the bill, which thus lacked the two-thirds vote requisite to overrule the veto.

In the debate in the House, John C. Calhoun [S. C.] and Henry Clay [Ky.] were the chief speakers in favor of the bill. Thomas B. Robertson [La.] objected decisively to it. Timothy Pickering [Mass.] objected to the constitutional argument of Calhoun in favor of the measure, but presented one of his own in its place. Erastus Root [N. Y.] objected to Federal roads as in-

Jefferson on Federal Aid to Education and Internal Improvements

In his annual message to Congress in December, 1806, President Jefferson advocated the retention of the tariff, especially on luxuries, and the expenditure of the revenue remaining after the operating cost of government had been defrayed upon public education and internal improvements.

Patriotism would certainly prefer its [the tariff system's] continuance and application to the great purposes of the public education, roads, rivers, canals, and such other objects of public improvement as it may be thought proper to add to the constitutional enumeration of Federal powers. By these operations new channels of communication will be opened between the States; the lines of separation will disappear; their interests will be identified, and their union cemented by new and indissoluble ties. Education is here placed among the articles of public care, not that it would be proposed to take its ordinary branches out of the hands of private enterprise, which manages so much better all the concerns to which it is equal, but a public institution can alone supply those sciences which, though rarely called for, are yet necessary to complete the circle, all the parts of which contribute to the improvement of the country, and some of them to its preservation.

I suppose an amendment to the Constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public moneys to be applied.

The present consideration of a national establishment for education particularly is rendered proper by this circumstance; also that, if Congress, approving the proposition, shall yet think it more eligible to found it on a donation of lands, they have it now in their power to endow it with those which will be among the earliest to produce the necessary income. This foundation would have the advantage of being independent in war, which may suspend other improvements, by requiring for its own purposes the resources destined for them.

The principle of Federal aid to education was put into practice during the Civil War, when land grants

terfering with State affairs, but advocated Federal canals.

Internal Improvements

House of Representatives, February 4-8, 1817

Mr. Calhoun observed that it seemed to be the fate of some measures to be praised, but not adopted. Such, he feared, would be the fate of that on which they were now deliberating. From the indisposition manifested by the House to go into committee on the bill, there was not much prospect of its success, yet it seemed to him, when he reflected how favorable was the present moment, and how confessedly important a good system of roads and canals was to our country, he might reasonably be very sanguine of success. At peace with all the world, abounding in pecuniary means, and, what was of most importance, and at what he rejoiced as most favorable to the country, party and sectional feelings immerged in a liberal and enlightened regard to the general concerns of the nation—such, said he, are the favorable circumstances under which we are now deliberating. Thus situated, to what can we direct our resources and attention more important than internal improvements? What can add more to the wealth, the strength, and the political prosperity of our country? The manner in which facility and cheapness of intercourse added to the wealth of a nation had been so often and ably discussed by writers on political economy that he presumed the House to be perfectly acquainted with the subject. It was sufficient to observe that every branch of national industry—agricultural, manufacturing, and commercial—was greatly stimulated and rendered by it more productive. The result is, said he, that it tends to diffuse universal opulence. It gives to the interior the advantages possessed by the parts most eligibly situated for trade. It makes the country price, whether in the sale of the raw product or in the purchase of the articles for consumption, approximate to that of the commercial towns. In fact, if we look into the nature of wealth we will find that nothing can be more favorable to its growth than good roads and canals. Let it not be said that internal improvements may be wholly left to the enterprise of the States and of individuals. He knew, he said, that much might justly be expected to be done by them, but in a country so new and so extensive as ours there is room enough, said he, for all the general and State governments and individuals in which to exert their resources. But many of the improvements contemplated, said Mr. Calhoun, are on too great a scale for the resources of the States or individuals, and many of such a nature that the rival jealousy of the States, if left alone, might prevent. They required the resources and the general superintendence of this Government to effect and complete them.

But, said Mr. Calhoun, there are higher and more powerful considerations why Congress ought to take charge of this subject. In many respects no country of equal population and wealth possesses equal materials of power with ours. The people, in muscular power, in hardy and enterprising habits, and in a lofty and gallant courage, are surpassed by none. In one respect, and, in my opinion, in one only, are we materially weak. We occupy a surface prodigiously great in proportion to our numbers. The common strength is brought to bear with great difficulty on the point that may be menaced by an enemy. It is our duty, then, as far as in the nature of things it can be effected, to counteract this weakness. Good roads and canals judiciously laid out are the proper remedy. In the recent war, how much did we suffer for the want of them? Besides the tardiness and the consequential ineffacy of our military movements, to what an increased expense was the country put for the article of transportation alone! In the event of another war the saving in this particular would go far toward indemnifying us for the expense of constructing the means of transportation.

It is not, however, in this respect only that roads and canals add to the strength of the country. Our power of raising revenue, in war particularly, depends, said he, mainly on them. In peace our revenue depends principally on the imposts; in war this source, in a great measure, fails, and internal taxes, to a great amount, become necessary. Unless the means of commercial intercourse are rendered much more perfect than they now are, we shall never be able in war to raise the necessary supplies. If taxes were collected in kind; if, for instance, the farmer and mechanic paid in their surplus produce, then the difficulty would not exist, as in no country on earth is there so great a surplus in proportion to its population as in ours. But such a system of taxes is impossible. They must be paid in money, and, by the Constitution, must be laid uniformly. What, then, is the effect? The taxes are raised in every part of this extensive country uniformly, but the expenditure must, in its nature, be principally confined to the scene of military operations. This drains the circulating medium from one part

and accumulates it in another, and perhaps a very distant, one. The result, said he, is obvious. Unless it can return through the operation of trade, the parts from which the constant drain takes place must ultimately be impoverished. Commercial intercourse is the true remedy to this weakness, and the means by which that is to be effected are roads, canals, and the coasting trade. On these, combined with domestic manufactures, does the moneyed capacity of this country, in war, depend. Without them, not only will we be unable to raise the necessary supplies, but the currency of the country must necessarily fall into the greatest disorder—such as we lately experienced.

But on this subject of national power, what, said Mr. Calhoun, can be more important than a perfect unity in every part, in feelings and sentiments? And what can tend more powerfully to produce it than overcoming the effects of distance?

No country enjoying freedom ever occupied anything like as great an extent of country as this Republic. One hundred years ago the most profound philosophers did not believe it to be even possible. They did not suppose it possible that a pure republic could exist on as great a scale even as the Island of Great Britain. What then was considered as chimerical, said Mr. Calhoun, we now have the felicity to enjoy, and, what is most remarkable, such is the happy mold of our Government, so well are the State and general powers blended that much of our political happiness draws its origin from the extent of our Republic. It has exempted us from most of the causes which distracted the small republics of antiquity. Let it not, however, be forgotten; let it, said he, be forever kept in mind that it exposes us to the greatest of all calamities, next to the loss of liberty, and even to that in its consequence—*disunion*. We are great and rapidly—he was about to say fearfully—growing. This, said he, is our pride and danger—our weakness and our strength. Whatever impedes the intercourse of the extremes with this, the center of the Republic, weakens the Union. The more enlarged the sphere of commercial circulation, the more extended that of social intercourse, the more strongly are we bound together, the more inseparable are our destinies. Those who understand the human heart best know how powerfully distance tends to break the sympathies of our nature. Nothing, not even dissimilarity of language, tends more to estrange man from man. Let us then, said Mr. Calhoun, bind the Republic together with a perfect system of roads and canals. Let us conquer space. It is thus the most distant parts of the

Republic will be brought within a few days' travel of the center; it is thus that a citizen of the West will read the news of Boston still moist from the press. The mail and the press, said he, are the nerves of the body politic. By them the slightest impression made on the most remote parts is communicated to the whole system, and the more perfect the means of transportation the more rapid and true the vibration. To aid us in this great work, to maintain the integrity of this Republic, we inhabit a country presenting the most admirable advantages. Belted around as it is by lakes and oceans, intersected in every direction by bays and rivers, the hand of industry and art is tempted to improvement. So situated, said he, blessed with a form of government at once combining liberty and strength, we may reasonably raise our eyes to a most splendid future if we only act in a manner worthy of our advantages. If, however, neglecting them, we permit a low, sordid, selfish, and sectional spirit to take possession of this House, this happy scene will vanish. We will divide, and in its consequences will follow misery and despotism.

Such, then, being the obvious advantages of internal improvements, why, said Mr. Calhoun, should the House hesitate to commence the system? He understood there were, with some members, constitutional objections. The power of Congress is objected to because the public moneys can only be appropriated to effect the particular powers enumerated in the Constitution. He was no advocate for refined arguments on the Constitution. The instrument was not intended as a thesis for the logician to exercise his ingenuity on. It ought to be construed with plain, good sense, and what can be more express than the Constitution on this very point? The first power delegated to Congress is comprised in these words: "To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States." First—the power is given to lay taxes; next, the objects are enumerated to which the money accruing from the exercise of this power may be applied; to pay the debts, provide for the common defence, and promote the general welfare, and, last, the rule for laying the taxes is prescribed—that all duties, imposts, and excises shall be uniform.

If the framers of the Constitution intended to limit the use of the money to the powers afterwards enumerated and defined, nothing could be easier than to have expressed it plainly.

He knew it was the opinion of some that the words "to pay the debts and provide for the common defence and general welfare," which he had just cited, were not intended to be referred to the power of laying taxes, contained in the first part of the section, but that they are to be understood as distinct and independent powers, granted in general terms, and are gratified by a more detailed enumeration of powers in the subsequent part of the Constitution. If such were in fact the meaning, surely nothing can be conceived more bungling and awkward than the manner in which the framers have communicated their intention. If it were their intention to make a summary of the powers of Congress in general terms, which were afterwards to be particularly defined and enumerated, they should have told us so plainly and distinctly, and, if the words "to pay the debts and provide for the common defence and general welfare" were intended for this summary, they should have headed the list of our powers, and it should have been stated that, to effect these general objects, the following specific powers were granted. The whole section seemed to him to be about taxes. It plainly commenced and ended with it, and nothing could be more strained than to suppose the intermediate words "to pay the debts and provide for the common defence and general welfare" were to be taken as independent and distinct powers. Forced, however, as such a construction was, he might admit it and urge that the words do constitute a part of the enumerated powers. The Constitution, said he, gives to Congress the power to establish post-offices and post-roads. He knew the interpretation which was usually given to these words confined our power to that of designating only the post-roads, but it seemed to him that the word "establish" comprehended something more. But suppose the Constitution to be silent, said Mr. Calhoun, why should we be confined in the application of money to the enumerated powers? There is nothing in the reason of the thing, that he could perceive, why it should be so restricted, and the habitual and uniform practice of the Government coincided with his opinion. Our laws are full of instances of money appropriated without any reference to the enumerated powers. If we are restricted in the use of our money to the enumerated powers, on what principle, said he, can the purchase of Louisiana be justified? To pass over many other instances, the identical power which is now the subject of discussion has, in several instances, been exercised. To look no further back, at the last session a considerable

sum was granted to complete the Cumberland road[1] in reply to this uniform course of legislation, Mr. Calhoun expected it would be said that our Constitution was founded on positive and written principles, and not on precedents. He did not deny the position, but he introduced these instances to prove the uniform sense of Congress, and the country (for they had not been objected to), as to our powers; and surely, said he, they furnish better evidence of the true interpretation of the Constitution than the most refined and subtle arguments.

Let it not be urged that the construction for which he contended gave a dangerous extent to the powers of Congress. In this point of view he conceived it to be more safe than the opposite. By giving a reasonable extent to the money power it exempted us from the necessity of giving a strained and forced construction to the other enumerated powers. For instance, he said, if the public money could be applied to the purchase of Louisiana, as he contended, then there was no constitutional difficulty in that purchase, but, if it could not, then were we compelled either to deny that we had the power to purchase, or to strain some of the enumerated powers to prove our right. It had, for instance, been said that we had the right to purchase under the power to admit new States—a construction, he would venture to say, far more forced than the one for which he contended.

Mr. Pickering said he did not admit the latitude of construction given by the gentleman from South Carolina [Mr. Calhoun], who introduced the bill, to the terms of the Constitution which he had quoted. Congress had power "to lay and collect taxes, duties, imposts, and excises"—for what purpose? in order "to pay the debts and provide for the common defence and general welfare of the United States." Hence, the gentleman inferred, that as public roads and canals would promote the general welfare, therefore Congress had power to make roads and canals. If this interpretation of the Constitution be correct, then the subsequent enumeration of powers to be exercised by Congress was superfluous; for the terms "to provide for the general welfare" would embrace the following enumerated powers and every other imaginable power, the exercise of which would promote the "general welfare." The object for which the Constitution was ordained is explicitly declared to be "to promote the general welfare," and the like

[1] The so-called "National Road," running from Cumberland, Maryland, to Wheeling, Virginia, and afterwards extended through Ohio and Indiana to Springfield, Illinois. It formed a great highway of emigration.

words at the head of the specified powers appeared to Mr. Pickering as intended to mark the line within which the powers expressed or fairly implied should be exercised: they must all have for their object the "general welfare." Then follows the enumeration of the powers granted to Congress, all of which are manifestly calculated "to promote the general welfare." From the specific powers granted to Congress "to establish post-offices and post-roads" the gentleman from South Carolina had inferred that Congress had power to make roads on which the post-riders might travel. This construction Mr. Pickering believed to be altogether erroneous. He remembered that the supposition that Congress might, under that clause, exercise the power of making roads in any State, and where they pleased, was offered as a serious objection to the adoption of the Constitution in the convention of Pennsylvania, of which Mr. Pickering (then living in that State) was a member. And his recollection was probably the more perfect because he answered the objections observing that the power "to establish post-offices and post-roads" could intend no more than the power to direct where post-offices should be kept, and on what roads the mails should be carried; and this answer appeared then to be entirely satisfactory.

But while the gentleman from South Carolina was speaking it had occurred to Mr. Pickering that, if Congress had the power to make roads and canals, it must necessarily be an implied one, and under the express power "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." To give facility and safety to foreign commerce, and to that between the several States, in what is called the coasting trade, Congress had caused lighthouses and beacons to be erected, piers in rivers to be constructed, and the coast to be surveyed to ascertain and mark dangerous shoals. But commerce (which consisted in the exchange of commodities) was carried on by land as well as by water, and if Congress, under the clause for regulating commerce, could rightfully do what, from the formation of the Government, they had been doing, and without a single objection—erecting lighthouses, beacons, and piers to give facility and safety to commerce by water, why should they not exercise the like power to facilitate, secure, and render less expensive, by means of roads and canals, the commerce *by land*? This, as it had occurred, Mr. Pickering suggested for consideration.

Mr. Root said if the national resources were to be directed to the internal improvement of the country, let them be applied

to objects the least interfering with State policy, with State rights and sovereignty, and the best calculated to promote the general welfare and to aid in the regulation of commerce. It would hardly be pretended, he said, that the constitutional authority to establish post-offices confers the power to lay out and work roads in despite of State regulations. The construction of roads is a municipal regulation, generally much more limited in its operation than the confines of a State. Except in some great leading roads the convenience of counties and towns and even of neighborhoods is and ought to be chiefly consulted. Roads, said Mr. Root, even great leading ones, are used more by the inhabitants of their vicinity than by travelers from a distance. Not so with canals. They may connect distant States, unite in commercial connections remote parts of the nation, and chain them together in bands not to be severed by ambition or faction. The distant boatman, the distant merchant, make use of the canal, and by that means enhance the value of the farmer's produce, and reduce the price of merchandise necessary for his comfort. The inhabitants of its immediate vicinity derive no material advantages from it which are not shared in nearly an equal degree by their more remote neighbors, unless, as sometimes may happen, a village or town shall spring up in consequence. Canals are therefore, said he, more properly an object of national regard. Let your surplus treasure, Mr. Chairman, for it would seem that you have much of it, and I shall not urge the more rapid reduction of the public debt, nor the repeal of any of the taxes at this time; let your surplus treasure, destined by this bill, not to be wasted, I hope, but to the achievement of great schemes of national grandeur, be directed exclusively to the construction of canals. Gentlemen, said Mr. Root, may suppose that I have my eye directed to the contemplated great canal to connect the waters of the upper lakes with those of the Hudson River. I have, sir; I candidly confess I have. If we are to go on in this way, if we are to expend the national resources on objects of this kind, said he, without waiting to examine our constitutional powers, I wish to see a great national work accomplished; to see the waters of the Lakes connected with the Hudson and the Mississippi, Michigan with the Wisconsin and the Illinois, and Erie with the Wabash and Ohio. The intercourse between the Eastern and Western States might then form a ligature and a cement which no Hartford convention could ever dissolve.

Mr. Clay [Speaker] observed that he had long thought that there were no two subjects which would engage the attention

of the national legislature more worthy of its deliberate consideration than those of internal improvements and domestic manufactures. He conceived the first and only step necessary to be taken at the present session was to set apart and make an inviolable pledge of the fund.

Mr. Clay said that as to the constitutional point which had been made by Mr. Pickering he had not a doubt on his mind, but it was not necessary, in his judgment, to embarrass the passage of the bill with the argument of that point at this time. It was a sufficient answer to say that the power was not now to be exercised. It was proposed merely to designate the fund, and, from time to time, as the proceeds of it came in, to invest them in the funded debt of the United States. It would thus be accumulating, and Congress could, at some future day, examine into the constitutionality of the question, and, if it had the power, it would exercise it; if it had not, the Constitution, there could be very little doubt, would be so amended as to confer it. It was quite obvious, however, that Congress might so direct the application of the fund as not to interfere with the jurisdiction of the several States and thus avoid the difficulty which had been started. It might distribute it among those objects of private enterprise which called for national patronage in the form of subscriptions to the capital stock of incorporated companies, such as that of the Delaware and Chesapeake Canal, and other similar institutions. Perhaps that might be the best way to employ the fund, but he repeated that this was not the time to go into that inquiry.

In reply to those who thought that internal improvements had better be left to the several States, he would ask, he would put it to the candor of every one, if there were not various objects in which many States were interested, and which, requiring therefore joint coöperation, would, if not taken up by the general Government, be neglected, either for the want of resources, or from the difficulty of regulating their respective contributions? Such was the case with the improvement of the navigation of the Ohio at the rapids; the canal, from the Hudson to the Lakes; the great turnpike road parallel with the coast, from Maine to Louisiana. These, and similar objects, were stamped with a national character, and they required the wisdom and the resources of the nation to accomplish them. No particular State felt an individual interest sufficient to execute improvements of such magnitude. They must be patronized, efficaciously patronized, by the general Government or they never would be accomplished.

My friend from Louisiana [Mr. Robertson] says his State wants no roads. Does she want no levees? But Mr. Clay conceived that no State was more interested in the making of good roads. The most vulnerable to a foreign enemy of all the points of our country, Louisiana is, at the same time, the most dependent upon the other parts of the Union for the means of her defence. Is she not, therefore, deeply interested in multiplying the channels by which those means may be transported to her? If two great roads, the one following the valley of the Ohio and that of the Mississippi, and the other the maritime coast, shall terminate at New Orleans, will not the security of Louisiana be greatly increased?

President Madison presented the following reasons for vetoing the bill:

I am constrained by the insuperable difficulty I feel in reconciling the bill with the Constitution of the United States to return it with that objection to the House of Representatives in which it originated.

The legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.

To refer the power in question to the clause "to provide for the common defence and general welfare" would be contrary to the established and consistent rules of interpretation as rendering the special and careful enumeration of powers, which follows the clause, nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them; the terms, "common defence and general welfare," embracing every object and act within the purview of a legislative trust. It would have the effect of subjecting both the Constitution and laws of the several States, in all cases not specifically exempted, to be superseded by laws of Congress, it being expressly declared "that the Constitution of the United States, and laws made in pursuance thereof, shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the Con-

stitution or laws of any State to the contrary notwithstanding." Such a view of the Constitution finally would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the general and state governments; inasmuch as questions relating to the general welfare being questions of policy and expediency are unsusceptible of judicial cognizance and decision.

A restriction of the power "to provide for the common defence and general welfare" to cases which are to be provided for by the expenditure of money would still leave within the legislative power of Congress all the great and most important measures of government, money being the ordinary and necessary means of carrying them into execution.

If a general power to construct roads and canals and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the States in the mode provided in the bill cannot confer the power. The only cases in which the consent and cession of particular States can extend the power of Congress are those specified and provided for in the Constitution.

As has already been noted (see Volume V, chapter II), almost every debate in Congress during the nullification agitation developed into a discussion of Federal *vs.* State rights.

This was the case with a bill for the repair of the national road from Cumberland, Md., to Ohio and westward, which came before the House of Representatives on January 19, 1829. The question involved the institution and administration of toll gates by the Federal Government, in order to acquire revenue for the repairs. The bill was passed by the House, but returned to it from the Senate with the provision for toll gates stricken out as unconstitutional. On March 2, 1829, the House agreed to the amendment of the Senate by a vote of 80 to 52.

In the debate on the bill in the House, the chief speakers in favor of the toll-gate clause were Tomlinson Fort [Ga.] and Oliver H. Smith [Ind.]. Those opposed to the clause were James Buchanan [Pa.] and Philip P. Barbour [Va.].

The Cumberland Road

House of Representatives, January 19-March 2, 1829

Mr. Buchanan.—It is not a question whether we shall keep the road in repair by annual appropriations, nor whether we shall extend other millions in constructing other Cumberland roads; these would be comparatively unimportant, but it is a question, upon the determination of which, in my humble judgment, depends the continued existence of the Federal Constitution, in anything like its native purity. Let it once be established that the Federal Government can enter the dominion of the States, interfere with their domestic concerns, erect toll-gates over all the military, commercial, and post-roads within their territories, and define and punish by laws of Congress, in the courts of the United States, offences committed upon these roads, and the barriers which were erected by our ancestors with so much care between Federal and State power are entirely prostrated. This single act would in itself be a longer stride toward consolidation than the Federal Government has ever made, and it would be a precedent for establishing a construction for the Federal Constitution so vague and so indefinite that it might be made to mean anything or nothing.

It is not my purpose, upon the present occasion, again to agitate the questions which have so often been discussed in this House as to the powers of Congress in regard to internal improvements. For my own part, I cheerfully accord to the Federal Government the power of subscribing stock in companies incorporated by the States for the purpose of making roads and canals, and I entertain no doubt whatever but that we can, under the Constitution, appropriate the money of our constituents directly to the construction of internal improvements *with the consent of the States* through which they may pass.

Before I enter upon the subject it will be necessary to present a short historical sketch of the Cumberland road. It owes its origin to a compact between the State of Ohio and the United States. In 1802 Congress proposed to the convention which formed the constitution of Ohio that they would grant to that State one section of land in each township for the use of schools; that they would also grant to it several tracts of land on which there were salt springs, and that five per cent. of the net proceeds of the future sales of public lands within its territory should be applied to the purpose of making public

roads, "leading from the navigable waters emptying into the Atlantic to the Ohio, to the said State, and through the same." The act, however, distinctly declares that such roads shall be laid out under the authority of Congress, "with the consent of the several States through which the road shall pass." These terms were offered by Congress to the State of Ohio, provided she would exempt, by an irrevocable ordinance, all the land which should be sold by the United States within her territory from every species of taxation for the space of five years after the day of sale. This proposition of Congress was accepted by the State of Ohio, and it thus became a compact, the terms of which could not be changed without the consent of both the contracting parties.

In March, 1806, Congress passed "An act to regulate the laying out and making of a road from Cumberland, in the State of Maryland, to the State of Ohio." Under the provisions of this act, before the President could proceed to cut a single tree upon the route of the road, it was made necessary to obtain the consent of the States through which it passed. The Federal Government asked Maryland, Pennsylvania, and Virginia for permission to make it, and each of them granted this privilege in the same manner that they would have done to a private individual or to a corporation created by their own laws.

Congress at that day asserted no other right than a mere power to appropriate the money of their constituents to the construction of this road after the consent of these States should be obtained. The idea of a sovereign power in this Government to make the road and to exercise jurisdiction over it for the purpose of keeping it in repair does not, then, appear to have ever entered the imagination of the warmest advocate for Federal power. The federalism of that day would have shrunk with horror from such a specter. This road has cost the United States more than thirteen thousand five hundred dollars per mile. This extravagant expenditure shows conclusively that it is much more politic for us to enlist individual interests in the cause of internal improvements by subscribing stock than to become ourselves sole proprietors. Any government, unless under extraordinary circumstances, will pay the third more for constructing a road or canal than would be expended by individuals in accomplishing the same object.

What, then, does this precedent establish? Simply that the United States may appropriate money for the construction of a road through the territories of a State with its consent, and I do not entertain the least doubt but that we possess this power,

What does the present bill propose? To change the character which the United States has hitherto sustained in relation to this road from that of a simple proprietor to a sovereign. We will not ask the States to erect toll-gates for us. We are determined to exercise that power ourselves. The Federal Government first introduced itself into the States as a friend by permission; it now wishes to hold possession as a sovereign by power.

The right to demand toll and to stop and punish passengers for refusing to pay it is emphatically a sovereign right and has ever been so considered among civilized nations. The power to erect toll gates necessarily implies, first: The stoppage of the passenger until he shall pay the toll. Second. His trial and punishment, if he should, either by force or by fraud, evade, or attempt to evade, its payment. Third. A discretionary power as to the amount of toll. Fourth. The trial and punishment of persons who may wilfully injure the road, or violate the police established upon it. These powers are necessarily implied. Without the exercise of them you could not proceed with safety to collect the toll for a single day. Other powers will soon be exercised. If you compel passengers to pay toll, the power of protecting them while traveling along your road is almost a necessary incident. The sovereign who receives the toll ought naturally to possess the power of protecting him who pays it. To vest the power of demanding toll in one sovereign and the protection of the traveler's person in another would be almost an absurdity. The Federal Government would probably, ere long, exercise the power of trying and punishing murders and robberies, and all other offences committed upon the road. To what jurisdiction would the trial and punishment of these offences necessarily belong? To the courts of the United States, and to them alone.

Can any man lay his hand upon his heart and say that in his conscience he believes the Federal Constitution ever intended to bestow such powers on Congress? The great divisions of power, distinctly marked in that instrument, are external and internal. The first are conferred upon the general Government—the last, with but few exceptions, and those distinctly defined, remain in possession of the States. It never—never was intended that the vast and mighty machinery of this Government should be introduced into the domestic, the local, the interior concerns of the States, or that it should spend its power in collecting toll at a turnpike gate.

Mr. Barbour.—All the powers of government may be con-

sidered as emanations from its sovereignty, but what I now speak of is that complete and perfect jurisdiction which necessarily includes, as a part of its definition, the right in, and power over, the domain or territory. Whensoever and wheresoever this jurisdiction is exercised directly over the soil, as the subject of its action, it must be exclusive, because, as the jurisdiction of a government embraces the whole right in and power over the soil, whenever it exercises it directly on that subject, the jurisdiction of any other government must necessarily be absolutely and totally contradictory and repugnant if brought to act upon the same subject. Thus, to illustrate: When the general Government shall have turnpiked a particular road, and established toll gates, if a State were to attempt to regulate or to claim the same road, the two powers could not exist together—the action of the first government directly upon the right of soil having exhausted the whole subject, and expended the whole power over it. Accordingly, with a view to prevent this necessary collision of jurisdiction in the clause relating to the seat of government, etc., the jurisdiction or legislation is, *totidem verbis*, declared to be exclusive, and in the other to dispose of and make all needful rules as to the public land, it must be exclusive, from the necessity of the case, because no other power can exercise jurisdiction, inasmuch as that implies the ownership in the domain, which is in the general Government alone. No one can doubt but that the erection of toll gates and demanding toll is an exercise of jurisdiction which can be founded only on a right to, and power over, the soil. If so, and the principle be true, that the jurisdiction in the Federal Government, in its direct action upon the soil, must, where it exists at all, be exclusive, then it results that the States have not, in this respect, concurrent power—that is, that they cannot turnpike any road which is declared to be a post-road—thus giving to the general Government exclusive jurisdiction over one hundred and fourteen thousand miles of post-road, which we now have, without the assent of the States, though the Constitution requires that assent before it can be divested of its jurisdiction, in the small surface which is the seat of government, and the other inconsiderable places which it enumerates. Again, sir. See to what lengths this principle would carry us. If Congress have a right to turnpike roads, then they have a right to adopt the accustomed means of doing it, but one of the most usual means is the incorporation of companies, and thus we might have every road in the Union in the hands of incorporated companies, demanding tolls of the

people, which Congress must make high enough to yield them a dividend upon their stock. This is not all: we are told that the right to create implies the right to preserve. Upon this principle Congress might, with a view to preservation, prohibit any citizen from passing it, unless his wheels were of a given width, and, indeed, in this very bill, it is provided that those whose wheels exceed six inches in width shall be exempt from toll.

But, sir, I affirm the proposition, and I call upon gentlemen to refute it if they can, that, with the exception of the cases provided for in the Constitution, of a seat of government, the sites of forts, magazines, etc., it is not competent for the general Government to exercise jurisdiction, or to acquire by purchase, jurisdiction and property in and over one square foot of territory in one of the States. Let me not be misunderstood; I speak not here of our public lands lying within any of the States; our power over them results from a substantive and distinct provision of the Constitution. But my proposition applies to those States, in all the soil of which the State governments have the right both of soil and jurisdiction, such, for example, as the State of Massachusetts.

Mr. Fort opposed the State Rights theory at length with the usual arguments for Federal power over the States. His last point was as follows:

Do the States enjoy a paramount and exclusive jurisdiction over the soil they cover? So long as this Government exists, its enactments are nothing, unless of force in the States. They are worse than nothing, if subject to be repeated, directly or indirectly, by the individual States. And how, let me ask, can this Government carry on its indispensable operations without exercising sovereignty over the soil? True, this sovereignty, although paramount for its purpose, is not exclusive, even for forts, arsenals, etc., unless by the consent of the States in which they lie, so abundantly guarded are the rights of the States. But for all the necessary purposes of its institution this Government, by the declaration of the people themselves, the uniform decision of its courts, and the legislative enactments of every administration, from its commencement, is declared to have a paramount jurisdiction over the whole Union. The powers of this Government are co-equal with its duties. It must establish post-roads, regulate internal commerce, defend us against our

enemies, have fortifications, march its armies, and occupy so much space as these operations require. Suppose a State were to refuse her consent to each and every one of these operations, by what right would this Government enter her territory for either purpose if the State sovereignty over the soil is exclusive?

I have used freely the term sovereignty. I am apprised that it is at the risk of being misunderstood or misrepresented. I disclaim all definitions of this term which signify a power unknown to the Constitution. I have used it because it is so liberally and exclusively applied to the States by those in opposition to my views. I grant that each government is equally entitled to the term, but must again repeat that the people of this country acknowledge no sovereignty inconsistent with that liberty which they have again and again declared is dearer than life, the one who surrenders it being unworthy to live. I think I have shown that the United States is a Government of the people, and that its powers are all sovereign and paramount, though in many instances not exclusive. That if it can make a road it must do so as a sovereign power, and, if so, a power to tax for the use is a necessary and proper incident.

Mr. Smith.—Was it not remarkable that those old sages and heroes [who formed the Constitution] who had fought the good fight in times that tried men's souls should not have been alarmed at the idea of letting the people become more closely united? Was there no voice then to raise the cry of State rights—of bleeding State rights? Yes, there were in those days such men as these; they represented, in glowing colors, the same—yes, the very same—doctrines that are now contended for on this floor. They contended that the States had much better continue under the Articles of Confederation than for the people to adopt a Federal Constitution with such tremendous powers as to authorize Congress "to provide for the common defence and the general welfare," but all to no purpose. It was believed that the people were capable of self-government; that they would be more likely to act together for the public good than to destroy each other without inducement. It was believed that a government, to do good and to "promote the general welfare," must have the power to act. The convention said so; the people said so, and the unparalleled prosperity of the United States, under the exercise of this power, enters a *caveat* against the confederation doctrines of the gentleman from Virginia [Mr. Barbour].

the hands of ingenius politicians, those aspirants for high office who seek evermore to enlist in their support the strongest passions of human nature, with a view to their individual aggrandizement, the ark of the covenant will be destroyed and the temple rent in twain. Let us expel the money changers from that temple, and introduce the only true worship. In this way only, I am fully satisfied, can we preserve the Union of these States and secure their unceasing happiness.

The question of the Government operation of public works, particularly those connected with transportation, came prominently before the country for the first time in the case of the Maysville [Ky.] Turnpike bill. This passed Congress in May, 1830. President Jackson vetoed it, basing his action on the lack of authorization in the Constitution for the *operation* (although not the *construction*) of public works, and suggested, as his predecessors had done when the subject of Federal internal improvements had come before them, amending the Constitution to justify such measures. When the bill was before the Senate, John Tyler [Va.] spoke as follows in opposition to it:

The First Entanglement of Government by Capital

Speech of Senator Tyler Against Operation of Public Works

It has become customary of late years to ridicule the Virginia doctrines, as they are called. That State which has stood by this Union through good and through evil report is sneered at and reviled. So was it in former times. Under the first Adams she was declared rebellious and factious, and it was said that her Republicans should be trampled into dust and ashes. She nevertheless, with Kentucky, raised her voice against the infractions of the Constitution. She does the same now. And what were the infractions against which she then protested in comparison with those against which she now protests? Bad enough they were, it is true. But the art of construing the Constitution, and the efforts to make it a nose of wax, were then but barely commenced. The sedition law was passed, and thereby the principle of force was resorted to. Now, sir, a more insidious and a more dangerous principle is brought into action. Money is now relied upon; cupidity—avarice, are the infernal agents now invoked. These are the fatal sisters who weave the web of our destiny, and if we do not destroy that web before we come to be more fully entangled, if we permit first an arm and then a leg to be tied up, there will be left to us no means of escape. Let us now begin the effort, and, by drawing back this Government to its legitimate orbit, save our institutions from destruction. My untiring efforts shall not be wanting in so holy a cause. But if we surrender ourselves into

CHAPTER V

National Aid to Railroads

[The Pacific Railroad]

Sen. Daniel Webster [Mass.] on Sympathetic Aid by the Government to Transportation Enterprises (The Baltimore and Ohio Railroad)—William M. Gwin [Cal.] Introduces Bill in Senate for the Government to Build a Railroad from the Mississippi River to the Pacific Ocean: It Is Opposed by Robert F. Stockton [N. J.]; Bill Is Committed—Debate on the Committee's Bill: In Favor, Thomas J. Rusk [Tex.], John B. Weller [Cal.], John Davis [Mass.], Stephen A. Douglas [Ill.], Henry S. Geyer [Pa.], Joseph R. Underwood [Ky.], George E. Badger [N. C.]; Opposed, James A. Bayard, Jr. [Del.], James Cooper [Pa.], William C. Dawson [Ga.], Andrew P. Butler [S. C.], James M. Mason [Va.], Isaac Toucey [Conn.]—Subsequent History of Pacific Railroads.

THE question of Federal aid to and partnership in private transportation enterprises came before the Senate on May 22, 1830, in the proposition that the Government subscribe to the stock of the Baltimore and Ohio Railroad Company. Daniel Webster [Mass.] advanced the suggestion

"That the funds of the general Government in works of internal improvement ought to be a circulating fund, to be applied as circumstances might demand, for the purpose of encouraging and promoting those works in different sections of the country, and when the works have been effected the stock should be sold out and again applied to the encouragement of similar works."

The bill was laid on the table by a vote of 21 to 19.

A system of granting public lands to the States for the encouragement of railroad construction was begun in 1850. On September 20 an act was passed for the benefit of the Illinois Central and the Mobile and Ohio railroads, donating over two and a half million acres to the States through which the roads were to run.

The rapid growth of the Pacific States after the discovery of gold in California caused a great national demand to arise for railroad connection between these and the Eastern States. Owing to the great cost of construction it was universally recognized that if the project were to succeed there would have to be a combination of private enterprise and public capital.

The chief subject of discussion in Congress during the session beginning December 6, 1852, and ending March 3, 1853, was the construction of a railroad from the Mississippi River to the Pacific Ocean. On December 22 William M. Gwin [Cal.] introduced in the Senate a bill authorizing the grant of the public lands to the States through which the railroad was to pass to be used for this purpose, the Government building the road through the Territories.

The Pacific Railroad and Telegraph

Senate, December 22-February 22, 1853

Robert F. Stockton [N. J.] opposed the consideration of the bill at the time, saying:

I am opposed to this whole scheme of a great national road. I go against it from the beginning to the end, from first to last; therefore it cannot be expected that I will yield any of the common and usual forms of legislation to facilitate its progress. I have no idea that such a bill as the one contemplated can pass the Congress of the United States at the present day. Sir, those who are endeavoring to extend the powers of this Government with the expectation and hope of making a splendid and magnificent empire of ours may well approve of this scheme, but I think the day has not yet arrived when the Congress of the United States will lend itself to such a project or proceed to make a railroad from the Atlantic to the Pacific. I am for a simple and frugal government, and against the proposed bill, and intend from the very start to oppose it.

On January 27 Thomas J. Rusk [Tex.] moved that the entire subject be referred to a special committee with instructions to report a bill. This was done, and he was made chairman of the committee.

On February 2 the Select Committee reported its bill to the Senate. This empowered the President to select the route of the railroad after surveys had been made; gave a right of way 300 feet in width for the road, and a telegraph line; appropriated for the construction of the road alternate sections of public lands six miles on either side, and not over $20,000,000 to supply any deficiency in the funds resulting from the sale of the lands; authorized the President to give out contracts to the lowest and best bidders; reserved to the Government preference in the use of the road; limited the period of construction to ten years; secured to the Government the right to purchase the road thirty years after its completion at ten per cent. advance on the cost of construction with the right of Congress to regulate tolls, etc., before this time; gave to Congress the power to "authorize individuals, companies, or States to form a connection between said railroads and any other railroad or railroads under their control"; and created "The Pacific Railroad and Telegraph Company" out of the contractors and their associates.

Upon this bill James A. Bayard, Jr. [Del.], spoke as follows:

When I look at this bill as it stands, it is, in my opinion, a project to create a corporation with a power which, if you ever do create it, will be fourfold the power of that corporation [the United States Bank] against which the Democratic party of the United States were at war for a series of years.

I do not mean to desert my Democratic principles on any ground of expediency, or on any of the magnificent ideas entertained by the honorable Senator from Maine [Hannibal Hamlin] as to the benefits of this road to the commerce of this country. There is a question with me, independent of the benefit to be conferred: whether it is within the constitutional power of this Government to create such a corporation as this bill proposes to create. And, further, beyond the question of constitutional power, there is a question whether the corruption that would result from the irresponsible power vested in such a corporation would not be greater than all the benefits to commerce which could flow from such a road.

This question is pressed at the close of the second or short

session of this Congress, when the people of this country, by their late vote, have decreed a change of the political power which controls the Executive Department. Under such circumstances, it looks as if there was something like a fear on the part of the honorable Senator from California that the incoming President of the United States [Franklin Pierce], judging by his previous opinions, might never be brought to sanction a bill to make such a road as this; and that, perhaps, is the reason why it is pressed upon us at this time without any preliminary surveys at all.

Senator Rusk.—Mr. President, it is very easy to talk of the powerful corporations. It is very easy to talk about a violation of the Constitution of the United States, and the enormous expenditure of money involved in this proposition, and the unlimited powers we are about to confer upon a corporation; but there is some difficulty in drawing that from the bill which has been reported to the Senate by the Select Committee. The honorable Senator from Delaware has chosen to characterize this bill as involving an unlimited amount of expenditure, and says we do not know the cost to which it will lead. Sir, the President cannot go beyond its limits. He is to contract "on the terms and conditions" prescribed in the bill. Who supposes that, with an appropriation of $20,000,000, the President will go beyond it?

Then, with regard to the "tremendous corporation" spoken of by the Senator from Delaware. Why, the only question with regard to corporations raised in any bill is the power of Congress to create a corporation in the Territories; for it goes on to declare, in more places than one, that it is to have no force or effect in any of the States of the Union until it is assented to by the legislature of such State. So much for the tremendous powers that have alarmed the Senator!

If gentlemen say there is a violation of the Constitution, let them point it out. Let them take up the bill, and point out where it conflicts with the Constitution. Let them prove that you cannot carry a mail to California. Let them prove that it is not your duty to protect that defenceless frontier. Let them take up the Constitution and prove that you cannot adopt the means necessary to defend all your possessions; and then prove that it is not your duty to do it. Let them select from the bill, and not from the workings of imagination, its objectionable features. Let us have no more of this raw-head and bloody-bones business of allusions to the United States Bank, and talk about Democracy. Why, sir, the chief apostle of Democracy,

General Jackson, said that he would vote money out of the treasury, or that he would sanction the voting of money out of the treasury, for internal improvements of a general and national character. Then, to keep within the pale of Democracy, let gentlemen take up and prove that the Pacific Railroad, without which you cannot defend California in case an attack should be made upon her, is a matter of local, and not of general, importance, then I will submit.

Senator Bayard.—Let me ask, will not the President be bound to contract for the whole road, at whatever price may be proposed by the lowest and best bidders? There is no limitation as to the price for which a contract is to be made; and, if the contractors should make a contract for a very large amount of money, they know perfectly well that they could fall back on this Government, and say, "Here is the contract—we have half made the road, and your appropriations have failed, and now you are bound by your public faith, in addition to the benefits arising to the community from the construction of the road, to comply with the contract, although it may cost $300,000,000 or $500,000,000."

Mr. President, this bill should not pass until we have accurate surveys made and know the cost of the road.

On February 3 John B. Weller [Cal.] replied to the opponents of the bill:

My friend from Delaware [Mr. Bayard] has discovered that there is an immense corporation covered up somewhere in the bill of the Senator from Texas.

If that Senator can show me that the effect of this bill is to incorporate a dangerous company, with the immense power which he claims can be exercised in controlling a work of this sort, I am against it. But what is this corporation? The President of the United States is authorized to make a contract with some private individual or individuals for the construction of this road. This is all. As well might it be claimed that, in all contracts which are made between the executive department of the Government and individuals, corporations are constituted. If my friend from Texas has been overreached, or if he is attempting to overreach me by forcing a bank of the United States upon this country, under the pretext of constructing a railroad, I desire that my able friend from Delaware shall give me the necessary information that I may convict that Senator, and then he shall be read out of the Democratic party.

The Senator from Indiana [Jesse D. Bright], who also says here is an incorporation which is going to eat out the liberties of the country, contended that this work was not within the constitutional powers of the Government. I desire to know whether there is no power in Congress to construct a military road? Is there no power in Congress to establish a post route? Is there not an obligation resting upon this great and powerful Government to protect the people who stand upon its frontier? Sir, the man who stands upon the remotest portion of the Republic is as much entitled to the protection of this Government as he who stands in its center. If you desire the confidence and support of the people, you must take care to protect them.

I had supposed that it was long since settled that Congress had a constitutional power to appropriate the public money for works of internal improvement of a national character. The Cumberland or National road, which was designed to connect the East with what was then the far West, was first sanctioned by Mr. Jefferson. It was approved by all our Democratic Presidents down to Mr. Polk. Yet, sir, a new light has sprung up here in the State of Indiana, discovering that there is no constitutional power to do that which all those apostles of Democracy have sanctioned. I am inclined to think that they were right and the Senator wrong.

SENATOR BAYARD.—By the bill the contractors are made a body politic and corporate, a great corporation, extending throughout the whole line of the road, and created for the express purpose of constructing the road. Then the last section refers to the existence of a company for the purpose of working this road. It secures the rights of that company, but provides that, at the lapse of thirty years, the Government may purchase the road from them, paying them their capital, with ten per cent. interest.

Now, if, after looking at all these sections, anyone can say that this bill does not create a corporation, that it does not contemplate the construction of this road by means of a great corporation, which is only to a very limited extent to be within the control of the Congress of the United States, I confess that I cannot understand the meaning of language and the objects of the bill.

Senator James Cooper [Pa.] added his arguments to those of Senator Bayard.

The honorable Senator from Texas told us yesterday that the bill prescribed the cost, and that the $20,000,000, for which bonds are to be issued, and the expense of keeping engineers upon the road, to inform the President of its progress, was all the cost the United States would be called upon to incur. Sir, I doubt it very much. If the route should be found to be practicable by the company undertaking its construction, when the $20,000,000 have been expended by the Government, and after $50,000,000 or $100,000,000 have perhaps been expended by private individuals, would not the Government be besought by this huge corporation—for a corporation it is to all intents and purposes? And do you believe that Congress would resist an application backed by the influence of such a company, with such interests at stake? You, sir, have seen enough—I, sir, have seen enough in the short period I have been here—to know that any great, influential corporation or company can bring means to operate upon Congress to induce it to overstep the boundaries of prudence in making appropriations; and such would be the case here. But suppose they should go on and complete it by the aid that the Government is to lend in money or lands, and it should be found out afterward to be unprofitable. Gentlemen may say there is no danger of that; but I am not at all sure that there is no danger of that kind.

I do not care how many individuals may be employed in the construction of this road—how many companies may be engaged in it—their interests will be similar; they will have the same object in view; there will be a combination from one end of it to the other; all the interests embarked in it will be combined; and when combined do you suppose that Congress could resist the influence which would be brought to bear?

A money influence of hundreds of millions would be vested in such a company, and who can suppose that Congress would be able to resist an application that it should take such a work out of their hands, if it should be found unprofitable?

Who ever before heard of such an enterprise—spanning a continent of three thousand miles in width, over territory larger than the whole territory of Great Britain and Ireland? Who can foretell—who can judge, with any degree of accuracy, the amount of power which such a corporation as this would possess? The honorable Senator from California has said that this bill, as it now stands, created no corporation. If it does not do that, what does it?

SENATOR WELLER.—I confess that when I made the remarks which I did make this morning I was not aware of the last sec-

tion contained in that bill; but, after having heard it read by the Senator from Delaware, I do regard it as an act of incorporation, and that, under the power which is thus conferred upon the company, they can, if they choose, exercise almost unlimited control. This I regard as a dangerous power, which ought not to be conferred even by implication.

SENATOR RUSK.—We have drawn up this bill for the purpose of restricting this company to the strict performance of the contract for the construction of the road. If gentlemen are not satisfied with this language, let them draw up the most restrictive clause possible, and I will agree to it, because it has been the object of the Select Committee to endeavor to control these men, and to keep them under the supervision of Congress.

On February 4 John Davis [Mass.] came to the aid of Senator Rusk.

The objection made to the bill is that it proposes to invest this company, who may undertake the work, with corporate powers. This seems to have excited very great alarm in the minds of some Senators. This corporation seems to be, in their judgment, a Trojan horse, filled with armed men; and we who come here to support this bill to be voluntarily prostrating the walls of the citadel to let the monster in, that those concealed in it may prey upon the confiding and unsuspicious. But, Mr. President, I think a little calmer view of this subject will greatly modify their idea of the magnitude of this evil. The proposition in this bill is to confer upon this company the corporate powers which are daily conferred on those who undertake to construct railroads. If there be a State in this Union that has not had the rashness, the temerity, to create just such corporations, I do not know which State it is. It is, certainly, a fact that just such corporations exist in nearly all, if not all, the States of the Union created by the legislative authority of those States.

The danger resulting from a corporation seems to spring entirely from the character of its paternity. If it be within a State, its claws are cut, its teeth are drawn; if it be a work of the United States, it becomes a savage monster, full of evil and full of defilement. The only question here is whether this work shall be done by a corporation, or done by the direct act of the Government, if it is done at all.

Why, sir, if we are to go to either of the two modes, that by means of a corporation, or that of the Government itself, for

the construction of a railroad, the former is infinitely preferable to the latter, because we all know from our experience and observation, and we might know by reasoning *a priori*, that, if the Government undertakes, by its own immediate exercise of power, to carry on such a work under its own direction and superintendence, abuses will creep in, and that it will become a political engine necessarily. That is precisely the objection made to a corporation, and yet how infinitely greater are the abuses under the management of a government itself than those which arise under the management of any corporation whatever.

What is it feared this monster corporation will do? I should be very greatly obliged to gentlemen if they will point out the probable abuses which will grow out of the power proposed to be vested in it. We hear gentlemen saying, substantially, that a corporation of that sort will come here and control Congress itself—having a power greater and higher than the legislature of the nation. I should like to have gentlemen point out the process by which that is to be done; I should like to see the means exposed by which such results are to be produced. I should be gratified to see both the sources of the power and the corruption, if they are to exist necessarily in a body of that sort; and, if there be not a way of avoiding the evils predicted, it will be some consolation to have that which seems so manifest pointed out, that we may be admonished by it, and inquire whether a purer and better course cannot be adopted—one more free from the objections raised here, and one which shall be carried forward more to the satisfaction of the country.

William C. Dawson [Ga.] made a number of pertinent inquiries relative to the relations of the general and State governments in respect to what is now called "interstate commerce."

Gentlemen have spoken about the corporation to be created under this act. I will not, in this stage of proceedings, raise the question as to the power of Congress to grant corporations within the limits of the States, but I would make this suggestion: After this corporation shall be formed for the construction of a road three thousand miles in extent, those portions of the road within the limits of the States will be, of course, within the jurisdiction of the respective States. The corporation will have received its power from the general Government. Will

not the general Government, therefore, have the right to regulate that corporation, either to extend the grant of powers to it, or limit it? If we yield to Congress the power to grant an act of incorporation to a company within the limits of the States, do we not yield the whole question as to the power to the Federal Government? Although it is provided that this corporation shall not be within the limits of the States, except by their consent, yet the question arises, Can Congress exercise an unconstitutional power, even with the assent of one of the States? Can we take upon ourselves to exercise a power which we admit by this bill does not belong to us, merely because a State says it may be exercised within her limits? This road may pass through the State of Texas. Who is to obtain the right of way there? Is it the Government of the United States? The provision of the bill is that the right of way shall be granted for the construction of this road through the public lands. There is not an acre of the public lands belonging to the United States within the limits of Texas. You will then have to acquire from that State the right of way. How is it to be procured? Have we made any arrangement for that?

SENATOR RUSK.—Texas has already granted the right of way.

SENATOR DAWSON.—To whom has she granted it?

SENATOR RUSK.—To anybody who will make the road.

SENATOR DAWSON.—Has she granted the right of way to anybody who may be under the control of the United States? Has she granted the right of way to any corporation which may be created by the Government of the United States to run the road through her limits?

SENATOR RUSK.—She has given the right of way for the construction of a road through that State to the Pacific Ocean to anybody who chooses to construct it.

SENATOR DAWSON.—If that be true, and I have no doubt it is, she never contemplated that she was going to yield the jurisdiction over that road to any other government than her own.

SENATOR RUSK.—Nor will she do so under this bill, unless she expressly consents to it after its passage.

SENATOR DAWSON.—Then let her do so. Will Texas give up all her power to control that matter, and give jurisdiction to the Government of the United States if we pass this bill?

SENATOR RUSK.—Try her.

SENATOR DAWSON.—But, sir, I care nothing about that question. The corporation which is to be created by the bill now under consideration is a tremendous one, as we all know; but

the dangers growing out of it I shall not now depict. If we grant them the act of incorporation, and it is carried into execution, who, I ask, will become the corporators, and upon what terms? The contractors, whoever they may be, are to be the corporators, together "with their associates and successors"; and the word "associates" I suppose is intended to mean such persons as these contractors may permit to associate with them. Who holds the stock that this company is to put before the country? Who authorizes the issue of the stock? Does the Government of the United States authorize it? Suppose these parties do issue stock, what are they to pay for it? The railroad is not to be built by the contractors' own money; and the Government is to grant fifty millions or thirty-five millions, or, according to some gentlemen, only fifteen millions of acres of land. Besides that, it is to issue five per cent. bonds to the amount of $20,000,000. That will cause a large portion of this road to be executed. To whose benefit will this inure? To the men who perform the labor. They get the pay for constructing the road; and, after the road shall be constructed, what are you to do? You are to pay them for constructing the road, and to give it to them. That is what you are to do. Is there a Senator here who denies it?

SENATOR RUSK.—Yes, sir.

SENATOR DAWSON.—Do we not, according to this bill, give the road to them?

SENATOR RUSK.—We do not pay them for taking it.

SENATOR DAWSON.—Why, the bill allows them to hold it for thirty years, and then they can dispose of it to the Government of the United States at an advance of ten per cent., after deducting the $20,000,000 in five per cent. bonds and the value of the lands. The Government then would only have to pay the additional sum the road may cost beyond that. How much will the road cost? That is a question in regard to which we should have information before we undertake the work. How are we to ascertain this? Men in private life, when their own interests are involved, when their own judgment and honor are involved in a transaction, when they propose such a work as this, first want to know its probable cost. I think that should be so in this case. Private individuals would not go into such a proposition without first understanding what they were about to do.

Suppose any one of the contractors should fail to execute his contract, or that any one of them could not procure means sufficient to connect different links of the road together, when the contracts shall be divided, as they no doubt will be, into hun-

dreds of sections. I suppose he would forfeit it, according to the bill, and then you would redispose of it to some other person. Can you take the money which you have already paid to the first contractor to complete the road? Will he not have the money, although he may have done scarcely anything, and will you not have to pay the same amount over again before you can connect together the various links? But this feature may be no objection, because the bill may be amended in this respect. This bill certainly requires amendment in many respects. If the Government of the United States is to enter upon the construction of this road, from one end of it to the other, and if the twenty millions of bonds, and the public bonds proposed to be granted, should be found not to be sufficient for the purpose, would they be able to proceed? Would not the contractors call upon us, from time to time, to make additional appropriations for the purpose of carrying on this great and magnificent enterprise, and should we be able to resist the appeal?

Private capital is not going to connect itself with this road, and why? Because every man who has an eye to his own interests must see that a railroad three thousand miles in length through a wilderness country, stretching to a population not over three hundred thousand or four hundred thousand, never can sustain itself by the ordinary profits on freights and passengers. No gentleman upon this floor can pretend to pledge his opinion that this is to be a money-making road? Hence it is that, if there is to be a total failure in the way of profits arising from the road, the Government of the United States should say at once and boldly: "We will build the road out of our lands and money entirely, and not seek in this indirect way to pledge ourselves to a large amount, in order that the people may not see the extent of the appropriation, and be mistaken in regard to the consequences." If it be true that this road will not pay, it is certainly true that no intelligent man will invest his money in it; and the contractors will take their contracts according to the limits of your capacity to pay under this bill. The road, therefore, will be carried to such an extent as the appropriations which you may make will carry it, and not an inch farther. Do gentlemen suppose that by passing this bill they will induce individuals to take stock in this road? If they do, I think they are mistaken. But by passing the bill, you pledge yourselves that if the road shall be built by your means, by your money, and by your lands, you will give it to the company after thirty years; and suppose they should say they would not take it, because it would not pay the expenses?

That would be an end of the matter. So I conclude that in my judgment—and I say it reluctantly—the friends of this measure cannot suppose that it is to be a money-making road.

I would rather vote for a bill appropriating hundreds of millions of dollars to build this road than to vote for this bill under the idea that we are merely extending a little aid to those companies which may make it.

But, Mr. President, has the period arrived when nobody is alarmed as to the extent of the public debt? Has nobody any fear that we shall have to increase the tariff in order to support the Government? Examine the matter in any of its bearings, it is certainly an extraordinary proposition. I have looked at it with a great deal of care. I have endeavored to comprehend it; and there is not a Senator upon this floor who would feel greater pleasure, and who, as an American, would feel prouder than I should to see a railroad extending from the Atlantic to the Pacific; and whenever the period comes when I can act understandingly, and keep myself within what I believe to be the pale of the Constitution, I will be found one of those as willing to do everything to promote the interests and greatness of this country as any gentleman here.

Stephen A. Douglas [Ill.] defended the bill.

I apprehend that gentlemen travel beyond the terms of the bill, and make arguments which are negatived by its provisions. They argue in defiance of it, when they pretend to show that the Government of the United States is about to go into an unknown expenditure, and to create a boundless public debt. One great merit of this bill is that it fixes precisely and exactly the liability of the Government; and it not only does that, but it contains such guards that by no possibility, under its terms, can there be a loss to the United States. By no possibility can the contractors get one dollar of public money, until they have expended on the road five times that amount, and given us a priority of lien on that fivefold amount as security for our advance. We do not part with our security even when the road is completed. I think, therefore, that an examination of the provisions of the bill will put an end entirely to any apprehensions upon that score.

The Senator from Georgia says he would like to see this road made, provided it can be done consistently with the Constitution. I did not understand distinctly from him that it violated the Constitution.

SENATOR DAWSON.—I said I would do all I could to bring it within the pale of the Constitution.

SENATOR DOUGLAS.—But if it is already within the pale of the Constitution, of course the limitation amounts to nothing; and if it is not within the pale of the Constitution I would like to see the objection to its constitutionality pointed out; and I will tell the Senator that, when it shall be pointed out, I will undertake either to answer the argument, or I will write an amendment to avoid the force of the objection.

The Senator from Georgia says no man dreams that the road is going to pay a fair dividend after it is made. I presume he was speaking in his usual beautiful, rhetorical manner, without pinning himself down to what he would expect us to regard as seriously the facts of the case. There are men who think that this road will pay when it is made. There are men who think they have some data by which they can arrive at that conclusion. I have seen, within the last four years, a road started within my own State through a country where hardly one-tenth of the land was under cultivation, and where the same predictions were made that it would never pay, and yet that road, although only half done, now yields twenty-seven per cent. upon its cost.

I undertake to predict to the honorable Senator from Georgia that, although the country through which this road is to be constructed is now a wilderness, before it is finished the line of the road and the country for a wide extent on either side will be more densely populated than the State of which he is the able representative on this floor. I undertake to say to the Senator that I am willing to put myself on the record as predicting that, when you get this road half done, the local travel along the finished portion of it will be beyond the capacity of a single track to perform. Each one hundred miles that you penetrate the wilderness, you shorten the distance for hauling supplies, and a greater number of teams will be required to concentrate upon it, and population will be swelling in upon each side to raise provisions to sell to the men engaged in the work.

One of the best markets that can be opened to the agriculturists anywhere will be along the line of this road, to supply your five thousand workmen who will be employed in its construction. Storekeepers and shopkeepers will be needed to supply them with goods and other materials. You will find mechanic shops growing up all along the road to make and repair tools and implements for the workmen. You will find the whole

country turning from a wilderness into one of the most densely populated and highly cultivated portions of America. Such will be the natural result of the construction of this road. That being the case, I do not see the force of the gentleman's argument that this work is to be constructed through a vast wilderness.

I am free to say to you, sir, that I believe it is the first and the highest duty of this nation to see that this road is made. I believe that the integrity of the Union itself depends upon its construction.

Then, how are we to do it? Some say with land; some say with money. This bill says by a combination of both. Then come in gentlemen who say, "It is all right; we are for the road; but let us have a survey first." Sir, we have been at that for three years, and when we bring up a bill for a road it is said we must have a survey. When we get up bills providing for a survey, it is said we must have the road immediately. And thus alternately one proposition or the other has received the go-by. The proposition now made to have a survey is simply a postponement of the building of the road, and is to result in doing nothing. I do not mean to say that gentlemen mean that; but I say that will be the result.

The Senator from Georgia says that no individual, no nation, no State, ever undertook a work of this magnitude without a survey. They never did, either with or without a survey; for never has a road of this magnitude been proposed, much less executed, anywhere. Works of less magnitude have been devised and executed without surveys. You objected to me, two or three years ago, because I was asking a grant of land, without a survey, for a railroad from Chicago to Mobile. You made the grant, although there had been no survey on a portion of the line for four hundred miles. But I have now the pleasure of telling you that the road is under contract. It is more than half done, and it will be finished in two years, although you gave us ten years within which to do it. The Senator from Georgia then told us that we were squandering the public lands for the purpose of encouraging railroads in a State. I told him, in reply, that the Government had had lands in the market for forty-two years, at $1.25 an acre, which were upon the line of the proposed road, and they could not be sold because of the absence of timber, and their distance from market; but that, if you would give us alternate sections, we would make the remaining half worth more than the whole was originally, and enable you to sell them at $2.50 an acre. He shook his head, and doubted

my argument. He said it was very good in theory, but the result would not turn out as I predicted, and that, if he thought it would, he would vote for the bill. I have now the pleasure of informing him that the alternate sections reserved to the Government have, some of them, been brought into market at public auction, and more of them have been sold within the last few months, since they have been brought into market, at $2.50 an acre, than were sold for years previously at $1.25. That demonstrates that all apprehensions upon the subject of a grant of lands for roads through a wilderness country where settlements have never penetrated vanish as the dew before the rising sun when there is an inducement for opening these lands and a means of communication by a railroad to be constructed.

Well-informed men in regard to the geography and topography of that country know that a railroad route from the Mississippi to the Pacific is practicable. Sir, instead of having difficulty in selecting an engineer that can find a practicable route, I think the engineer will immortalize himself who can find a route in our own territory which is not practicable. These mountains are full of passes—practicable passes. Gentlemen talk about the great deserts that lie there, impassable and uninhabitable. There are such tracts which are not very large, but I undertake to say that there is no continuous line which is not susceptible of a higher degree of cultivation and a greater yield of product than the line from here to New Orleans, or the line from here to Portland, in Maine.

When people start from their old homes and go to the Western wilds, they are apt to find fault with everything they see which they do not find exactly as it was in the country which they left. They grumble at everything that is not exactly agreeable to them. If they get sick, they charge it upon the new country; if any misfortune happens to them they charge that upon it. Hence you find the first explorers of every country always underrate its value. Who does not remember that, shortly after the close of the last war, President Monroe sent commissioners into the Territory of Michigan for the purpose of selecting lands upon which to locate military bounty land warrants? Those intelligent commissioners, after spending one year in Michigan and traveling all over it, reported officially to the War Department that there was no land in that Territory susceptible of cultivation. [Laughter.]

ANDREW P. BUTLER [S. C.]—Julius Cæsar reported the same thing of England.

SENATOR UNDERWOOD.—My country was called "Barrens."

SENATOR DOUGLAS.—My friend from Kentucky has reminded me that the country where he lives was once called the "Barrens." That brings to my mind a thing which used to puzzle me very much when I first emigrated to the State of Illinois. I found that the State was divided into prairie country and barrens. The barrens consisted of portions of land on the borders of the prairies that had grown up to shrub oaks; but after a while the people cultivated the barrens and raised better wheat on them than on the prairies.

I could not find out, at that time, how it was that the best land in the State was called barrens. The people told me they did not know how it was, but that the Kentuckians, who were some of the first settlers, came over there and named it barrens, and it was said that it was a sort of Kentucky notion that the best lands in any country must be called barrens. [Laughter.] The first settlers who came from Virginia found a part of Kentucky so destitute of timber and of water that they thought it ought certainly to be called barrens. They passed round it, and settled every other nook and corner in the State, and even ascended the mountains, and fixed themselves in their deep gorges, in preference to entering these barren wastes. In later years other people went and settled upon these lands, and it was found that these spots called barrens were among the very best lands in the Mississippi valley or on the broad continent of America.

I remember that my intelligent friend from Connecticut [Mr. Smith], when we had the subject of annexing California before us, made a speech, in which he described utter desolation as pervading every valley, and every stream, and every mountain top in the whole Territory. But we find out now, sir, that the only trouble in regard to California is that it is so productive that it is actually asserted that when a man plants a ten-acre patch of potatoes, he has got to rent an adjoining tract to pile them up on. [Laughter.] And until I saw some Californians, who returned from that country, I could not comprehend the story that I heard from a gentleman who was in Texas several years ago. He said that while traveling through that country he entered the camp of a distinguished general who was in command of the Texan army, and there he found a fellow sitting on one end of a sweet potato while he was roasting the other in the fire. [Laughter.]

Sir, I am under the impression that the vast regions of desert in the slopes on either side of the mountains west of the Mis-

sissippi will disappear before investigation and settlement, in the way that other deserts have.

On February 5 Andrew P. Butler [S. C.] opposed the bill.

Mr. President, we are engaged in the consideration of a bill of unusual importance, and it seems to be assumed, as I understand, that it is to be carried through this body and through the other House by the momentum of its own magnitude.

The reason given by the friends of this bill, why we should not have such lights before us as are usually consulted in such cases, is because this is a measure whose magnificence puts at defiance everything that has preceded it, either in the Congress of the United States, or in any other deliberative body of the world. A measure, the success of which must therefore depend more upon the chances of blind fortune than upon the counsels of wisdom or lights of experience.

Since I have been referred to as one that may have constitutional objections to this measure, I will present, by way of illustration, a proposition involving principles the same as those of this bill which many of the gentlemen now advocating it have condemned as opposed to party creed, upon the ground that it was subject to the same objections which I might well urge to it now. Suppose the proposition, once made, to construct a Federal road from Buffalo to this city, and hence on to New Orleans, were now to be revived. Gentlemen would then take party alarm, and cry out that this savors of a general system of *internal improvement*, and violates the cardinal doctrines of the Democratic creed. In principle, the cases supposed cannot be distinguished from the measure under consideration, for this bill proposes to make a railroad to run through two or more of the States west of the Mississippi by the direct appropriation of money from the Federal treasury. The difference, then, between these systems of internal improvement is simply the fact that part of the Pacific road runs over territory, and that a desert belonging to all the United States—a distinction that cannot avail gentlemen unless they are prepared to give up conviction or party professions to the force of interest and the temptations of sectional aggrandizement; to this complexion it must come at last. They cannot even lay the flattering unction to their souls, which seems to have sustained Mr. Jefferson, in his disregard of the Constitution, by the purchase of Louisiana, upon the broad doctrine of *State*

necessity. Such a doctrine might afford a place of refuge for a virtuous and wise magistrate, acting under the duress of necessity, while it might become a dangerous hiding-place for selfish expediency or criminal ambition. Gentlemen do not pretend to plead this necessity: indeed, they cannot, for a communication with California can be now had, within thirty days, by the ocean and Panama route. And when a railroad shall be completed, at some one of the many points in contemplation across the isthmus, it is very doubtful whether this one will have any advantages over it. In a commercial point of view, it is a common opinion that there will be none. These natural facilities of communication seem to have been pointed out by the finger of God, while this road to be indicated, without reconnoissance or survey, will be the work of guessing man.

Now, Mr. President, let gentlemen look at it. Is not this a measure of internal improvements, to be constructed by the direction and the means of the Federal Government?—not by the direction of the Federal Government, in its full meaning, but one of its departments—the executive. It is but an illustration of many of the lessons of history that doctrine and principle melt and crumble under the temptations of interest. Creeds and party platforms are but as barriers of sand against the tide of power and the force of local combinations.

Mr. President, we are standing on the threshold of an eventful future. We are about to embark upon a system that will swallow up all others, and will increase the tendency of this Government, once a free confederacy of Republican States, to become a consolidated empire. We are departing from old landmarks and entering upon a boundless wilderness of unknown powers, without chart and without compass. We are committing our destinies to the discretion of irresponsible legislation, instead of allowing it to be controlled and protected by the obligations and the guaranties of a written and once-respected Constitution.

Mr. President, I have lived too long and seen too much of the predeterminations upon subjects of this kind to enter here upon discussions that are regarded as the stale notions of our ancestors under the tide of what is called *progressive democracy*. Yes, sir, I have seen enough to convince me that the machinery of this Government, in its actual operation, is stronger than the Constitution. The law of progress has superseded the law of the Constitution. I was reminded by a friend, no longer ago than last night, of the futility of resisting what is called the progressive tendency of the age. The question was asked me:

Will you continue to think with your ancestors? I will give the same reply to you that I gave to him: I am willing to obey the law of progress, for we would not fulfill the great designs of Providence if we were to oppose it. But to conform to that law, as I would have it observed, it must be regulated by wisdom, freedom, and justice; otherwise it becomes rash, slavish, and aggressive—running into the doctrine that "might makes right." Under the influence of this law, as I have heard it so often interpreted upon this floor, conservative restraint and guidance are looked upon as stupid impediments, restraining the wisdom and suppressing the genius of Young America.

In looking at all nature, I find there are salutary vetoes upon the unrestrained energies and impulses of progress. No nation, or great people, ever attained security and greatness by a disregard of these wise lessons, and a disregard of them, even in our own history, characterized as it is by such wonderful developments, would be like Apollo giving up to Phaëton the reins of the horses of the Sun. It is a law to be conducted very much as the concerns of society are, under the impulsive energy of youth and the restraining wisdom of age.

Shall we trust this law of progress to the judgment, I would rather say the decision, of an unrestrained majority, having no other control than the wisdom of its discretion and the policy of progression? Those who are for trusting alone to the impulsive energy of progress may sow the seeds of the storm and reap the whirlwind. I have not more caution than other men, but surely I may be permitted, at least, to appeal to *conservative principles* and the *spirit* of the *Constitution* to save us from the dangers of acceleration and the consequences of transgression.

And now, so far from my suffering the Constitution of the United States to restrain this great law of progress, I say that it ought to have been consulted, and its expansibility ought to have been developed, in order to embrace everything that would accommodate it to this law of progress. Sir, the Constitution within itself contains the very element of self-existence—the provision of amendment. Have you amended it? Have you not practically disregarded that provision which allowed the Constitution to expand with the progress of events? Let this be answered; there stands the Constitution a dead letter, in many respects, I will not say in all. You have not expanded it by the wise interposition of the legislature, allowed by the instrument itself, to amend it according to the exigencies of the change of human affairs. But what have you done? I intend

to speak boldly, and freely, and fearlessly before the Senate upon that subject. If I had the eloquence of Cicero, I might pay a decent tribute to the memory of the Constitution; but I could not restore it no more than he could restore the life and virtue of the Roman Senate, over which he wept in such strains of eloquence as have survived Rome itself, and given immortality to the memory of the violated institutions of the commonwealth as it existed in the days of its primitive purity and simplicity, and before they were tarnished by Augustan casuistry or imperial pollution. The Constitution has not been amended and expanded to accommodate itself to the progress of events. But what has been resorted to to supply that wise provision? Construction—a construction like India rubber that accommodates itself to the interests of those who choose to avail themselves of the Constitution whenever an advantage is to be gained by any measure. And *compromises* where there is no provision of the Constitution. I say, deceptive and dangerous *compromises*, to be violated whenever there is a temptation to do so; and platforms, deceptive, fallacious platforms, to whip parties into harness and to keep them there, and scarcely for any other purpose. These are the miserable expedients that have been resorted to to supply the place of amendments to the Constitution. If I am to be reproached because I appeal to the spirit of that sacred instrument, allow me to say that I have been doing more to preserve this Union and the integrity of the institutions of this Confederacy than those who blindly obey the aggressive spirit of progress. Progress, left entirely to legislative discretion, is a law without limit or certain direction, and must vary according to the fluctuation of the times and the temptations of men. It is as easy to obey it as to float with the current, but would be as unwise as to follow that current without knowing over what cataracts it may fall. It would be like committing the vessel to the wind, without rudder or compass. To make it safe in a political point of view, it "must have a right direction, and be kept within constitutional limits."

The last resort which an intelligent people should make is to revolution for the vindication of their rights, and the greatest danger of such a resort will be a disregard of the organic law of existence. When it shall be ascertained that this Confederacy, in the name of its Union, shall have survived the Constitution of its existence, it deserves to perish.

On February 18 Senator Cooper again spoke against the bill.

Sir, our friends on the other side of the chamber used to be terrified by a monster which had its den in my own good State—the bank of the United States—and they supposed that with its capital of $35,000,000 it had it in its power to break down and trample under foot the liberties of the country. Sir, are the powers that are conferred here of a character which would be likely to permit of an unwholesome exercise, such as in the case of a bank? In my judgment they permit of greater abuse. I have seen, in a neighboring State, the influence of these railroad corporations. There are two or three railroads, not, perhaps, more than four hundred or five hundred miles in extent, and yet they control, politically, socially, and morally, the whole population of that State. They make and they unmake at pleasure. And let a railroad of this kind be built across the continent; let the company have at its command the transportation of the commodities of the whole eastern world, as you are told it will—supposing that fuel and everything else can be found in sufficient abundance to make the communication between the East and the West in this way practicable and easy—and what kind of powers will it possess? Unexampled in the history of the world. I repeat, I cannot particularize in what way it might affect the public interests; how it might eventually be used to the danger of the public liberties. There are things in the future which wisdom cannot foresee. It is not necessary that I should particularize, that I should, in short, do that which is impossible to be done; but it is enough to repeat that possessing such powers as it will possess, and such vast pecuniary resources, it will use them as other corporations have used theirs, and it will abuse them as other corporations have abused them. There is nothing more certain than this.

I agree in many of the suggestions which have been made as to the value of this great enterprise of the Pacific Railroad. I think it will be one of the most magnificent that human genius and human skill have carried out and perfected. But this is nothing to the purpose. It can only be thus magnificent, it can only add to the character and the grandeur of this country by being what it ought to be—as perfect as possible. I therefore, in view of the character of the country, desire that this enterprise shall be undertaken upon such principles as will insure as much perfection as possible. I desire that we shall not disgrace American genius by hurrying forward into a great enterprise of this kind, and making it a miserable patchwork thing, when it ought to be one grand and magnificent whole, honorable to the

skill and genius of the country, as it will be beneficent to the world.

Senator Cooper was followed by Henry S. Geyer [Mo.] who spoke in favor of the bill.

The Senator from Pennsylvania supposes that, although Congress can be trusted in the location of the road, and in the bargain which it will make for the construction of it, when it is made, influences may be brought to bear upon them hereafter by which a much larger and unlimited expenditure may be made. If the Senator had looked at the bill carefully he would have seen that that contingency was not likely to arise, because the bonds are to be issued as the road is built by sections; and, if there is a failure to construct any section of fifty miles, there is a forfeiture of all the work that has been done, and not another dollar or another acre of land will go into the hands of the company.

Senator Cooper.—The Senator misconstrues my argument. My argument is that, although the amount of twenty millions was fixed in the bill, and the number of acres, though not fixed, is ascertainable by calculation, yet, if it became necessary, this company would have it in its power, by its pressure upon Congress, to obtain as much more as was necessary. It does not matter at all whether Congress is subject to such influences or not; it does not affect my argument at all. I may have been wrong, but, if I was right in supposing that Congress was subject to such influences, my argument was good.

Senator Geyer.—The argument is one in favor of a dissolution of this Union, or at least of the incompetency of Congress. If a great and beneficent measure cannot be compassed, because we cannot trust Congress, we had better cease to legislate. Sir, I do not believe that any influences can be brought to bear upon a future Congress which cannot be brought to bear upon this. There are influences adverse to this measure. There are the roads across the isthmus. There is the influence of the Atlantic cities, which want the ocean transportation, and which would be somewhat reluctant to erect a rival road. Why, even now we are so very solicitous to get a means of transportation across Tehuantepec that there is a threat of war. We are to seize it *per fas et nefas*,[1] to get a line of transportation between the Atlantic seaports and the Pacific. We would prefer to go to war, and hazard all the expenditure of blood and

[1] "Right or wrong."

money to which it would lead, and the calamities which it would bring upon us, than to give it up.

Another objection to the bill is that the work is to be committed to individuals, who, in consequence of its magnitude, will have a fearful power. Sir, when we look at the thirteenth section of the bill—which is all that it contains about a corporation—we shall see that its powers are very limited; more so than those of any railroad corporation in the State of Pennsylvania. To contend that these powers may be abused is to contend that no corporation should ever be created; nay, sir, that no trust shall be confided to any individual, for it is liable to be abused. But in this country we have no reason to apprehend any great abuse of power. If the corporation should exceed its powers, we have a judicial tribunal that will rebuke it. Its powers may be tested by the same law and by the same tribunal that our rights of property are inquired into.

But the alarm is in the name "corporation." The honorable Senator from South Carolina [Mr. Butler] intimated that within the States it was clearly unconstitutional, though with their consent, and of doubtful constitutionality, to say the least of it, within the Territories. I will not enter at large into the argument of the power of Congress to incorporate a body of men employed by them to do a work under an acknowledged power under the Constitution; but I would ask the honorable Senator what is a territorial government but a municipal corporation? You have two bills now on your table, one to incorporate the inhabitants of the Territory of Washington, so called, and the other of Nebraska—municipal corporations with general legislative powers—an "abdication," in the language of the Senator from Ohio, of the power of Congress to legislate. Sir, if it be an "abdication" to intrust any person with the execution of work for which it is in the power of Congress to provide, the Constitution has been broken at almost every session of Congress from the time it was first signed down to the present day.

Senator James M. Mason [Va.] followed with a speech against the bill.

This is not a new subject. Those with whom I have always acted in public life have denied the power of Congress to appropriate either money or land for the purpose of internal improvement. They have denied to Congress the power by any agency, either directly or indirectly, to construct works of internal im-

provement; but this bill, by one fell swoop, declares, as an order of the Congress of the United States, that it shall be done; and that, if it cannot be done by ordinary legislation, it shall be done by the fiat of executive will. What is the discretion given to the Executive? The Executive is to determine, upon the whole Mississippi border, and upon the whole Pacific border—on the east and on the west—where this road is to begin, and where it is to end. You will see at once the immense discretion vested in the Executive, and the inordinate power that it gives him when it invests him with that discretion. Why, he may control the legislation of a whole district of country, of whole tiers of States, by his will, in fixing where this road is to begin and where it is to end. But that is nothing in the world to gentlemen. The destinies of this country are well confided to an Executive, who is not responsible to the Constitution, provided they can get the road. Could such a power as this be given to the Executive, unless there was an interest behind it greater than the control of constitutional obligation—that interest with which gentlemen are so much impressed here—the indispensable importance of having this road? But that is not the only power. He is to fix the termini, and, in the vague language of the bill, he is to fix all the important intermediate points. He is to control the immense interests that will be involved in and affected by this work, between the North and the South, by his fiat alone. The representatives of the people in the other branch of Congress and of the States in this branch are not to be consulted in this matter. Everything that pertains to legislation and the expenditure of the public money, or to the regulation and adjustment of the vast and great interests of the different portions of the Confederacy, I had thought were by the Constitution vested in Congress; but the bill takes them from Congress, great and extensive as they are, and leaves them to the discretion of a single man. Why, we all know—gentlemen here admit—the conflict that will arise whenever it is determined what route this road shall take; whether it shall go to the north or to the south. They know the immense influence it will exercise in building up the section of country where it goes, and in injuring that where it does not go. Yet, gentlemen say, so indispensably necessary is it to have the road that they will take all the power from the representatives of the people and vest it in executive discretion alone.

Mr. President, there is but one term, in my judgment, which will characterize a measure of this kind. It is a *rape* of the Constitution. The Constitution has vested these powers in the

legislature. The bill wrests them from the legislature, and confides them to an irresponsible Executive; for he is not responsible under the Constitution for the exercise of this discretion.

What is the next power? The Executive is to make the contracts—these immense contracts which are to involve an expense, as all admit, of at least $100,000,000. The Executive is to make these contracts and to dispose of them at his discretion. Congress has no part nor lot in making them. The people of the United States create one agency, through their representatives, by which the public money is to be expended; but it is given by this bill, almost by rapine, to an irresponsible Executive. And the bill instigates the President to dispense, as far as practicable, with preliminary surveys. The language of the bill is that he shall act under it "at an early day." And that emphatic language is repeated in a subsequent part of the bill, instigating him to go immediately to work, to determine where the road is to go, and at an early day commence its construction. Is this the language of solidity of judgment? Is it language which becomes the representatives of the States of this Confederacy when they are ordering an expenditure of some $100,000,000 of the public money? It is to be done at an early day—almost with indecent haste.

Sir, there is another clause in that bill, one that struck me with extraordinary force. It is proposed to pass through the Territories of the United States by the potentiality of a law of Congress, and it is proposed to pass through the States by the assent of the States. That is to say that, if the States assent to be invaded by this Federal power, then the Federal power is to construct the work within their limits. Now, I submit it to the honorable Senator from Texas, and I submit it to every Senator upon this floor, where do you find anywhere in the Constitution the power in a State to enlarge or curtail or qualify to any extent the power of the Federal Government. Is this to be added to the platform which was spoken of by the honorable Senator from South Carolina [Mr. Butler] as presenting a fundamental law more potent than the Constitution itself; that where the Constitution is silent any State can increase its power or enlarge it by its single assent? Sir, the language of the Constitution is this—and I beg to call the attention of Senators to it—that the laws made pursuant to the Constitution are supreme within the limits of the States, and when the Federal power goes into a State, armed with a law of Congress, it goes there with supreme power, and the State legislation bows before it. But by the terms of this bill the law of Congress goes

within the limits of a State, and asks that State to give its sanction to it. If this be the law of the Constitution, then it is in the power of any State whatever to enlarge and amplify, or to restrain and control it at its own pleasure. And yet the honorable Senator who reported this bill from the Special Committee I apprehend found himself under the necessity of so construing the Constitution, in order to give his bill any value.

Again, sir: the bill creates a corporation, and a corporation to act where? To act through the whole Confederacy and based upon the public treasury—not such a corporation as the Bank of the United States, and, by the way, that never could be chartered by Congress until, as was most eloquently said by a Senator from Kentucky, now no longer living, they resorted to almost every clause in the Constitution to find authority for it, and he called it a vagrant power. Here is a corporation proposed to be created for the purpose of a Federal agency, based upon the Federal treasury. And what is the corporation, and who are the corporators? They are the body of the contractors for the work. The President, then, is to control this corporation, for he selects the contractors. The President is to designate who these corporators are to be, and it is by his fiat, in the exercise of the patronage given to him, that this corporation is to be called into being. The bill offers these extraordinary features. You are to bring a body of contractors to make this railroad from the Pacific to the Mississippi, and you are to pay them from the public treasury, partly in land and partly in money. You pay them a full equivalent for the work they are to do, and then, when you have done that, you create them into a corporation and present them with the work, and they are to draw the whole emoluments from it. Sir, this extraordinary machinery it is found necessary to invoke in order to enable the Federal Government to exercise a power not granted, and through an agency unknown to the Constitution.

There is another provision in this bill, on which, in this connection, I should like to comment. The provision is this, one that the Senator from Illinois [Mr. Douglas] said, a few days ago, furnished ample security to the Government: that, if the contractor fails to comply with his contract, his work shall be forfeited. Forfeited! And who ever heard of a forfeiture enforced which was caused by a failure of that kind? Why, sir, between man and man, equals in society, the courts of justice are open, for the purpose of relieving a party from such forfeiture. It is done every day. Forfeitures are odious in law, even between man and man, and what would be a forfeiture between

a citizen and the Government? It would not be enforced; and, if it were enforced, what becomes of the property? Where do you find a clause in the Constitution making this Government the residuary legatee of a bankrupt contractor, to take his effects and administer them for the benefit of Government? But by the provisions of this bill it is declared that, if he do not comply with his contract, Government may take not only the work he has done, but his effects, being the residuary legatee of the bankrupt contractor. Sir, it will never be done. If the contractor fails to comply with his contract, and remains there ready to go on, he will be reinstated, especially if he is a pet of the Executive or has political influence.

I should like to know—for it has been a part of my professional duty to be engaged in the construction of laws—what is the meaning of the bill when it says, in the thirteenth section, the corporators are to be "the contractors, their associates and successors." Who are the associates? I can understand who the contractors are. Thomas Wilson proposes to contract to build a certain portion of road for a given sum; or Thomas Wilson and John Thompson, with others, propose to contract. They are associated together, but they are the contractors. But who are to be the associates of the contractors?

THOMAS G. PRATT [Md.].—Those who take stock.

SENATOR MASON.—What is the stock for? Stock in what? Railroad stock, I presume, in the "Pacific Railroad and Telegraph Company," inviting subscriptions by an association with the contractors making them a part of the corporators, and entitling them to part of the profits. I should like to see the machinery by which that could be done. I should like to see how these certificates of stock will read; I should like to see them presented to the President for his approbation, to be conferred upon his pet class of contractors. I should like to see the privileges and immunities and advantages that the Executive patronage may deal out to these contractors, or their associates, or successors. Who are the "successors"? The bill says, "the contractors, their associates, and successors." I suppose they are the assignees of the stockholders.

Well, if we are to have a joint stock company, in which the United States Government is to hold barren stock, and the contractors and associates the profitable or productive stock, if that is the character of it, if the Government of the United States goes in with millions of dollars, in money and lands, to be used at the discretion of the President, and any number of contractors and associates come in with an unlimited amount of

stock, and the Government stock is to be barren, and the contractors' stock is to be productive, let it be so understood by the country.

Mr. President, there was a day in this Republic when we were accustomed to scan carefully and closely executive power. The fathers of the Republic transmitted it to us as a legacy that we should scan all power, and more especially the power of the Executive. But what does this bill do? It not only gives him the power, but it gives it to him alone. This immense body of corporators, with $100,000,000 of barren stock on the part of the Government, and an unlimited issue of their own, are to be handed over to the President as the source of its authority and the dispenser of its influence and patronage.

There is another provision in this bill, which authorizes the President to employ such military officers and troops as he may deem necessary. It puts the army of the United States at the disposal of this immense corporation.

How much of the army is to be required for this purpose nobody can tell; but if the distance be, as is said, from two thousand to three thousand miles from the Mississippi to the Pacific, and through a large portion of which you are to meet predatory and hostile bands of Indians—if you allow five soldiers to every ten miles, you have a large army employed at once. The military of the United States will not be equal to the duty unless the army be increased for the purpose of protecting this body of corporators.

Mr. President, who doubts how this bill will be construed if it becomes a law? Who doubts how it will be carried into effect? Who can now resist, in far smaller matters, the tremendous collateral pressure of capital that is every day at the doors of the Senate? Capital is a power so potent that we are told monarchs reel before it upon their thrones. We are told every day that the strongest monarchs of Europe are powerless before the Rothschilds and the Barings, and it is true. How do we stand in this country? We have no Rothschilds or Barings, but we have men who aspire to be such: men who wield capital potentially, who, it may be, without actual bribery and corruption, bring a thousand influences to operate, which are not known until they are felt. Yes, sir, pass this bill into a law, and you will begin the work, utterly ignorant whether you will ever be able to finish it; and that is to be the character of the legislation of an American Senate at this early day of our Republic!

Mr. President, if this bill becomes a law there will be no

longer parties in this country except the party in power and the party in opposition. The whole character of the Government will be changed, never to be reclaimed; and it will have been done by gold, and, worse than all, by gold out of the public treasury. The Constitution will be gone. There will be no appeal to that, and the Government will be one of unlimited power.

Sir, this bill, with its appropriation of a hundred millions, will make a breach in the Constitution through which everything will pass. It will be perfectly idle, after such a power, to talk about the tenets of party. After that, the only parties will be the party in power and the party in opposition, and the party in power will have no restraint or control but the will of a majority. I would recall to the Senate the vaticinations of one of our greatest men and most gifted statesmen—a statesman to whom at his death the honorable Senator from Texas paid a beautiful tribute of feeling and sensibility. I refer to the illustrious Calhoun. When the order was given by the President of the United States to march an army to the frontier of Mexico, Mr. Calhoun said to his friends, "It dropped a curtain between me and futurity; I cannot see beyond that." It was, in his view, the first aggressive march taken by an American army; and said that prophetic man, "It dropped a curtain between me and the future." "I told my friends," said he, "that here closed the first book of the history of this Republic; the second book is unwritten and unread." Mr. President, if that man were here now, he would find the curtain lifted. He would see something written which is to go into the next book of American history; and it is written on the pages of this bill. It is a measure forced upon the country. Honorable Senators may say that it is forced upon the country because we have these Pacific possessions, and cannot get to them without it.

Sir, I shall deeply deplore the passage of this bill. I make no factious opposition to it, and I have made none. Sir, the State of Virginia will be as deeply interested in access to the Pacific as any other of the Atlantic States. She is very deeply interested; but the State of Virginia, I trust, never will take it at the expense of the Constitution which she has bound herself to support. This bill cannot stand with the Constitution. You must take one or the other; and, if you take the bill, you make a breach in the Constitution through which everything can pass. I move that the bill be referred to the Committee on Roads and Canals.

Isaac Toucey [Conn.] on February 19 spoke against the bill.

What, I ask, will be the condition of this Western country fifty years hence with a dense population, with a line of States across the continent, with this colossal corporation, with its immense commercial business, vast beyond any present conception? Sir, I tell you that the States which will exist in the vicinity of this road, which will embrace the line of the road, will make war upon it. They will not consent to have this colossal corporation overriding them in the hands of the money power of this country, transporting for their own profit the great commerce that will find its way through that channel to and from the different continents of the world. The States will make war upon this corporation. It will be a war whether the corporation can exist. It will be a war whether you can exercise the power that you have reserved in this bill of regulating merchandise and passengers in crossing this road. It will be a war whether this act of Congress can override the sovereignty of those States. It will be a war with this Government; aye, sir, with its own government, whether the men now upon the stage of action, by assenting to the exercise of a jurisdiction of this kind, can debar the generation that will then be conducting the affairs of the country from exerting the usual legislative powers of their government for the management of their own internal affairs.

Joseph R. Underwood [Ky.] followed with a speech in favor of the bill.

If you cannot create a corporation, you have undertaken to protect them in foreign countries, when created by others. You did that in the treaty with New Granada. You did the same thing by the Clayton-Bulwer treaty. I want the people of the United States to consider these *democratic* ideas advanced here. Government, according to the Democratic creed, has no power to establish a corporation by which we may execute a great national object and fulfill our constitutional powers and duties. But, if other nations will form one by which we can derive benefit, we can go into treaty guaranties to defend that corporation, on foreign ground, in the execution of its work. The interest which we have in, and the benefits which we derive from, the action of foreign corporations may be such that we can pledge the whole force of the country, the army and the navy,

to defend these corporations and protect them against all dangers; but we cannot find the power to do for ourselves, at home and upon our own territory, the same things which we can go to war to protect foreign corporations in doing for us abroad! I ask the people if we can pledge the whole force of the country and go to war in order to protect a foreign corporation in which we may have an incidental advantage, in order to secure a right of way and a free passage across the Isthmus of Darien, may we not make a corporation and build a road for ourselves in our own country? If, under the Constitution, we may rightfully go to war and fight, to protect the railroad from Chagres to Panama, or a ship canal from Lake Nicaragua to the Pacific Ocean, so that we may travel these routes in going to California and Oregon, why may we not, under the same Constitution, shorten our line of travel thousands of miles by building a railroad all the way within our own country? If you can do the one, by virtue of the post office, commercial and military powers of the Constitution, why will not these powers enable you to do the other also? I cannot perceive a reason for the difference, and, if I had the power of the people, I would cast overboard all politicians who pretend that there is a difference.

Mr. President, I want the country to understand another thing which I see here whenever gentlemen from the seaboard get up to offer an argument or make a speech on subjects of this kind. Sir, in 1789, when our Constitution went into operation, we had a little settlement—it deserves no other name than that when compared with things as they exist at this time—a little strip of settlements along the salt water, and the Contitution at that time seems to have been puffed up by a sort of salt-water impregnation. It has certainly brought forth a spawn of all kind of improvements for the seaboard and little or nothing for the interior. One of the salt-water constructions of the Constitution is that the interior States of the Union—although the Constitution expressly gives to Congress the right to regulate commerce between the several States, and of course through the several States—are to be entirely dependent upon the seaboard States for a channel of commercial communication through their borders. They assume the sole right of making railroads, and of taxing travel and transportation, just as they please and as much as they please. They can neglect to keep common highways in repair, in order to force the citizens of other States to use and pay tolls upon artificial works. They may refuse to grant facilities in constructing direct lines of railroad or canal between important commercial points in order to force the citi-

zens of other States to travel circuitous routes to promote local interests and the sectional schemes of particular States. This has already been done by Pennsylvania, if I am correctly informed, in refusing the Baltimore and Ohio Railroad a direct route across her territory to Wheeling. Sir, if the doctrine be conceded that this Government can, under no circumstances, make a road or canal in or through a State, then may the seaboard States prescribe what terms they please to the people of the interior States as to the manner in which they shall reach the ocean, that common highway of all nations. They may block up all dirt roads and turnpikes, and compel all travelers and merchants to seek transportation for themselves and property on such railroads or canals and under such tolls as shall be prescribed by a local and sectional policy. Sir, I protest against any such doctrine. It is no answer to tell me that the States will never do these things. That is not the question. If they should do so, have I any remedy? If they cut me off from the ocean, have I a right to appeal to Congress to give me a right of way and a commercial road, so that I may enjoy the privilege of getting to the ocean?

Senator Butler.—Do I understand the Senator from Kentucky to lay down the broad principle that if Kentucky, or if a corporation created by Congress, should design having a road, by way of regulating commerce, it could be done as against the consent of the State of Tennessee, Georgia, or South Carolina, through those States?

Senator Underwood.—I shall lay down this proposition: that if Tennessee shall undertake to say that the people of Kentucky shall not, with their wagons and produce, pass through her territory to get to Georgia, Alabama, or Mississippi, then the people of Kentucky have a right to appeal to Congress to open a way for them, and to guarantee a safe passage through it, so that they may freely trade with the people of the South.

Senator Butler.—That is not the proposition. But have you a right to go through by a road to be created by Congress?

Senator Underwood.—If the object cannot be accomplished in any other way, I have.

Senator Butler.—I wanted to make the proposition pretty broad.

Senator Underwood.—Just as broad as you choose to have it. I maintain, if the State of Tennessee should declare to the people whom I represent, "You shall not go to Georgia, to Alabama, or even to South Carolina, through my territory; you may go around by the way of Virginia and North Carolina, if

you please, or you may cross the Father of Waters and go around by Arkansas and Mississippi, but you shall not pass through Tennessee," and undertake to enforce the declaration, that I have a remedy for the evil in the legislation of the Congress of the United States, and in the judiciary of the United States, to abrogate and annul all State laws which obstruct free intercommunication and commerce between the several States. Sir, there is no danger that Tennessee will ever deny Kentuckians the right to pass through her borders as freely as her own citizens; but, if she should be so unmindful of good neighborship, and attempt to do it, I believe her legislation, to accomplish such an object, would be void, as an infraction of the Constitution of the United States, upon two grounds: first, it would be directly in conflict with that provision of the Federal Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"; second, it would conflict with the rights of intercommunication and commerce among the several States, which can alone be regulated by Congress, and which are clearly guaranteed to the people of every State by the Federal Constitution. The power to regulate "commerce among the several States" is part of the same clause which grants to Congress power "to regulate commerce with foreign nations." The powers are identical, and a State can no more interfere with the internal trade and intercourse among the several States than it can interfere with the same thing with foreign nations. We have, from the origin of the Government, improved and preserved harbors for the benefit of foreign commerce. We have passed law after law, under Democratic administrations as well as Whig, to improve the Mississippi and other rivers for the benefit of internal commerce. Now, if we can improve upon nature, and make rivers and harbors for commercial purposes better than they were, will not the same reasons justify us in building a road? Sir, we have the power, and we ought to exercise it whenever any State shall undertake to cripple and regulate the travel and commerce of another State upon local motives and sectional considerations.

Sir, if that power is not already in the Constitution it ought to be there. I think it is there. If it is not there what is the consequence? You allow the seaboard States of the Union to regulate the business of the interior States at their pleasure; you allow a seaboard State to cut off an interior State from access to the ocean, except upon terms which that seaboard State may prescribe. If this Government is nothing but a confederation—though I deny that—but if it is nothing but a confederation, and each State can make its own transit laws, just as it pleases, governing persons and property in passing through its territory, imposing onerous taxes in the shape of railroad tolls, and setting slaves free, as has recently been done, my word for it, such a confederation will not last. Sir, the people of my State will never consent that the State of Louisiana shall block up the mouth of the Mississippi and prevent their access to the ocean, or allow Louisiana to tax their commerce and navigation upon that stream. That is a good illustration. Will the gentleman from South Carolina [Mr. Butler], when he comes to make his speech, say that Louisiana has a right to block up the mouth of the Mississippi, and prevent Kentuckians from going down to the gulf and thence across the ocean to any country of the world? The Senator from Virginia [Mr. Mason], though I think he carried his doctrine a little too far, contended for a right of way across the Isthmus of Tehuantepec upon legal principles. If we may insist upon a right of way over foreign territory, much more may we insist upon a similar right across a State of this Union. If Tennessee will not give or allow that right to the people of Kentucky, how are we to get it?

SENATOR BUTLER.—Tennessee will allow you to use her roads as she uses them, but will not build one because you want it built.

SENATOR UNDERWOOD.—Suppose she will not. I have no right to ask her to build a road for my use. But suppose she makes a law against my using the roads she builds for herself, or imposes such conditions on me that I cannot comply, and consequently cannot use her roads, then what is my remedy? I cannot go to war with her, because the Constitution ties my hands in that respect. What remedy have I? There is none on earth, unless it is found in the powers of the Federal Constitution. Sir, I want the people to think about these things. Some gentlemen, when they come to construe the Constitution of the United States, construe it as if all the means for executing the powers of Government, except those known in 1787, are illegitimate, and cannot be resorted to. I think that if Wise, the aëronaut, should ever teach us to navigate the atmosphere successfully, we may use balloons, and just as many of them as we please. And I also think, when it comes to that, no State, under the ideas of "State Rights," and "State sovereignty," and the old common-law notion of owning from the center "*usque ad cœlum*,"[1] could rightfully prevent the passage of the

[1] "Clear to the sky."

balloons of Congress over her territory. I believe that Congress may make roads over and through the territories of the States whenever they are "necessary and proper" auxiliaries in executing constitutional powers. I believe that Congress may properly execute the powers of the Constitution by using the most appropriate means furnished by the inventions of the age in which we live, and that it is both "necessary and proper" to avail ourselves of all means to accomplish constitutional ends which science and "*progress*" have made since the Government commenced its operations.

If Congress shall erect its own lines of telegraph, and allow the President to appoint sworn officers to transmit his orders (and that might be necessary to prevent publicity), what reason can be assigned against doing it, unless it be that such a thing was not known at the origin of the Government in 1789, or even as late as the enlightened age of the Virginia resolutions of '98? I insist that Morse's telegraph may be adopted as legitimate and constitutional means by which the President may transmit his orders. I do not know that this argument has been presented before to the country, and I want the people to see it. Here is a clear power given the commander-in-chief to issue orders to the military and naval forces of the country. These orders must be sent by some means. Science has discovered a new mode of communicating intelligence. Can we use it? And, if so, can a State prevent our using it, and arrest the erection of the posts and wires in her territory, any more than she could prevent our courier from passing under whip and spur through her borders? Like the gentleman from Michigan [Mr. Cass], I hold that the powers of Congress do not at all depend upon the consent of the States.

This bill, in my judgment, presents no question of constitutional power. We, the present Congress, have found power in the Constitution, by adopting the Wheeling bridge as a post road, to save it from abatement as a nuisance, under the decision of the Supreme Court. If we have power to prevent pulling a bridge down, we can build it. If we can protect a bridge, or build a bridge over a river within a State, under our post office powers, we can make a road and preserve it. This body, in the Wheeling bridge case, has settled the constitutionality of this bill. But, if it must be argued over and over again, then I say that speed and facility of concentrating supplies and soldiers is military strength and power. To defend our possessions on the Pacific, the railroad would be invaluable. You know that a navy of your enemy is sailing around Cape

Horn. Let us have a national telegraph, and orders can be given with the rapidity of thought; troops can be concentrated as circumstances require, your country defended. But start your courier—give him relays of the fleetest race horses, keep him mounted on the back of Henry or Eclipse, Boston or Fashion, and let him distance the wild Comanche on the open plains, and beat the antelope in the mountains; and yet, sir, before he can deliver an order or a warning, your Pacific possessions may be invaded, your army captured in detail, your ships sunk, and your commerce ruined.

Why, sir, destruction of life by thousands, and loss of property by millions in value, may be saved, and the Union preserved from dismemberment, by the proposed railroad and telegraph; and yet we are told gravely, at this day, that there is no constitutional power to construct them. In other words, we are gravely told that the organic functions of the Government are so imbecile that it lacks the capacity of self-preservation. If this be true, its rickety existence will soon perish, and but few mourners will weep at the grave. Let the people look into these things, and hold to accountability, as I shall do when I retire from this body, all those who virtually deny to this Government the necessary powers of self-defence, saying, if the States will not or cannot build railroads and telegraphs where they are wanted for national purposes, then we are to go without them. Sir, we might just as well call upon the States to build for us our steamships, manufacture our cannon, or furnish any other means of national defence.

WILLIAM H. SEWARD [N. Y.].—It is a hundred and fifty miles from New York to Albany.

SENATOR UNDERWOOD.—The Senator from New York says the distance is one hundred and fifty miles; will he tell me how many lighthouses there are in that distance?

SENATOR SEWARD.—There are five. [Laughter.]

SENATOR UNDERWOOD.—I saw a great many more, according to my recollection.

SENATOR SEWARD.—They are double reflectors. [Laughter.]

SENATOR UNDERWOOD.—The gentleman says they are *double reflectors*, and, if so, I should suppose a fewer number might answer the purpose of inducing us to *reflect twice* upon what I am about to state. I saw some other things as I passed up the river. I saw buoys to point out the channel. I saw these internal improvements made by Congress, with national funds, in the State, without the consent of the State, and without ever having asked its consent. That is the idea which I wish to

bring to your mind. When and how did the idea originate that Congress might erect lighthouses and plant buoys without the consent of a State? It originated with the birth of the general Government, and it has been put in practice from that day to this. The idea sprang from the Constitution, correctly interpreted by its makers and the founders of the Government. The idea suited and promoted *salt-water* regions and *salt-water* interests. Then we had no interior. At length the fertile and great interior had opened her dense forests, and her agriculture sought means to reach foreign markets with her rich products. The great interior then wanted internal improvements of the same kind to benefit her commerce. But, when she applied to the general Government for them, she was met by a new generation of politicians—not statesmen—with the objection: "There is no constitutional power to gratify your wishes." To protect and aid commerce is the foundation on which the doctrine and practice originally stood. Now, I appeal to the common sense of mankind and ask, if our ancestors had constitutional power sixty years ago to aid commerce, by building lighthouses and planting buoys along the seaboard, may not their posterity aid commerce by building a railroad from the seaboard into the interior, without violating the Constitution?

Senator John B. Weller [Cal.], seeing the opposition to the corporation authorized in the bill, moved on February 21 to amend the measure by striking out this provision. This motion, however, had the disastrous effect of alienating some of its strongest supporters, such as Rusk and Underwood, and so doomed the bill to defeat. On this point Senator Weller spoke on February 22.

The bill came into the Senate lame, halting, impotent, and scarcely half made up. Notwithstanding the paternal care that was exercised over it by my friend from Texas, it came in here impotent for all practical purposes, impotent to carry out the objects he had in view—most potent so far as it violated principles heretofore considered sacred. He will therefore allow me to say this much in answer to the remarks of my friend from Texas, in derision of the amendment which I had the honor to propose to this bill. I was glad that he did see wisdom in that amendment. I am sorry, however, that he is now laboring to defeat the bill. But, sir, the Senator from Kentucky, who has

taken his seat, thinks the mortal wound was inflicted when the corporation was stricken out.

SENATOR UNDERWOOD.—I do.

SENATOR WELLER.—Sir, that Senator belongs to a class of politicians who believe that nothing good can be accomplished except through the medium of a corporation. He would have a corporation to transact the most ordinary business of life!

SENATOR UNDERWOOD.—No, sir.

SENATOR WELLER.—If he desires the construction of a railroad, or that any labor shall be performed, or any public improvement made, he thinks it can be accomplished in no other way so well as through the aid of a corporation. I differ from him in regard to that point, and I therefore moved the other day to strike from this bill the section which incorporated these contractors into a great corporation, an overshadowing one, which, in my judgment, would, under the patronage of the general Government, have exercised a more disastrous influence than that which was exercised by the late Bank of the United States. With such a provision in it, I could not sustain the bill. The Senate, by a vote of nearly two-thirds, concurred with me in that opinion, and upon my motion this unconstitutional and dangerous provision was stricken from the bill. By that decisive vote, the favored corporation put in here by my friend from Texas, who claims to represent Democratic principles, was stricken out. That was an improvement; and I then began to think that there might be virtue enough in the bill to effect the object which so many of us had near to our hearts —the completion of a road to the Pacific. This amendment gave offence to the fathers of the bill, and hints were then thrown out that it was ruined. Wedded to the scheme which they reported, they could not be expected to look with a favorable eye upon any change which might be made. That corporation, as proposed by the committee, could have exercised all the privileges of bankers, and flooded the country with irredeemable paper money. The destruction of this feature of the bill alarmed the committee, and they began to show symptoms of abandonment.

Now, is the bill dead? My friend from Texas, who "is an honorable man," says that it is. An attempt was made to bury it this morning. Some of those who have claimed to be the especial friends of the bill joined in the effort. They failed. Now, I ask my friend from Texas to stand by me and sustain this bill, and I pledge what little reputation I may have in this country that there are plenty of contractors who would be glad

to take contracts under it, not only for the construction of the road in his State, if that should be selected as the most desirable route, but for its construction from the Mississippi valley to the Pacific Ocean.

I know, and I admit, that the Senator from Texas has labored more assiduously than any Senator on this floor in the preparation of this bill; I know that all his energies—and great they are—have been devoted to accomplish this great national work; and that section of the Union from which I come owes him a deep debt of gratitude for the friendly interest he has exhibited in it. But I was sorry that, at the very moment when his power and influence were particularly required, at a time when the adoption of a simple amendment was calculated to give life and vigor to the bill by avoiding a constitutional difficulty, he abandoned it, and declared that it was dead, and that it remained for the Senate but to inter it. If he withholds his support, it can scarcely be expected that the bill will pass. If gentlemen have made up their minds to defeat it, they certainly can do so. On their heads the responsibility must rest.

SENATOR RUSK.—The honorable Senator from California says the bill came in lame, halting, deformed, and unfinished, until his master hand got hold of it, and then it became perfect. I am sorry to differ from my honorable friend in this particular; but I cannot vote for the bill as it now stands. I do not believe it will build the road. I am sure that in its present "perfected" form it will split up the road into three different pieces, and perhaps four; and I cannot vote for such a disjointed bill.

There have been appeals on both sides of the chamber to the country about the subject. Sir, I am not talking to the country. I have not been working for applause. I have been working for this railroad bill. I have no disposition to put the honor of killing Cock Robin upon anybody. Those who did it may divide the honor among them.

When I first reported the bill, the clause in relation to a corporation was the "rawhead and bloody bones" that troubled the conscience of some of my Democratic friends. I did not care six snaps of my finger for the corporation, and in fact I rather agreed to put it in, because I saw that it would draw the enemy's fire; that it would bring forward a great deal of patriotic thunder in opposition to that feature of the bill. Well, sir, in that I was right. We went on; thundering licks were struck; the artillery roared, and the small arms crashed against the terrible corporation; and I should have voted to strike it out myself, but I thought that if I did so some of these gentlemen would think they had frightened me off the track [laughter], and so I voted in a very small minority to keep it in, not, however, that I cared a sixpence about it.

After the corporation was stricken out, the first constitutional scruples that I heard of were brought forward against appropriating any money in the States. The idea started, and it rolled on with the fury of a hurricane, and out went that provision of the bill by a majority of two votes. The honorable Senator from California thinks that it made the bill a perfect instrument; made it an instrument by which the road could be built. There is a difference of opinion between us on this point. If I thought so, I should vote for it. It would be tolerably hard work for me to do it even then; but I would trust to Providence. As the bill now is, however, the road is divided up, and we have no means of controlling the ends of it. It is to be given by the States to railroad companies, who are to do as they please. We have no means of saying that passengers and freights shall pay only so much; the power has gone out of our hands, and we shall have no control over the subject in the States, because the very ground on which the amendment goes is that you have no constitutional power to control the road in the States.

Under such circumstances, believing that we have no further use for the bill, and, as the Senator from California does not appreciate my courtesy in keeping the bill up, I now announce to him distinctly that I want a favorable opportunity of putting my name on the record against the bill in its present shape, and that may go to the country also. Cock Robin is killed! As to who killed him I do not care six straws. He is dead. I expected to get a road, but I know that, under the provisions of the bill as it now stands, I cannot get one, and I do not care about the credit or discredit of it. I shall have the proud satisfaction of reflecting that I have performed my duty faithfully upon this important subject, and with that I must be content.

GEORGE BADGER [N. C.].—Mr. President, I am a very earnest and decided advocate for the establishment of this road, and in that I present no exception to the Senate generally. Everybody is in favor of the road.

SENATOR MASON.—No!

SENATOR BADGER.—The Senator from Virginia is not in favor of it?

SENATOR MASON.—Decidedly not.

SENATOR BADGER.—I am glad to hear there is one man not

in favor of it. Now I am sure that I am right since the Senator is against me in the main project. [Laughter.] I was about saying that everybody in the Senate was in favor of the road, but there were so many conflicting opinions as to the mode in which, conveniently, constitutionally, and consistently with the principles of the Democratic party it could be accomplished that it seemed as if the general wish for a railroad was an abstraction, and the general difficulties in the way of its construction, a reality, which made the abstraction of no value.

Well, sir, I have been in favor of any measure that is a practical one, that would accomplish the object which is of so great importance to the country. But I find that there are insuperable obstacles in what are called the principles of the Democratic party. I never hear of them without alarm, for I have generally observed that they are brought forward and operated precisely to the extent, and precisely for the purpose, of preventing the accomplishment of some great good to the country.

Now, Mr. President, it has been said over and over again that this bill is dead. Gentlemen on all sides agree as to that except the Senator from California [Mr. Weller] who has a manifest State interest in keeping it alive and who I think mistakes certain galvanic motions in the dead body for the evidence of life and conjures up for it future exertion and usefulness.

It is agreed on all hands that, whether by what has been done or not, it is the general sentiment in the Senate, and the deleterious effect of the administration of Democratic principles upon the measure, that it is dead, and the only inquiry on all sides has been how it should be decently and respectably disposed of by an honest burial.

Now, instead of moving that this bill lie on the table as a test question, having very great respect for the bill as it was originally reported, and the greatest respect and kindness for my honorable friend from Texas, who reported it, and who has pressed it with so much anxiety, I think the best course we can adopt with this distinguished member of the once practical measures, but now abstractions and humbugs of the age, would be to treat it exactly as we treat a member of Congress when he is dead. And, by way of taking final leave of it and testifying our respect for its memory, I move that the Senate do now adjourn [laughter] with the understanding that that makes an end of the Atlantic and Pacific railroad at least for this session.

The motion to adjourn was passed by a yea-and-nay vote, Senator Douglas desiring to put the members on record.

Completion of the Pacific Railroads

By 1855 the Government had ascertained by surveys the passes practicable for railroads through the Rocky Mountains.

In 1860 all parties declared either in platform or in statements of their candidates in favor of constructing a Pacific Railroad by the Government. The outbreak of the Civil War caused the Lincoln Administration to urge the completion of the road in order to bind the Pacific States more closely to the Union, even though this involved the expenditure of funds sorely needed for the prosecution of the war. Owing to the great Republican majority in Congress an act to this effect was pushed through that body on July 1, 1862, with only a feeble opposition from the few State Rights Democrats who remained in the House and Senate. This act was in favor of the Central Pacific, Kansas Pacific, and Union Pacific railroads. Vast tracts of land were granted directly to these corporations instead of to the States for the benefit of the roads. This method has been invariably followed since that time. The largest grants to single corporations have been 47,000,000 acres to the Northern Pacific Railroad, and 42,000,000 acres to the Atlantic and Pacific Railroad. The amount of bonds issued to the various Pacific railroads, interest payable by the United States, was $64,623,512.

The Union Pacific Railroad was completed on May 10, 1869.

CHAPTER VI

National Abolition of State Railroad Monopolies

[THE CAMDEN AND AMBOY RAILROAD]

Bill in Senate to Prevent Discrimination by State Governments between Railroads—Debate on the Bill: In Favor, Zachariah Chandler [Mich.], Charles Sumner [Mass.]; Opposed, Reverdy Johnson [Md.], John P. Hale [N. H.]; Bill Is Not Brought to Vote.

DURING the Civil War the Government was compelled by military necessity to seize and operate certain railroads. In addition to this executive action the House passed a bill in 1864 authorizing every railroad company in the United States to carry freight, mails, passengers, troops, and Government supplies on their way from one State to another, and to receive compensation therefor from the national treasury. This gave the Government precedence of private individuals or corporations whenever it so desired.

The bill, while general in its application, was designed especially to abolish the monopoly of the Camden and Amboy Railroad in New Jersey, which, in 1832, by a State charter, had received the exclusive right of transit through the State in consideration of a bonus of the stock of the railroad. The charter, with its grant of monopoly, was afterwards extended until 1869, upon the agreement of the railroad to charge passengers no more than three cents per mile for transportation.

The bill was brought up in the Senate on January 16, 1865.

State Monopolies in Transportation

SENATE, JANUARY 16-MARCH 3, 1865

Zachariah Chandler [Mich.] supported the bill. He said:

If the State of New Jersey has a right to levy a small tribute upon either passengers or freight passing through that State, she has a right to levy a large tribute, and if she has a right to levy a large tribute she has a right to prohibit their passing absolutely if she, in the exercise of her sovereignty, sees fit thus to prohibit it. No man would claim that the State of New Jersey possessed that right; probably she would not attempt to exercise it, but it is a well-known fact that she has exercised the right of levying a tribute for years, and this monopoly has been grinding upon the people of the United States, grinding upon every man who has had occasion to pass from the great capital of the nation [Washington] to the actual capital of the nation [New York].

Senator Chandler showed that the State government had recognized in the charter of the railroad the right of Congress to control commerce through the State by providing that the bonus of stock paid by the railroad to the State government in consideration of the exclusive privilege granted it should revert to the railroad if Congress should recognize another road through the State.

Reverdy Johnson [Md.] opposed the bill on constitutional grounds. Every State has exclusive jurisdiction over its internal commerce. Congress can exercise jurisdiction only with the assent of the State. It has been the unvarying practice of the United States Government to procure this assent in establishing navy yards, mints, etc.

There was at one time a doubt as to the true meaning of the clause to be found in the eighth section of the first article which gives to Congress the right "to establish post-offices and post-roads." The question turned upon the meaning of the word "established," as there used. Some few contended that it gave to Congress the right to make roads as well as to say what roads already made by the States they would use for the transportation of their mails, but the received opinion after a while, which was adopted and has been uniformly acted upon, and since recognized as the correct opinion by the judiciary in every instance in which any analogous question has been before the Supreme Court of the United States and the circuit courts of the United States, has been that the meaning of the clause giving

to Congress the right to establish post-roads meant only that they had the power to designate roads already existing.

Senator Johnson entered into the history of transportation in New Jersey.

The State of New Jersey in the infancy of the railroad system, as far back as the year 1830, when we had no experience which would enable a man or a government or a company to decide whether it would be a profitable business to engage in enterprises of this description—authorized the construction of a railroad under a charter granted to the Camden and Amboy Railroad Company. At the same time they authorized a company to make a canal called the Delaware and Raritan canal. The latter, perhaps, was under all the circumstances supposed to be a more perilous enterprise than the former, for a canal of this length had never been constructed through a State like New Jersey, not then with the population that now teems upon her fields; and its termini (the cities of Philadelphia and New York) did not then as now number a population of millions, but were comparatively in their infancy. It was exceedingly doubtful whether either of these enterprises would prove to be lucrative on the part of the corporators. What did New Jersey say? What was she obliged to say? What was her object in saying it? She wanted a railroad between Philadelphia and New York; she wanted canal transportation between those two termini; it was not only important to her, and it was not only important to Pennsylvania and New York; it was important to the United States. Every man who came from the West, traveling north to the East, and every man who came from the opposite quarter traveling west, and every man who had any merchandise to send of any description from west to east or east to west was interested in having a mode of transportation for himself and merchandise through New Jersey. New Jersey, then, actuated by that enlightened and patriotic policy which I think has illustrated her career, determined that she would, if she could, have made through her limits a railroad and a canal which would operate so beneficially, not only for herself, but for the rest of the country. But how to do it was the question.

This enterprise required an expenditure of millions; she could not make the expenditure without very heavy and onerous taxation. Who would make it? Individuals. How could they be induced to do it? By giving them a charter that promised

to make the railroad and the canal, when they should be constructed, profitable. How was that to be accomplished? There were two ways to accomplish it: the first was to authorize them to levy any amount by way of toll that they might think proper; the other was to guard them against all competition. It was better, in her judgment, and, as I think, she decided rightly, that she should hold out the latter motive to the individuals who might be willing to construct this railroad and this canal, because to tax by a heavy imposition of toll would be not only to injure those of her own citizens who might want to travel on these improvements, but would also be to injure us and the other citizens of the United States who might want to travel and to transport their merchandise upon them.

Now, Mr. President, a word or two will show, as I think, that New Jersey had a right to do both. New Jersey was under no obligation to make a road or a canal. There is nothing in the Constitution of the United States which compels New Jersey to spend a dollar for the benefit of other States, to spend a dollar in the construction of roads or canals in her own State. What she does for the benefit of her own citizens she is authorized to do, and may be compelled to do, not by the United States, but by the influence of her own population. They elect her legislature and, if they, the people of New Jersey, are willing to have roads constructed, they, the people, will instruct the members of their legislature to construct any particular road or canal that they want, but the United States have no right to interfere. If New Jersey was not under any obligation to the United States, or any citizen whatever living in any other State, to construct a road or canal in 1830, when these two improvements were authorized, and she determined upon constructing a road and canal, had she not a right to say upon what terms she would authorize them to be constructed? Who can doubt that? She had the power to make either of these improvements, and nobody had a right to enforce as against her the execution of that power. It was a power confided to her own sole discretion, and, being in the full and unlimited possession of the power, she had a right to exert it just in the manner she thought proper; and if she, in her judgment, believed that she could make this road by means of this charter, and by force of all the provisions contained in the charter, including that provision which secures the company as against competition, who has a right to complain of it? Can the corporators complain after they have got the charter? I

suppose that question answers itself. And, if they cannot complain, who else can complain?

My friend from Michigan is a citizen of the United States, but also a citizen of Michigan. He wants to come to Washington. He gets to the eastern limit of New Jersey and insists upon the right to come through. When he gets there, there is no road to bring him through. What is he to do? File a bill in equity against the State of New Jersey to compel the specific performance of some duty which she owes to the United States, to compel New Jersey to make a road over which my friend from Michigan can travel to Washington or from Washington home? Certainly not. When he gets there, and there is no road, does he stand in a stronger relation to the government of New Jersey than every Jersey man stands in relation to that government? And, if no Jersey man could complain that New Jersey had not provided for a road through her limits, it would follow necessarily that my friend could not complain that she was without such a road and that he had to foot it the best way he could. How was it before the system of railroads was adopted? How were the turnpike roads made? Not by any act of Congress; not by any power supposed to be derived to the States by any act of Congress, but by virtue of a power antecedently existing in the States, not surrendered by the Constitution of the United States to the Government of the United States, and therefore remaining just as effective and operative as it would have been if the Constitution of the United States never had been adopted. Does anybody doubt that upon those turnpikes, such as were made in all the States of the Union before the railroad system was adopted, no man had a right to travel without paying toll? That question also, I presume, is too clear for debate.

Then, if you cannot travel upon a railroad or a turnpike without conforming to that provision to be found in the charter under which turnpikes or railroads are made that authorizes the companies to charge toll, either for the transportation of passengers or the transportation of merchandise, what right have you to complain—I mean legal right, constitutional right? You may think it unkind in New Jersey, a want of comity, the absence of an enlightened policy, that she will have her system of railroads such as it is now, but what right have you to complain that you are placed in the position of all the citizens of the State of New Jersey, and all the other citizens of the country at large?

Why, Mr. President, if you do not pass this bill, cannot

these companies surrender their charters to New Jersey tomorrow, and then can she not close the road permanently, and permanently close the canal? I suppose nobody doubts that, and if New Jersey could do both, or either, it is only because over the construction of a road or a canal the jurisdiction of a State is not concurrent with any jurisdiction possessed by the United States, but is exclusive of all power on the part of the United States.

There have been some doubts as to the extent of the provision of the Constitution of the United States which prohibits the States from passing only laws impairing the obligations of contracts. In the beginning of the Government it was supposed that it did not apply to anything assuming the form of a contract to which a State was a party, and therefore no legislation constituting a company, or making a grant of land, and entering into stipulations with the grantee on the part of the State, was by some supposed to be embraced by the prohibition against the States impairing the obligation of contracts. But in the case of the State of New Jersey *vs.* Wilson, reported in 7 Cranch, and recognized ever since by all subsequent cases, the Supreme Court decided that the contract made in that case was protected. What was that? It was a very strong case, and about which a good deal might have been said at the time, and a good deal was said. There were differences of opinion—not on the bench, for the court was unanimous, but at the bar—whether that contract, if it could be called a contract, was binding at all upon the State, on the ground that it was a contract which the State had no right to enter into. The State of New Jersey took possession of certain lands belonging to Indians within her limits, and agreed to purchase for them other lands, and agreed that the other lands which she was to purchase should not be subject to the taxing power of the State. The Indians sold those lands, and they came into the hands of the parties who were in possession of them, and who were parties to the case which I have just mentioned, and the question before the Supreme Court of the United States, on appeal from the courts of New Jersey, was whether it was competent for the State to surrender at all the taxing power; whether it was not simply void legislation, not because of any clause of the Constitution of the United States, but because of the nature of the power itself. It was imagined to be a power so necessary to State existence that a State could not deprive herself of it. The Supreme Court, however, decided that in that case the agreement was a contract, and therefore

protected by the constitutional inhibition upon the States interfering with contracts.

Now, Mr. President, if I am right so far, what does this bill do? It says, no matter what are the limitations to be found in any railroad charter, no matter what they are prohibited from doing, whether carrying all freight, all passengers, or any particular freight, or any particular class of passengers, they are to have that privilege by virtue of this act. Is not that altering the franchise—the contract with the State?

The act has even a greater power than authorizing the road to be made. It is denying to the State the right to make roads of this description as she thinks they ought to be made, because to admit that she has a right to impose limitations as between herself and the holders of the franchise, and to hold at the same time that it is within the power of Congress to free the holders of the franchise from the obligation of the franchise, is to tell New Jersey (to apply it to New Jersey): "Your authority to make railroads is to be exercised in subordination to our authority to extend the privileges and to do away with the conditions without which you never would have authorized the roads to have been made at all."

Under this bill they are authorized to receive, for the transportation over their road of what by it they are authorized to transport, compensation. What compensation? How is it to be regulated? What limitation is there upon it? The charter has no limitation, because (according to the assumption I have made, that this is to apply to a road which is not authorized to carry passengers and freight through) the charter does not authorize them to charge at all for carrying passengers and freight through. Then, if there is no authority in the charter to carry passengers and freight from one terminus to the other, there is no limitation in the charter upon the right to carry such passengers or freight, and, as you are about to authorize them to carry passengers and freight, and to receive compensation therefor, without limiting the compensation which they are to receive, you are about to give them the authority to charge just what they please.

It may be said that New Jersey has no right to say that a citizen from Michigan or from Massachusetts shall not come through her territory. It will be sufficient to argue that question when New Jersey says it. She has not said any such thing. She has not said that unless you go upon the Delaware and Raritan canal or upon the Camden and Amboy road you cannot go through her territory. Go upon the other road;

if she has turnpikes, resort to the turnpikes; if she has no turnpikes, travel what are called the country roads; if she has no country roads, walk through. New Jersey is bound, with a view almost to her own existence, certainly to the promotion of her own prosperity, to furnish the means by which travel into or through her territory from the other States may be made, but she is under no obligation to say that she will spend her money to give you a favorite mode of transportation except upon her own terms. She is under no obligation to make these roads at all.

If there was no obligation upon her to make this railroad, and nobody else but herself could make it or authorize it to be made, then she had a right to say upon what terms she would make it, and he who undertakes to make it, or does make it, under a charter which subjects him to certain conditions, does not act honestly, certainly does not act legally, unless he complies with the condition. If he abuses the power, transcends the authority conferred upon him by the franchise, the franchise will be taken from him; the road is no longer his, and vests in the sovereign.

But here you propose to step in and say to New Jersey, who alone could have made the road, to whose exclusive jurisdiction the subject itself is confided, because not delegated by the Constitution, "It is true you had a right to make the road; you have made it; it has been made under your authority; you never would have authorized it to be made except upon the conditions included within that authority, but Congress now says to you your limitations are wholly inoperative as against us; it is our right not to assist anything that you have done, not to complete your road, not to appropriate money for the purpose if money should be wanted, but to step in and annul the very conditions without which you never would have authorized the construction of the road."

I warn Senators that there is involved in this measure a principle which is destructive of the sovereignty of their own States. If you pass this measure, and it can stand judicial examination—I am sure it will not, at least I think so—you submit the authority of the States now supposed to be exclusive to the unlimited power of Congress.

Congress may do with any of your needs just what Congress may think fit to do, and in a controversy between any one State and all the other States in which the Representatives from the other States may be brought to believe that the interest of their particular constituencies will be promoted by

disregarding the limitations in the franchises under which the roads in the particular States have been made, they will be done away with, and then see how we shall stand with our people. We are sent here to take care, among others, of the rights of our States. Our oath to support the Constitution of the United States is not merely to execute all the powers which it confers, but to abstain from exerting any powers which it does not confer.

On February 14 Charles Sumner [Mass.] spoke in favor of the bill.

Mr. President, the question before us concerns the public convenience to a remarkable degree. But it concerns also the unity of this Republic. Look at it in its simplest form, and you will confess its importance. Look at it in its political aspect, and you will recognize how vital it is to the integrity of the Union itself. On one side we encounter a formidable railroad. Usurpation with all the pretensions of State rights, hardly less flagrant or pernicious than those which have ripened in bloody rebellion. On the other side are the simple and legitimate claims of the Union under the Constitution of the United States.

New Jersey lies on the great line of travel between the two capitals of the country, political and commercial. It cannot be avoided except by a circuitous journey. On this single line commerce, passengers, mails, troops—all must move. In the chain of communication by which capital is bound to capital—nay, more, by which the Union itself is bound together, there is no single link of equal importance. Strike it out, and where are you? Your capitals will be separated and the Union itself will be loosened.

New Jersey, in the exercise of pretended State rights, has undertaken to invest the Camden and Amboy Railroad Company with unprecedented prerogatives. These are the words of the legislature: "It shall not be lawful, at any time during the said railroad charter, to construct any other railroads in this State without the consent of the said companies, which shall be intended or used for the transportation of passengers or merchandise *between the cities of New York and Philadelphia*, or to compete in business with the railroad authorized by the act to which this supplement is relative." (New Jersey Session Laws for 1854, page 387.) Here, in barefaced terms, is the grant of a monopoly in all railroad transportation, whether of

commerce, passengers, mails, or troops, between *New York*, a city *outside* of New Jersey, and *Philadelphia*, another city *outside* of New Jersey. Or, looking at this grant of monopoly again, we shall find that, *while it leaves the local transportation of New Jersey untouched*, it undertakes to regulate and appropriate the transportation between two great cities outside of New Jersey, constituting, from geographical position, the gates through which the whole mighty movement, north and south, must pass.

If this monopoly is offensive on its face, it becomes still more offensive when we consider the motive in which it had its origin. By the confession of its supporters, it was granted in order to raise a revenue for the State out of men and business not of the State.

Here the speaker quoted statements of original officers of the road.

But the character of this usurpation becomes still more apparent in the conduct adopted toward another railroad in New Jersey. It appears that a succession of railroads has been constructed, under charters of this State, from Raritan bay, opposite New York, to Camden, opposite Philadelphia, constituting a continuous line, suitable for transportation, across New Jersey and between the two great cities of New York and Philadelphia. This continuous line is known as the Raritan and Delaware Bay Railroad. On the breaking out of the rebellion, when Washington was menaced by a wicked enemy, and the patriots of the land were aroused to sudden efforts, the Quartermaster-General of the United States directed the transportation of troops, horses, baggage, and munitions of war from New York to Philadelphia over this line. The other railroad, claiming a monopoly, filed a bill in equity, praying that the Raritan and Delaware Bay Railroad "be decreed to desist and refrain" from such transportation, and also praying "that an *account* may be taken to ascertain the amount of damages." The counsel of the monopoly openly insisted that, by this transportation, the State was "robbed of her ten cents a passenger," and then cried out, "I say it is no defence whatever if they have succeeded in obtaining an order of the Secretary of War, *when we call upon them to give us the money they made by it;* and that is one of our calls. They have no right to get an order to deprive the State of New Jersey of the right of transit duty, *which is*

her adopted policy." Such was the argument of Mr. Stockton, counsel for the monopoly, November 12, 1863. The *transit duty* is vindicated as the *adopted policy* of New Jersey. Surely, in the face of such pretensions, it was time that something should be done by Congress.

Such, sir, are the pretensions of New Jersey to interfere with commerce, passengers, mails, and troops *from other States*, on their way, it may be, to the national capital, even with necessary succors at a moment of national peril. Such pretensions, persistently maintained and vindicated, constitute a usurpation not only hostile to the public interests, but menacing to the Union itself. Here is no question of local taxation, or local immunities, under State laws, but an open assumption by a State to tax the commerce of the United States on its way from State to State.

From the nature of the case, and according to every rule of reason, there ought to be a remedy for such a grievance. No usurping monopoly ought to be allowed to establish itself in any State across the national highway, and, like a baron of the middle ages perched in his rocky fastness, levy tolls and tribute from all the wayfarers of business, pleasure, or duty. The nuisance should be abated. The usurpation should be overthrown. And happily the powers are ample under the Constitution of the United States.

Following unquestionable principles and authentic precedents, the committee have proposed a remedy which I now proceed to discuss.

The bill under consideration was originally introduced by me into the Senate. It was afterward adopted and passed by the other House as a substitute for a kindred bill which was pending there.

The entire and unimpeachable constitutionality of the present measure is apparent in certain familiar precepts of the Constitution, which were brought to view in the title and preamble of the bill as introduced by me, but which have been omitted in the bill now before us. The title of the bill as introduced by me was "to facilitate commercial, postal, and military communication among the several States." This title opens the whole constitutional question. This was followed by a preamble, as follows:

"Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several States, to establish post-roads, and to raise and support armies: Therefore, *Be it enacted.*"

In these few words three sources of power are clearly indicated, either of which is ample, but the three together constitute an overrunning fountain.

First. There is the power "to regulate commerce among the several States." Look at the Constitution and you will find these identical words. From the great sensitiveness of States this power has been always exercised by Congress with peculiar caution, but it still lives to be employed by an enfranchised government.

In asserting this power I follow not only the text of the Constitution, but also the authoritative decisions of the Supreme Court of the United States. Perhaps there is no question in our constitutional history which has been more clearly illustrated by our greatest authority, Chief Justice Marshall. In the well-known case where the State of New York had undertaken to grant an exclusive right to navigate the waters of New York by vessels propelled by steam, the illustrious Chief Justice, speaking for the court, declared the restriction to be illegal, because it interfered with commerce between the States precisely as is now done by New Jersey. In his opinion commerce was something more than traffic or the transportation of property. It was also "the commercial intercourse between nations and parts of nations in all its branches," and it embraced by necessary inference *all interstate communications* and the whole subject of intercourse between the people of the several States. It was declared that the power of Congress over the subject was not limited by State lines, but that it was coextensive with commerce itself according to the enlarged signification of the term. Here are the words of Chief Justice Marshall:

"But in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power if it could not pass these lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every State in the Union, and furnish the means for exercising this right. *If Congress has the power to regulate it, that power must be exercised wherever the subject exists.* If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State."—Gibbons *vs.* Ogden, 9 Wheaton, 196.

This important decision of the Supreme Court was before railroads. It grew out of an attempt to appropriate certain

navigable thoroughfares of the Union. But it is equally applicable to these other thoroughfares of the Union where the railroad is the substitute for water. It is according to the genius of jurisprudence that a rule once established governs all cases which come within the original reason on which it was founded. Therefore I conclude confidently that the power of Congress over internal commerce by railroad is identical with that over internal commerce by water. But this decision does not stand alone.

Mr. Justice Story, who was a member of the Supreme Court at this time, in a later decision thus explains the extent of this power:

"It does not stop at the mere boundary line of a State; nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. *It extends to such acts done on land as interfere with,* obstruct, or prevent *the free exercise of the power to regulate commerce* with foreign nations and *among the States.*" United States *vs.* Coombs, 12 Peters, 78.

From various cases illustrating this power I call attention to that known as the Passenger case, where the Supreme Court declared that the statutes of New York and Massachusetts imposing taxes upon alien passengers arriving at the ports of those States was in derogation of the Constitution. On this occasion Mr. Justice McLean said:

"Shall passengers, admitted by act of Congress without a tax be taxed by a State? The supposition of such a power in a State is utterly inconsistent with a commercial power either paramount or exclusive in Congress."

Mr. Justice Grier said with great point:

"To what purpose commit to Congress the power of regulating our intercourse with foreign nations and among the States, *if these regulations may be changed at the discretion of each State?*" . . . "It is, therefore, not left to the discretion of each State of the Union either to refuse a right of passage to persons or property or to exact a duty on permission to exercise it."—7 Howard, 464.

But this is the very thing that is now done by New Jersey, which "exacts a duty" from passengers across the State.

I call attention also to the case of the Wheeling bridge, where Congress, under peculiar circumstances, exercised this identical power. In this case the State of Pennsylvania claimed the power to limit and control the transit across the Ohio River

to the State of Ohio, and this power was affirmed by the Supreme Court so long as Congress refrained from legislation on the subject. But under the pressure of a public demand, and in the exercise of the very powers which are now invoked, Congress has declared the Wheeling bridge to be a lawful structure, anything in any State law to the contrary notwithstanding. The Supreme Court, after the passage of this act, denied a motion to punish the owners of the bridge for a contempt in rebuilding it, and affirmed that the act declaring the Wheeling bridge a lawful structure was within the legitimate exercise by Congress of its constitutional power to regulate commerce. (13 Howard, 528.)

Such are the precedents of courts and of statutes showing how completely this power belongs to Congress in the regulation of internal commerce. It would be superfluous to dwell on them. There they stand like so many granite columns, fit supports of that internal commerce which in itself is a chief support of the Union.

Secondly. There is also the power "to establish post-roads," which is equally explicit. Here, too, the words are plain, and they have received an authoritative exposition. It is with reference to these words that Mr. Justice Story remarks that "constitutions of government do not turn upon ingenious subtleties, but are adapted to the business and exigencies of human society, and the powers given are understood, in a large sense, in order to secure the public interests. Common sense becomes the guide and prevents men from dealing with mere logical abstractions." (Story, "Commentaries on Constitution," Vol. 2, sec. 1134.) The same learned authority, in considering these words of the Constitution, seems to have anticipated the very question now under consideration. Here is a passage which may fitly close the argument on this head:

"Let a case be taken *when State policy*"—

As, for instance, in New Jersey at this time—

"or State hostility shall lead the legislature to close up or discontinue a road, the nearest and the best between two great States, rivals, perhaps, for the trade and intercourse of a third State; shall it be said that Congress has no right to make or repair a road for keeping open for the mail the best means of communication between those States? May the National Government be compelled to take the most inconvenient and indirect routes for the mail? *In other words, have the States the power to say how, and upon what roads, the mails shall and shall not travel?.* If so, then, in relation to post roads, the States, and not the Union, are supreme."—Story, "Commentaries on the Constitution," Vol. 2, sec. 1144.

Thirdly. Then comes the power "to raise and support armies," an unquestionable power lodged in Congress. But this grant carries with it, of course, all incidental powers necessary to the execution of the principal power. It would be absurd to suppose that Congress could raise an army, but could not authorize the agencies required for its transportation from place to place. Congress has not been guilty of any such absurdity. Already it has by formal act proceeded "to authorize the President of the United States in certain cases to take possession of railroads and telegraphs, and for other purposes." (12 Statutes at Large, p. 334.) By this act the President is empowered "to take possession of any or all the railroad lines in the United States, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances," and it is declared that any such railroad "shall be considered as a post-road and a part of the military establishment of the United States." Here is the exercise of a broader power than any which is now proposed. The less must be contained in the greater.

Such is the argument in brief for the constitutionality of the present bill, whether it be regarded as a general measure applicable to all the railroads of the country, or only applicable to the railroads of New Jersey. The case is so plain and absolutely unassailable that I should leave it on this simple exhibition if the Senator from Maryland [Mr. Johnson], who always brings to these questions the authority of professional reputation, had not most zealously argued the other way. According to him, the bill is unconstitutional. Let me say, however, that the conclusion of the learned Senator is only slightly sustained by the reasons which he assigns. Indeed his whole elaborate argument, if brought to the touchstone, will be found inconclusive and unsatisfactory.

The Senator opened with the proposition that the internal commerce of a State is within the exclusive jurisdiction of the State, and from this he argued that the present bill is unconstitutional. But the Senator will allow me to say that his proposition is not sufficiently broad for his conclusion. The present bill does not touch the internal commerce of a State, except so far as this may be a link in the chain of "commerce among States," which is committed by the Constitution to the jurisdiction of Congress. Mark this distinction, I pray you, for it is essential to a right understanding of the case.

From this inapplicable proposition the Senator passed to another equally inapplicable. He asserted that the jurisdiction

of a State over all territory within its limits was exclusive, so that the United States cannot obtain jurisdiction over any portion thereof, except by assent of the State, and from this again he argued the unconstitutionality of the present bill. But this very illustration seems to have been anticipated by Mr. Justice Story in his learned commentaries, where he shows conclusively, first, that it is inapplicable, and, secondly, that so far as it is applicable, it is favorable to the power. Here are his words:

> "The clause respecting cessions of territory for the seat of Government, and for forts, arsenals, dock yards, &c., has nothing to do with the point. *But, if it had, it is favorable to the power.*" . . .
>
> "But surely it will not be pretended that Congress could not erect a fort or magazine in a place within a State unless the State should cede the territory. The only effect would be that the jurisdiction in such a case would not be exclusive. Suppose a State should prohibit a sale of any of the lands within its boundaries by its own citizens, for any public purposes indispensable for the Union, either military or civil, would not Congress possess a constitutional right to demand and appropriate land within the State for such purposes, making a just compensation? *Exclusive jurisdiction over a road is one thing; the right to make it is quite another.* A turnpike company may be authorized to make a road, and yet may have no jurisdiction, or at least no exclusive jurisdiction, over it."—2 Story on Constitution, Sec. 1146.

Had the distinguished commentator anticipated the argument of the Senator from Maryland, he could not have answered it more completely.

Passing from these constitutional generalities the Senator came at once to an assumption, which, if it were sustained, would limit essentially the power of Congress with regard to post-roads. According to him the words of the Constitution authorizing Congress "to establish post-roads," mean only that it shall designate roads already existing, and in support of this assumption he relied upon the message of Mr. Monroe in 1822, on the Cumberland road. The learned Senator adds that this is "the received opinion uniformly acted upon and since recognized as the correct opinion by the judiciary." Of course his testimony on this point is important, but it is overruled at once by the authority I have already cited, which says that "the power to establish post-offices and post-roads has never been understood to include no more than the power to *point out* and *designate* post-offices and post-roads." (Story's "Commentaries," Vol. 2, sec. 1136.) In the face of Mr. Justice Story's dissent, expressed in his authoritative commentaries, it is impossible to say that it is "the received opinion," as has been as-

serted by the Senator. But the learned commentator insists that "the Constitution itself uniformly uses the word *establish* in the general sense and never in this peculiar and narrow sense," and after enumerating various places where it occurs, says, "it is plain that to construe the word in any of these cases as equivalent to *designate* or *point out* would be absolutely absurd. The clear import of the word is to create and form and fix in a settled manner." "To establish post-offices and post-roads is to frame and pass laws, to erect, make, form, regulate, and preserve them. Whatever is necessary, whatever is appropriate to this purpose, is within the power." (*Ibid.*, sec. 1131.) I might quote other words from the same authority, but this is enough to vindicate the power which the Senator has denied.

But here it is my duty to remind the Senate that the argument of the Senator from Maryland on this head is not only false in its assumption, but that the assumption, even if correct, is entirely inapplicable on the present occasion. The bill now before the Senate does not undertake to create, but simply to *designate* or *point out*, certain roads. Therefore it does not fall under the objection which the Senator has adduced. Even by his own admission it is constitutional.

But the Senator, not content with an erroneous assumption concerning post-roads, which, even if correct, is entirely inapplicable, made another assumption concerning another clause of the Constitution which was equally erroneous and inapplicable. The Senator argued that the railroad charters in New Jersey were grants in the nature of a contract, and that they were protected by "the constitutional inhibition upon States interfering with contracts," and here he referred to several decisions of the Supreme Court of the United States. I do not trouble you with the decisions. It will be enough if I call attention to the precise text of the Constitution, which is: "*No State* shall pass any law impairing the obligation of contracts."

Look at these words, and it appears, in the first place, that this prohibition is addressed to the States and not to Congress, whose powers are not touched by it. Look still further at the railroad charters, and even admit that they were grants in the nature of a contract, but you cannot deny that the contract must be interpreted with reference to the Constitution of the United States. Learned judges have held that the law of the place where a contract is made not only regulates and governs it, *but constitutes a part of the contract itself.* (Sturgis *vs.* Crowninshield, 4 Wheat. 122.) But if the law constitutes a part of the contract, still more must the Constitution. Apply this

principle and the case is clear. Every railroad charter has been framed subject to the exercise of the acknowledged powers of Congress, all of which are implied in the grant as essential conditions, not less than if they were set forth expressly. The Supreme Court has decided that "all contracts are made subject to the right of *eminent domain*, so that they cannot be considered as violated by the exercise of this right." (The West River Bridge *vs.* Dix, 6 Howard, 507.) But the powers of Congress, invoked on the present occasion to regulate commerce among the several States, to establish post-roads, and to raise and equip armies, are in the nature of an *eminent domain*, to which all local charters are subject. Therefore, I repeat again, nothing is proposed "impairing the obligation of a contract," even if that well-known prohibition were applicable to Congress.

From these details of criticism the Senator jumped to a broader proposition. He asserted that the pending measure was destructive of the sovereignty of the States, and he even went so far as to say that it was the same as if you said that all State legislation is null and void. These, sir, were his exact words. How the Senator, even in any ardor of advocacy, could have ventured on this assumption it is difficult to comprehend. Here is a measure, which, as I have already demonstrated, is founded on three different texts of the Constitution, which is upheld by three unassailable supports, and which is in essential harmony with the Union itself, and yet we are told that it is destructive of the sovereignty of the States. Such an assumption seems uttered in the very wildness of unhesitating advocacy. If it is anything but a phrase, it must be condemned, not only as without foundation, but as hostile to the best interests of the country.

Sir, the pending measure is in no respect destructive of the sovereignty of the States, nor does it in any sense say that all State legislation is null and void. On the contrary, it simply asserts a plain and unquestionable power under the Constitution of the United States. If in any way it seems to touch what is invoked as State sovereignty, or to set aside any State legislation, it is only in pursuance of the Constitution. It is simply because the Constitution, and the laws made in pursuance thereof, are *the supreme law of the land.*

But the assumptions of the Senator bring me back to the vital principle with which I began. After exhibiting the public convenience involved in the present question, I said that it concerned still more the unity of the Republic. It is in short

that identical question, which has so often entered this Chamber, and which is now convulsing this land with bloody war. It is the question of the Union itself. In his ardor for that vampire monopoly, which, brooding over New Jersey, sucks the life-blood of the whole country, the Senator from Maryland sets up most dangerous pretensions in the name of State rights. Sir, the Senator flings into one scale the pretensions of State rights. Into the other scale I fling the Union itself.

Sir, the Senator from Maryland is a practiced lawyer, and he cannot have forgotten that Nathan Dane, whose name is an authority in our courts, tells us plainly that the terms "sovereign States," "State sovereignty," "State rights," and "rights of States" are not constitutional expressions. Others of equal weight in the early history of the country have said the same thing. Mr. Madison, in the convention which framed the Constitution, said, "Some contend that States are *sovereign*, when, in fact, they are only political societies. The States never possessed the essential right of sovereignty. These were always vested in Congress." Elbridge Gerry, of Massachusetts, in the same convention, said: "It appears to me that the States never were independent. They had only corporate rights." General Pinckney, of South Carolina, said: "I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty." ("Madison Papers," page 631.) Both Patrick Henry and George Mason, in the Virginia convention, opposed the Constitution on the very ground that it superseded State rights. But perhaps the true intention of the authors of the Constitution may be best found in the letter of General Washington, as President of the Convention, transmitting it to Congress. Here are his words:

"It is obviously impracticable *in the Federal Government of these States to secure all rights of independent sovereignty to each*, and yet provide for the safety of all. Individuals entering into society must give up a share of liberty to preserve the rest." . . . "In all our deliberations we kept steadily in view that which appears to us the greatest interest of every true American—THE CONSOLIDATION OF OUR UNION—in which are involved our prosperity, safety, perhaps our national existence.

"GEORGE WASHINGTON."

I content myself on this head when I find myself with the support of this great name.

By the adoption of the Constitution the people of the United States constituted themselves *a nation*, one and indivisible, with all the unity and power of a nation. They were no longer a

confederation, subject to the disturbing pretensions, prejudices, and whims of its component parts, but they became a body-politic, where every part was subordinate to the Constitution, as every part of the natural body is subordinate to the principle of life. The sovereignty then and there established was the sovereignty of the United States, where the States were only "parts of one stupendous whole." The powers then and there conferred upon the nation were supreme. And it is those very powers which I now invoke, in the name of the Union, and to the end that pretensions in the name of State rights may be overthrown.

I have already presented a picture of these intolerable pretensions. But they must be examined more minutely. They may be seen, *first*, in their character as a monopoly, and, *secondly*, in their character as a usurpation under the Constitution of the United States. I need not say that in each they are equally indefensible.

If you go back to the earliest days of English history, you will find that monopolies have from the beginning been odious, as contrary to the ancient and fundamental laws of the realm. A writer, who is often quoted in the courts, says: "Monopolies by common law are void as being against the freedom of trade and discouraging labor and industry, and putting it in the power of particular persons to set what prices they please on a commodity." (Hawkins's "Pleas of Crown," Vol. 1.) But, without claiming that the present monopoly is void at common law, it is enough to show its inconsistency with the Constitution. And here I borrow Mr. Webster's language in his famous argument against the monopoly of steam navigation granted by the State of New York, as follows:

"Now I think it very reasonable to say that *the Constitution never intended to leave with the States the power of granting monopolies* either of trade or of navigation; and, therefore, that, as to this, the commercial power is exclusively in Congress."

Then again he says:

"I insist that the nature of the case and of the power did imperatively require that such important authority as that of granting monopolies of trade and navigation *should not be considered as still retained by the States.*"

And then again he adduces an authority which ought to be conclusive on the present occasion. It is that of New Jersey at an earlier day:

"The New Jersey resolutions [on forming the Constitution of the United States] complain that the regulation of trade was within the power of the several States within their separate jurisdiction, to such a degree as to involve many difficulties and embarrassments; and they express an earnest opinion that *the sole and exclusive power of regulating trade ought to be with Congress.*"

And yet, in the face of these principles we have a gigantic monopoly organized by New Jersey, composed of several confederate corporations, whose capital massed together is said to amount to more than $27,537,977—a capital not much inferior to that of the United States Bank, which once seemed to hold "divided empire" with the National Government itself. And this transcendent monopoly, thus vast in resources, undertakes to levy a toll on the commerce, the passengers, the mails, and the troops of the Union in their transit between two great cities, both of which are outside of New Jersey. In its attitude and in its pretension the grasping monopoly is not unlike Apollyon in "Pilgrim's Progress."

New Jersey is the Valley of Humiliation through which all travelers north and south must pass, and the monopoly, like Apollyon, claims them all as "subjects," saying, "for all that country is mine, and I am the prince and god of it."

The enormity of this usurpation may be seen in its natural consequences. New Jersey claims the right to levy a tax for State revenue on passengers and freight in transit across her territory from State to State; in other words, to levy a tax on "commerce among the several States." *Of course, the right to tax is the right to prohibit.* The same power which can exact "ten cents from every passenger," according to the cry of the Camden and Amboy Railroad, by the voice of its counsel, may exact ten dollars or any other sum, and thus effectively close this great avenue of communication.

But if New Jersey can play successfully this game of taxation, and compel tribute from the domestic commerce of the Union as it traverses her territory on the way from State to State, then may every other State do likewise. Then if the Union should continue to exist, it would be only as a name. The national unity would be destroyed.

A profitable usurpation, like that of New Jersey, would be a tempting example to other States. Let this usurpation be sanctioned by Congress, and you hand over the domestic commerce of the Union to a succession of local imposts. Each State will be a tax gatherer at the expense of the Union. If there be any single fruit of our national unity, if there be any

single element of the Union, if there be any single triumph of the Constitution which may be placed above all others, it is the freedom of commerce among the States, under which that *free trade* which is the aspiration of philosophers is assured to all citizens of the Union, as they circulate through our whole broad country, without hindrance from any State. But this vital principle is now in jeopardy.

Do not forget that it is the tax imposed on commerce between New York and Philadelphia, two cities outside of the State of New Jersey, which I denounce. I have denounced it as hostile to the Union. I denounce it also as hostile to the spirit of the age, which is everywhere overturning the barriers of commerce. The robber castles, which once compelled the payment of toll on the Rhine, were long ago dismantled, and exist now only as monuments of picturesque beauty. Kindred pretensions in other places have been overthrown or trampled out. The duties levied by Denmark on all vessels passing through the Sound and the Belts; the duties levied by Hanover on the goods of all nations at Stade on the Elbe; the tolls exacted on the Danube in its protracted course; the tolls exacted by Holland on the busy waters of the Scheldt, and all transit imposts within the great Zoll-Verein of Germany, have all been abolished, and in this work of enfranchisement the Government of the United States led the way, insisting, in the words of President Pierce, in his annual message, "on the right of *free transit* into and from the Baltic." But the right of free transit across the States of the Union is now assailed. Strange that you should reach so far to secure *free transit* in the Baltic and should hesitate in its defence here at home!

Thank God! within the bounds of the Union, under the national Constitution, commerce is free. As the *open sea* is the highway of nations, so is this Union the highway of the States, with all their commerce, and no State can claim any exclusive property therein. The Union is a *mare librum* beyond the power of any State, and not a *mare clausum*, subject to as many tyrannies as there are States. And yet the State of New Jersey now asserts the power of closing a highway of the Union.

Such a pretension, so irrational and destructive, cannot be dealt with tenderly. Like the serpent, it must be bruised on the head. Nor can there be any delay. Every moment of life yielded to such a usurpation is like the concession once in an evil hour yielded to nullification, which was kindred in origin and character. The present pretension of New Jersey belongs

to the same school with that abhorred and blood-bespattered pretension of South Carolina.

There is a common bond among the sciences, among the virtues, among the vices, and so, also, among the monopolies. The monopoly which was founded on the hideous pretension of property in man obtained a responsive sympathy in that other monopoly which was founded on the greed of unjust taxation, and both were naturally upheld in the name of State rights. Both must be overthrown in the name of the Union. South Carolina must cease to be a slave State, and so must New Jersey. All hail to the genius of universal emancipation! All hail to the Union, triumphant over the rebellion, triumphant also over a usurpation which menaces the unity of the Republic!

JOHN P. HALE [N. H.].—The Senator from Massachusetts represents the Union and commerce and peace, and all the kindred arts as enlisted on one side, and monopoly on the other, and not content with the profundity of his own suggestions he goes to that old English classic, the "Pilgrim's Progress" to illustrate the Heavenly City and the City of Destruction. Which he would represent as the City of Destruction and which the Heavenly City I do not know, but I suppose, from their names, Philadelphia would represent the Heavenly City and New York must represent the other. [Laughter.]

Mr. President, like the Senator from Massachusetts, I could draw a picture, not so eloquent, but as truthful, representing the various interests that are contending here, and if I were to do so I might represent a railroad, a bad speculation, paying no dividends, nor even the interest on its bonds; its stock being worth nothing, I might represent such a railroad, by the magic influence of this act, short and simple as it is, raised to be one of the best stocks in the market. That, I think, would be as near the practical effect that would be brought about (not to say designed) by this bill as any which have been pictured by the Senator from Massachusetts. This would be the immediate and the tangible effect: the Raritan and Delaware Bay road, if that is the name of the corporation, would suddenly find themselves, from being below a fancy stock, raised to a considerable advance in the market, and, as one of the newspapers which advocate this bill says that there are at least twenty men in the Senate that make speeches for money, the wicked world outside perhaps would stop to inquire which side paid the most money.

Mr. President, let me say that I want to put down this rebellion; I want this Union to succeed, I trust, with an ardor

and a sincerity of conviction not second even to that which animates the Senator from Massachusetts, but when the war is over, as I believe it will be, when the rebellion is put down, as I have no doubt it will be, I want there to be something left of the Constitution for which we profess to be contending. I do not want to strike giant blows at the rebellion which, when they put that down, shall annihilate the Constitution and all State rights, so that everything shall be consolidated into one despotism. I undertake to say that the right of controlling the railroads within their own limits is one, notwithstanding everything that has been said about it and a great many decisions that have been had, that has been always maintained, preserved, and protected by the legislatures and by the courts of the several States, and by none more so than by the State of Massachusetts. If you pass this bill you strike a blow at the cherished policy of Massachusetts to-day as it exists upon her statute books and is enforced by her judiciary.

Massachusetts has not been alone in this policy. It is essential to every State that it should have the power to exercise this right. There is the great State of New York, what has been her action? She incorporated by a series of acts what is now known as the New York Central Railroad, leading from Albany to Buffalo, a distance of between three and four hundred miles. That road was prohibited from carrying certain articles of merchandise, I think wheat, one of the great necessaries of life—almost as necessary to life as paper [laughter], except upon condition that a certain toll was paid upon the wheat, and I think it was a toll equal to the amount of the whole freight received, to the Erie canal. That was the law of New York for a long time. It was a question of policy for the State of New York whether that prohibition should be continued or not, but I believe, in all the discussions that took place between the advocates of the prohibition and those who were for its repeal, it was never suggested that it was a thing with which Congress had any right to meddle, with which Congress could interfere, in regard to which Congress had any right to exercise any power, but left it for the State of New York to settle for herself, and to settle exclusively as a question affecting her own State policy.

Mr. President, it may well be asked, if this be a power residing in the general Government, why in the whole history of the States and the Union has it not been invoked before? During the whole history of this Camden and Amboy monopoly, why has not the power of Congress been invoked until this time?

Why was it not invoked in the State of Massachusetts? Why has it not been invoked in New York? Why was it not invoked somewhere else? Why, until the Raritan and Delaware Bay Railroad Company found that they had sunk thousands and hundreds of thousands in their road, and it was a losing concern, that they could not pay dividends on their stock or interest on their bonds, did not those patriotic gentlemen, governed by these public interests, these high motives, these great considerations relating to the Union, enlist the eloquence of my learned friend from Massachusetts to come in here with grandiloquent pæans in praise of the Union, and to excite public sentiments and public opinion in favor of the Union——

SENATOR SUMNER.—How have they "enlisted" me?

SENATOR HALE.—Why, Mr. President, in a hundred ways. They enlisted him by articles in the New York *Tribune* [laughter]; they enlisted him by various articles scattered all over the country; they enlisted him by all the ways and means by which men that have a selfish and a private object to effect appeal to great objects, high considerations, and moral sentiments, and thus operate upon the judgment and the sympathies of the generous, the impulsive, and the unreflecting. [Laughter.]

Despite the strenuous efforts of its advocates the bill was not brought to a vote. Senator Chandler was on his feet asking for the yeas and nays on the bill in the closing hour of the session when the Vice-President [Hannibal Hamlin] entered with the Vice-President-elect [Andrew Johnson] and all business was suspended to hear the inaugural address of the latter.

CHAPTER VII

GOVERNMENT RAILROADS

John Sherman [O.] Introduces in the Senate Bill to Charter Government Railroads from the Capital to Various Points—Debate: In Favor, Sen. Sherman; Opposed, William P. Whyte [Md.], James R. Doolittle [Wis.]; Bill Is Postponed—William H. Kelsey [N. Y.] Introduces Bill in the House of Representatives Authorizing the Construction of a Railroad between New York City and Washington, D. C., to be under Government Control—Debate: In Favor, Burton C. Cook [Ill.], Charles O'Neill [Pa.], Dennis McCarthy [N. Y.], Austin Blair [Mich.]; Opposed, Charles E. Phelps [Md.], William D. Kelley [Pa.]; Passed by House and Not Acted upon by Senate.

ON January 6, 1869, John Sherman [O.] introduced in the Senate a bill "to promote commerce among the States and to cheapen the transportation of the mails and military and naval stores," particularly by chartering three railroad companies respectively from Washington to New York, Pittsburgh, and Cincinnati.

GOVERNMENT RAILROADS

SENATE, JANUARY 6-23, 1869

Senator Sherman, in supporting his bill, discussed the public inconvenience resulting from the monopoly over interstate commerce exercised by railroads not under the control of Congress, instancing in particular the Baltimore and Ohio Railroad. Passengers on this were made to suffer unnecessary inconvenience.

The Baltimore and Ohio Railroad will not connect with the only road from Baltimore to the North. It will not transfer baggage or sell tickets over or to that route. The time tables are arranged to create delay in Baltimore; a rough omnibus or carriage ride across the city one mile, with a scramble for

baggage at either end of the transit, are unreasonable, inconvenient, and expensive, but they must be endured. The tracks of the two roads actually meet and connect, but the transfer is not made at the point of connection, and there can be no reason for this except the hostility of rival companies—the desire to force the Western travel over the main line of the Baltimore and Ohio Railroad, and the fact that passengers are utterly helpless to correct the evil. Tens of thousands of passengers have passed through this experience; many ladies and sick persons have suffered severely. In cold and heat, by day and by night, this antiquated system of transfer goes on. It is estimated that the delay and expense of this transit through Baltimore have already exceeded the cost of a new line from Baltimore to Washington. If this inconvenience could fall upon the citizens of Maryland, it would not have been endured, for they could correct it, but all the passengers compelled to undergo this transit are traveling beyond the limits of Maryland, and thus have no remedy unless Congress can give them one. It has been complained of here and everywhere, but the only reply is that it is not the policy of the Baltimore and Ohio Railroad to make this connection. Recently, it is said, efforts have been made to reconcile the petty rivalries and jealousies of these roads, but it is not done, and will not be done until competition compels them to regard the convenience and comfort of their passengers.

The Government as well as the general public had a right to complain.

A President of the United States [Lincoln], to the lasting disgrace of the nation, was compelled, by an organized plot of assassination, to steal through Baltimore at night in disguise. Soldiers duly summoned to the defence of the capital were murdered in the streets of Baltimore. For weeks the railroads in and near Baltimore were in the possession of an armed force in hostility to the United States, and the rolling stock and property of the only railroad to Washington were in the use of the public enemy. At the same time their use was denied to the Government of the United States. Recently an armed mob in the streets of Baltimore took possession of a train of cars and insulted passengers for political opinions. None of these outrages could have occurred if there were free competing railroad lines through and around Baltimore.

Full charges for freight were exacted from the United States

without abatement during the war, while all other roads lowered their rates to the Government, and on United States troops the charge was one dollar to one dollar and ten cents.

At the very time the United States was defending Maryland from invasion by the rebels she charged the United States a tax of thirty cents on each soldier who traveled over this road to her protection. The amount thus collected from the United States far exceeded the entire cost of building and running a new road to Baltimore.

It is thus apparent that the railroad transit to Washington is neither direct, convenient, nor cheap, and that from the nature of the existing monopoly no remedy can be expected from the State of Maryland. That State commands every avenue of approach to Washington. It ceded to the United States this District as a national capital. This fact at common law implies a reasonable right of way over her remaining territory to the ceded territory. This is not granted. She obstructs free communication between the capital and the great body of the people. The inevitable tendency of this policy is to unsettle the continuance of the capital at this place. It is now far from the center of population, but its fine location on the Potomac, central between the North and South, the historical associations connecting it with General Washington, and the great expenditure incurred for public buildings will secure the permanence of this location if direct, convenient, and cheap communication may be had to it from all parts of the country. One chief reason urged for this location was its easy access to the West by the old route of the Potomac and Monongahela and Ohio Rivers. This is the great national route to the West—the route of the Indian trails—of the pioneers of Ohio and Kentucky, of Washington as a surveyor and soldier, and apparent on the map as the nearest and easiest connection between the waters of the Atlantic and the waters of the upper Mississippi basin.

When the Baltimore and Ohio Railroad was built the interests of Baltimore and the legislature of Maryland diverted this route from its natural course along the Potomac to Harper's Ferry eastward over a difficult country to Baltimore, while westward from Cumberland the local interests of Philadelphia and Pennsylvania prevented its construction to Pittsburg and forced it over dangerous and difficult mountains to Wheeling. The same adverse local interests have been strong enough thus far to prevent this national route from being occupied. And thus the chief reason for locating the capital of the nation here has been counteracted, so that now this city is more difficult

of access from the West than any city on the seaboard. If this anomaly is continued it will be impossible to resist the removal of the capital to a more central location, free from the danger of foreign and domestic violence, and where the policy of the neighboring States invites the freest and fullest competition in modes and routes of transit of persons and property.

The only remedy for all these complaints is free competition in the building and running of railroads to and from Washington. Where this is allowed no legislative restraints or regulations are required. Railroads are vast agencies of commerce vitally necessary to modern civilization, and it is as wrong by law to limit the number of them as to limit by law the number of steamboats, cotton mills, or blacksmith shops.

Free competition in railroads is necessary in another view. The tendency of the age is to the combination of railroads—the union of connecting and competing lines with a view to prevent the reduction of fares. This process has, within a few years, by leases, by divisions of profits, and by running arrangements, united in a single interest, under a common control, over one thousand miles of railroad, reaching through many States. The only way to avoid injury from this combination of capital is to invite new competing lines. The liberty to build these is the only check upon monopolies. But for this, existing railroads would form combinations precisely as they would be formed by merchants and manufacturers if the freedom of new competition did not compel them to gain their business and profit by the cheapness of their commodities and the excellence of their productions, rather than by special privileges.

A greater danger presents itself than mere combinations to regulate freight. It is the combination of great corporations to control Congress. A very marked example of this is presented by the effort of great corporations to oppose this bill. I will ask the secretary to read a circular letter recently published, signed by eight railroad presidents.

The secretary read as follows:

PHILADELPHIA, *December* 26, 1868.

SIR: Two bills are now pending before the Senate of the United States, each of which incorporates several companies, and authorizes them to build railroads, seven in all, radiating from Washington and extending over seven or eight different States. These bills confer very great powers and impose few restrictions. For example, one of them authorizes the construction of a road to any point on any railroad in Virginia.

It is well understood that this is but an entering wedge to a system of railroad legislation by Congress, intended to extend over every part of the country.

Believing that such congressional legislation will be destructive of existing railroad interests, promote wild and dishonest speculation, and be highly demoralizing in its influence, we call your especial and immediate attention to it.

Many of the corporators named in these bills—some of them officers of existing railroads—have never been consulted. This has given the impression that influential men and companies favor this legislation who in fact are strongly opposed to it.

Under the impression that no such bill can pass, railroad companies generally have not opposed the measure. Prominent Senators, however, say that the danger is great and imminent, and that it calls for immediate and vigorous exertions on the part of existing railroad officers to avert it.

Should this matter appear to you as it does to us, we suggest that you use your influence with your friends in Congress, especially in the Senate, to defeat all such measures.

SENATOR SHERMAN.—I know the gentlemen whose names appear attached to this paper. They are among the ablest railroad managers in the United States. But, sir, if they make combinations of capital to prevent competition they must expect new competitors. They control powerful corporations, but these corporations are subject to law. They have no exclusive powers, and let me say to them, in all kindness, that this effort of theirs is ill-advised, and if persevered in will result in political combinations, both in the States and in Congress, that will override at once their efforts to prevent new railroads, new combinations, and improved facilities.

Experience has shown that free competition is not only beneficial to the public, but is not injurious to the railroads. A new railroad develops its own business; the reduction of prices caused by competition increases the amount of business, and often increases the net earnings of a road. Competition promotes economy in railroad management. It destroys corruption, which is usually an instrument of monopoly. In every aspect, and to every interest, a free competition in railroads is beneficial; it develops local resources, it increases subordinate industries, it cheapens the cost of living, while monopoly in railroads has the opposite tendency, and creates a feeling of dissatisfaction, which, in the end, without regard to legal enactments, will overthrow it.

I have thus far considered the question as a local one, affecting alone the citizens of Washington, or those coming to or going from Washington. There is another view far more important. The right of a State to obstruct commerce and com-

munication between the States by imposing taxes on commerce, or by granting special privileges and monopolies, has often been denied in Congress and by the courts, and presents a question of infinitely greater proportions than the dwarfing of Washington or the cost and inconvenience of persons traveling to Washington. It is the same question which mainly led to the adoption of the Constitution, to the formation of the Zollverein of Germany, and to the formation of the present empires of France and Great Britain. It is the struggle between local restrictions and the liberty of commerce. The effort to harmonize these was attempted by the Constitution of the United States. Local government for local purposes is the primary object of cities, counties, and States; general government for general objects affecting the people of the nation was the object of the national Government.

The precise boundary between these must always be the subject of dispute, and this must especially occur where a specific power is given to both the States and the United States. The power over commerce is of this character: Congress has power "to regulate commerce with foreign nations and among the several States and with the Indian tribes." Here the power of Congress is limited only by the nature of the commerce. The power over local commerce between the citizens of a State is left exclusively to the States, but commerce among the States is to be regulated by Congress. Railroads are the agents both of local commerce and commerce among the several States. This creates the difficulty of defining the limits of the power of Congress and the States. Navigable streams, even if within the limits of a State, have been repeatedly held to be subject to the regulation of Congress. States create railroads for local commerce. May not Congress create railroads for commerce among the States? States prescribe fares and freights for local commerce. May not Congress do the same for commerce among the States? This brings us to the general constitutional question involved in this and all the bills referred to the select committee: does the Constitution confer upon Congress the power by general regulations or by new corporations to control and build railroads?

The general design of the Constitution was to secure to Congress all legislative power affecting the interests of more than one State and essential to the general welfare. Thus questions of peace or war, of armies and navies, of foreign intercourse, of commerce with foreign nations and among the several States, are carefully reserved for the consideration of Congress.

It may sometimes be difficult to draw the line between local commerce within the State and general commerce between the States, but there can be no difficulty in classifying the vast operations of modern railroads, telegraph, and transportation companies, reaching from State to State, as commerce among the States. Commerce between New York and Chicago, traversing several States, cannot be classed as local interstate commerce, nor is it made so by being carried on by different agents of the several States. Though chartered by different States, if they form a connecting line for a single voyage they are agents of a commerce between States, and are subject to the regulation of Congress. If, by the policy of their State or by local interests, they fail to conduct this commerce between States in a convenient, cheap, and expeditious manner, they may be superseded by other agencies created by Congress. The power to regulate includes the power to enforce regulations. The law of a State cannot obstruct or oppose this power. Nor can its agents, under shelter of the authority of the State, impede, retard, or delay commerce among the States.

Internal commerce is the life-blood of a nation, as essential to national existence as an army or navy, more essential than separate departments of the Government or the careful division of political power. As an object of government internal commerce is secondary only to the preservation of life and property. This principle was recognized by the framers of the Constitution. They could not foresee the new modes of transit devised in recent times, but they declared the power of the nation, not only over external, but internal commerce, when between States. When the canoe, the scow, the keel-boat, and the raft were the agents of commerce on navigable rivers they secured the power of Congress over them. When the sailing vessels owned by private merchants and engaged in free competition on the ocean and lakes were the agents of commerce, jurisdiction over them, the power to regulate them, was carefully reserved to Congress. The control over commerce, the duties levied upon commerce, the necessity for uniform commercial regulations, were leading inducements for the formation of the National Government, and these powers were clearly and fully given to the new Government. If the framers of the Constitution could have foreseen the forty thousand miles of railroads and the steamships, telegraphs, express, and transportation companies that now are the agents of commerce, overlapping State lines and extending their operations to the remotest hamlets of the country, they could not have adopted language more clearly

conferring upon Congress the power over all these agencies than the language of the Constitution.

Reasoning thus from the nature and character of our Government and the language of the Constitution, I cannot doubt the full power of Congress, not only to regulate the commerce among the States conducted by existing railroads, but when it deems it expedient to build new railroads, either directly by the money of the people or by corporations created by it, and this view is strengthened by the history of the Constitution.

The power of the United States to build works of internal improvement within the States has been settled by a series of precedents stretching through our entire legislative history and sanctioned by every department of the Government. The public records show that the policy in some form or other has been coeval with the existence of the Government, and the rapid progress of the nation is evidence of the wisdom of the policy. Vetoes have sometimes limited the general power for a time, but these are exceptions to the general rule. Rivers and harbors have been improved; canals have been made; turnpikes and railroads have been constructed; private property has been appropriated for public use, and almost every form of commercial improvement has been authorized and constructed by the authority of the general Government.

A long list of these appropriations is contained in Professor Baché's report to Congress some years ago, and in Wheeler's History of Congress. From these it appears that appropriations for internal improvement have been made during every Administration, for a great variety of improvement, and varying in character as commercial agencies advanced from turnpikes to canals, steamboats, and railroads.

The Cumberland road was commenced in the time of Mr. Jefferson. In the Administration of Mr. Monroe the system of internal improvements was revived. The instructive debates in the Senate in 1824 and 1830 exhausted the constitutional argument. Mr. Webster, in his second reply to Mr. Hayne, proved conclusively that Mr. Calhoun, the champion of the most limited authority of Congress, had repeatedly conceded and voted for the unlimited authority of Congress over public improvements, with or without the consent of the States. And, sir, when we reflect upon the march of events, upon the debates and acts of this Senate during the last eight years, it seems idle to pause over the exercise of a power to build a national railroad to the capital of the nation when its necessity is so clearly demanded for the public good, and when it is only

resisted by the interest of private corporations demanding a monopoly in the name of State rights.

If Senators desire to follow the constitutional argument further, they will find in the memorial to Congress of the Chicago internal improvement convention of 1848, the authorship of which is attributed to John C. Spencer, of New York, an argument that, to my mind, is conclusive upon every objection made to the power of Congress by the several veto messages of Presidents Polk and Tyler. This argument is on the record of Congress, and deserves a place among the ablest State papers of this century. I can add nothing to it.

A claim is sometimes made that, though the power of Congress to build railroads is settled by legislative precedents, yet Congress cannot condemn land for that purpose without the assent of the State. This claim is certainly untenable. The general power includes all the necessary and proper means to carry it into execution. This cannot be done without appropriating land.

The authority of Congress to build roads, canals, and all forms of internal improvement has been sustained by the Supreme Court whenever questioned before that tribunal. Though the direct question whether Congress may, in disregard of a State law, build a railroad within a State has never been presented, yet the tenor of the decisions of that court has always upheld the power of Congress to adopt its own agencies in the execution of its delegated powers and to disregard any obstructions set up by a State. The United States Bank cases and the Wheeling bridge case sustain all that is attempted by this bill. Whether the bank was an agency proper and necessary for the execution of any of the express powers of Congress was a question of doubt, but no man will question but that a railroad between Washington and New York is an agent of commerce between States, essentially and vitally necessary for the postal, military, and commercial service of the United States, and to hold that no such agent shall exist except it be created by a State, controlled by a State, regulated by a State, made a monopoly by a State, and beyond the power of Congress, is to destroy the essential qualities of a supreme National Government. It is secession intensified, for if a State seceded it lost the benefit of the protection of the general Government, but a State that can grapple and control for her own interests merely all communication over her territory could enjoy all the benefits of union and yet inflict upon her sister States all the injuries of separate governments. The case of

New Jersey is a marked and, fortunately for the country, an isolated example of this policy.[1] Now, therefore, is the proper time to assert the authority of Congress to regulate commerce among the States by authorizing new lines of transit; by encouraging competition, improvement, and enterprise; by making the construction of railroads as free as the construction of merchant vessels and blacksmith shops, and by guarding by general laws the lives and safety of passengers on railroads as well as steamboats. We have already by a general telegraph law greatly increased the competition in that agency of commerce. We have often exercised our power to regulate commercial vessels, both on the sea and on the rivers. The iron track is now the great commercial road of mankind. Over it the commerce of men is now greater than by all kinds of navigable water. The locomotive is either superseding or revolutionizing the canal boat, the sailing vessel, and the steamboat. It is creeping up every valley and overleaping every mountain of our vast country. It is everywhere the agent of commerce and civilization. It has added more to the wealth of our country than all the land and houses and possessions were worth forty years ago. If the railroad and telegraph are not national, then nothing is national. If railroads can be built only by a State, regulated by a State, monopolized by a State; if a State can prevent their construction to promote some local interest or monopoly, then our Government is not national.

The fear of Jonathan Dayton, of New Jersey, expressed in the Constitutional Convention of 1787, has come true. A State, under pretence of State law, taxes other States.

It is one of the great beauties of our Constitution, framed by men of rare wisdom, that though man may invent and magnify; though the habits and agencies of their day are swept away by the inventive genius of their children; though our population has increased twelvefold, and our country extends across the continent, yet that the general principles and powers they have ingrafted in the Constitution, like the teachings of the Bible, meet all changes, all time, all diversities of condition, wealth, and population, and, applied with a liberal and fair construction, regulate agencies and things of which they had no conception, in harmony with their central idea of a local government for local purposes merely, affecting only the people of the State; a national government for general purposes, affecting the people of different States. I believe, sir, that in authorizing the construction of these railroads we exer-

[1] See preceding chapter.

cise no doubtful power, while if our legislation is followed, as I hope it will be, by their speedy construction, we will have contributed not only to the local interests of this District, but to the common good and general welfare of the whole people of the United States.

On January 20 William P. Whyte [Md.] opposed the bill.

I hardly think it can be seriously contended that any power in Congress to build roads is to be found expressed in any of the grants of the Constitution, and, if there is no such power in the creator, surely none can be claimed for the creature. The power, therefore, not being expressed, but in fact denied by the framers of the Constitution, the advocates of this bill claim that it is incident to an expressed power. Such a proposition is not new. As early as the time of Mr. Monroe the same claim was set up. In his veto of the bill to extend the Cumberland road he denied the proposition.

This bill, as its title declares, is to "promote commerce" among the States, and the authority of Congress to pass such a measure is asserted to be incidental to the power "to regulate commerce." Says Mr. Madison:

> "A power to be incidental must be exercised for ends which make it a principal or substantive power, independent of the principal power to which it is an incident."

It is not enough that it is regarded by Congress as convenient, or that its exercise would advance the public weal. It must be necessary and proper to the execution of the principal expressed power to which it is an incident, and without which such principal power cannot be carried into effect. "To regulate commerce among the States" gives no warrant to take from a State its right of eminent domain over the soil within its territorial jurisdiction. "To regulate commerce" is not to carry it on. In Gibbons *vs.* Ogden (9 Wheaton, 196), the Supreme Court said "to regulate is to prescribe the rule by which commerce is to be governed." It never meant to make bridges, construct roads, canals, or streets, but it could prescribe the rule by which commerce was to be conducted over them "among the States." The distinction is too clear to need further argument. In the Wheeling bridge case, to which my friend, the Senator from Ohio, casually referred, in which the majority of the court only decided that the power to regulate commerce

included the power to determine what shall and what shall not be deemed an obstruction of navigation, Mr. Justice John McLean, in his opinion, dissenting from some of the rulings of the court, said:

> "If under the commercial power Congress may make bridges over navigable waters it would be difficult to find any limitation of such a power. Turnpike roads, railroads, and canals might on the same principle be built by Congress. And if this be a constitutional power it cannot be restricted or interfered with by any State regulation.
>
> "So extravagant and absorbing a Federal power as this has rarely, if ever, been claimed by any one. It would in a great degree supersede the State governments by the tremendous authority and patronage it would exercise. But if the power be found in the Constitution no principle is perceived by which it can be practically restricted.
>
> "This dilemma leads us to the conclusion that it is not a constitutional power."

I turn from these authorities and these executive expositions of this power in Congress to find some case, or some dictum even, from those high judicial officers who have thrown light upon the jurisprudence of our country, laying down a doctrine in opposition to this, but I look in vain. Not a single case can be found maintaining the power of Congress to construct a railroad in a State without its concurrence, either expressed or implied. If the Senator from Ohio could have laid his hand upon one he would not have allowed the opportunity to have passed. Without the multiplication of words, for I do not wish to trespass unnecessarily upon the time of the Senate, I affirm that no such power exists in Congress under the Constitution.

But should such power exist in Congress as claimed in this bill I should still protest against its passage upon the ground of its injurious effect upon the country. Every man knows the corrupting influences which surround legislative bodies in the interest of corporations and charter seekers, the former striving for ampler powers and privileges and greater immunities from their common law liabilities, and the latter seeking to obtain charters, to be bought up by rival and existing companies. Once establish Congress as a corporation manufacturer and you will transfer to the rotunda of the Capitol the lobbies of thirty-four States. The third house will outnumber both Houses of Congress put together.

Thousands of miles of railways, intersecting the country at all points, and woven over it like a spider's web, costing millions of money, have been built by private enterprise under State charters and fostered by State legislation. The vast capital

so expended has, in a great measure, come from foreign lands, and after lying idle for years is now beginning to yield revenues to the holders of these investments. Let it be understood that after a private company, incorporated by a State, has raised capital from Europe and opened up new territory, and brought to the farmer a market for his grain, and is about to realize the profit of its enterprise, Congress shall intervene and grant charters for parallel roads, without responsibility to the States, and you paralyze the whole railroad energy of this country. No more foreign capital will seek investment in railroad securities here. Under the present system, wherever railroads have been needed, charters for them have always been granted by the States, as far as my experience goes, with a single exception. I concur with the Senator from Ohio in his advocacy of competing lines. Competition in railways, as in everything else, ought to be encouraged. Wherever capital and enterprise are willing to open the country every legislative facility ought to be granted. No monopolies ought to be permitted, whether in railways or copper mines or any other branch of industry. They are odious to republicans, and are calculated to build up the meanest of all aristocracies—the aristocracy of money.

But, Mr. President, I contend that there is no necessity for any such new roads, as proposed by this bill. The State of Maryland has been foremost in the promotion of works of improvement. At the previous session its legislature refused to make any change in the charter of the Baltimore and Potomac Railroad which should prevent a direct connection over its line between Baltimore and Washington.

That she may have erred in some of her legislation I do not pretend to deny, but her good far outweighs her evil. The capitation tax on the Washington branch of the Baltimore and Ohio Railroad is, in my judgment, whether constitutional or not, unfounded in justice or in policy. It exacts as well from her own citizens as from strangers an unnecessary and burdensome toll. It ought to be, and I trust will be, repealed by the legislature at its next session, for I do not think it has now the popular sanction.

Another cause of complaint stated by the Senator who reported this bill is the failure in close connections between the Baltimore and Ohio Railroad and the road running northward to Harrisburg. It is a serious inconvenience, and ought to have a remedy, and if any constitutional mode can be suggested for the benefit of the traveler I shall be most ready to support it. I appeal to Senators, to their candor and to their justice—

Maryland having broken all the bonds of the past, if there were bonds in the past; Maryland having opened wide its doors for capital and for enterprise to build these new roads—whether now the power of Congress shall be extended over that State to destroy all the capital and all the interests created there of which I have spoken, and to build up a monopoly in railroads between this capital and the city of New York and the other points named in the bill?

On January 22 James R. Doolittle [Wis.] opposed the bill in an extended speech of which the conclusion was as follows:

It is upon these grounds, Mr. President, first, that by the Constitution Congress has no power to grant an incorporation for any such purpose; that such power is neither expressly given nor can fairly be implied from the powers which are granted; second, because Congress has no power without the consent of the State legislature to assert the right of eminent domain, and thus far to oust the jurisdiction of the State over its property, its own soil; and, third, because Congress has no power to withdraw valuable and important property interests belonging to the State from State taxation, that I am opposed to the passage of this bill. I believe in the truth of what Justice McLean said, that the exercise by Congress of these tremendous powers will, if once entered upon, revolutionize the Government. If Congress once begin, of necessity all railway corporations will seek to be chartered by national authority. I believe if Congress shall bring to itself here, and under its control, all the railway corporations of the United States, it will in the end subject the control of this Government to an aristocracy of concentrated wealth, not an aristocracy of men, which may have some redeeming qualities, but an aristocracy of mammoth corporations, which, as has been said in strong Anglo-Saxon, have neither "bodies to be kicked nor souls to be damned." In the hands of these great mammoth railway corporations, representing thousands of millions, congresses and presidents will be but playthings.

Mr. President, I have observed the fact—it may be entirely by accident, I hope it is—that under the new *régime* every statue has been removed from the rotunda of the Capitol except that of Alexander Hamilton. Is he to be the presiding genius of the coming future? Having always represented in his life the Federal tendency to bring consolidated power to

this Government, he may represent the future just before us, and which is soon to come, and which if you pass this bill has already come. The power of the States over their own railways, their own means of communication, their own institutions, even over their suffrage, is to be subjected to the power of this Government. If this measure shall pass and be acquiesced in by the people every railway corporation will desire its charter under this Government. They will seek a national charter. They will seek national authority for all their acts independent of State control. The time would not be far distant before they would seek to relieve themselves from State taxation in whole or in part. They will be here in immense force, the representatives not only of hundreds of millions, but of thousands of millions of dollars, concentrated and controlled by directors who meet in secret and control all their gigantic operations. When the time comes that all this concentrated power is here, I tell you, Mr. President, and I tell you, my brother Senators, the days of this Republic under the Constitution of the United States as our fathers made it, as our fathers understood it, are already numbered. The plea for a strong government will be set up by these moneyed monopolies, and they will not plead in vain. Capital seeks strong governments. Capital seeks to concentrate itself; and concentrated capital, wherever it exists and in whatever form, has a tendency to concentrated despotism. If we would not see the just powers of the States destroyed, if we would not have them broken down and an imperialism established here at Washington, an imperialism not represented by monarch or potentate or aristocracy of birth, but represented by an aristocracy of concentrated wealth held by railway and banking corporations, we must resist the passage of this bill.

The bill was postponed on January 23 by a vote of 33 yeas to 16 nays.

Government Railroads

House of Representatives, February 3-12, 1869

On February 3, 1869, a bill proposed by William H. Kelsey [N. Y.] authorizing the construction of a military and postal railway from Washington, D. C., to New

York City was reported in the House from the Committee on Roads and Canals by Burton C. Cook [Ill.], its chairman.

Mr. Cook announced the cause of the introduction of the bill to be the "holding up" of the Government by the existing railroad (the Baltimore and Ohio joined to the Camden and Amboy) in mail contracts, and assaults committed upon passengers over the line because of political opinions. The bill proposed to incorporate a company of capitalists under control of the Government, especially in relation to transportation of mails and troops, and limitation of fares and freight charges.

The power to charter such a railroad Mr. Cook derived from the constitutional power of Congress to regulate interstate commerce. He cited the case of Cooley *vs.* The Board of Wardens, 12 Howard, 316, as deciding that the means used to transport merchandise from one State to another are the "instruments of commerce," and the case of Gibbons *vs.* Ogden, 9 Wheaton, 191, as deciding that "wherever commerce among the States goes the power of the nation goes with it to protect and enforce its rights."

But it is insisted that Congress has no power to authorize the construction of a railroad, even if it has the power of regulating commerce over those already existing and extending from State to State.

I do not see how any distinction can be made between the power to widen and deepen a river so that the commerce of the country can be carried on by an avenue through which it could not pass before and constructing a railroad for the same purpose. The end sought in either case is the same, and the exercise of power is the same. If Congress may deepen Lake St. Clair, it may construct a railroad around it if the interests of commerce would be better served thereby. And it is too late now to question the power of Congress to create avenues of commerce which did not before exist by the improvement of those great rivers which, reaching from State to State, may be made instruments of commerce among the States.

It is argued with great earnestness that Congress has no right to create a corporation in a State. I grant that this is so, except in cases where the creation of such a corporation is a

necessary, or at least a proper, means of carrying into effect some one of the powers expressly granted to Congress by the Constitution. If the power to regulate commerce among the several States be one of these powers, if that commerce must be to a very great extent carried on over railroads, to deny to Congress the right, under proper restrictions and limitations, for the benefit of commerce, to create a corporation for the purpose of making that commerce free from the imposts and heavy charges imposed either by individual States or by corporations created by such States would be to construe the Constitution as if it read thus: "Congress shall have the power to regulate commerce among the several States, subject, however, to the control of each individual State at its pleasure." This is not a case of first impression. The precise point was argued by very eminent counsel and decided by the Supreme Court of the United States in the case of Osborn *vs.* United States Bank, 9 Wheaton, 860, Chief Justice Marshall delivering the opinion of the court, and deciding that Congress has the power to create a corporation in any case where it is a proper instrument to carry into effect any power vested in the Government of the United States. Whether the bank was a necessary agency in carrying out any of the express powers conferred by the Constitution upon Congress may be a matter of argument, but no one can doubt that a railroad between Washington and New York is an agency necessary for the postal, military, and commercial service of the United States.

But it is insisted that Congress has not the right to authorize the taking the land of individuals within the several States. The right of eminent domain existing in the States is qualified by whatever right the Constitution has vested in the United States. The question is: Is it necessary or proper, for the proper regulation of commerce among the several States, that a railroad should be constructed between two or more States? If it is, Congress has clearly the power to authorize its construction, and it is believed to be precisely the same exercise of power as would be the improvement by Congress of the navigation of a river running through several States. In both instances it would be the creation of a means of transportation of commerce not before existing, and would require in each case the appropriation of some soil of the State; and yet the power to improve the navigation of the rivers extending from one State to another has long been exercised, and is believed to be unquestionable. The right to authorize the building of bridges across the navigable waters of the country has been repeatedly exer-

cised by Congress, and the exercise of such right repeatedly sustained by the Supreme Court.

It is urged that Congress can pass no law whereby the title to the soil can be divested from the owner and vested in the corporation, and that the power of the Government, uninterruptedly exercised from the beginning, to erect lighthouses, forts, arsenals, and dockyards is derived, not from their authority to regulate commerce, but from the following clause in the Constitution [Art. I, sec. 8, par. 17].

And, contending that the consent of the State was by this clause required to the erection of lighthouses, dockyards, and other needful buildings, it is argued that this is inconsistent with the idea that Congress possessed the power under other grants of the Constitution. The mistake in this argument is evident in not adverting to the real object of the clause in question, which is not to enable the United States to hold lands in the States, but simply to give Congress exclusive jurisdiction over such places as should be purchased with the consent of the States.

The Supreme Court have decided (3 Wheaton, 388) that Congress may purchase land for a fort or lighthouse and erect such buildings without the consent of the States, but that in such cases the jurisdiction remains with the State, and cannot be acquired by the United States except by a cession.

There is no power given in the Constitution to the United States to erect lighthouses, dockyards, etc., except the power to regulate commerce. That the power to take private property for public use is given to the national Government may be clearly inferred from the last clause of the fifth article of the amendment of the Constitution: "Nor shall private property be taken for public use without just compensation." This is simply a restriction upon the power possessed by the Government of the United States under the Constitution. (Fox. *vs.* State of Ohio, 5 Howard, 434.)

The power to regulate foreign commerce has been always conceded to give the right to build lighthouses, dockyards, and harbors, to open harbors, to deepen the mouths of rivers, and to create avenues of commerce where they did not before exist. Can anyone draw a distinction between the right to do this and the right to create new avenues of commerce between two or more States?

Can one State without appeal authorize or forbid at its pleasure the passage of the commerce of another State through its limits by railroad communication? Is the authority of every

State over the greater portion of the commerce of the several States superior to that of Congress? By what right can you create a new avenue for foreign commerce if you may not do so for commerce among the several States?

The necessity of the exercise of this power may be seen from the fact that it is in the power of great corporations created by the laws of one State, by the use of controlling capital, to become virtually the owners of connecting lines in other States, and thus to form great trunk lines of communication over which the commerce of the interior States must be carried on, and thus to subject that commerce to such impositions as their own interests may dictate, and thus virtually to "regulate commerce among the several States" by a power wholly unknown to the Constitution, and wholly independent of the people. Nor do I believe that any plan can be devised by which the government of any one State can remedy this evil.

There is another reason, which addressed itself to the committee with some degree of force, why Congress should exercise power to regulate railroads as instruments of commerce. The great lines of railroad west of the Mississippi River, which connect the Atlantic with the Pacific Ocean, are being built mainly by means furnished by the national Government; the money which is used in their construction is taken from the common fund belonging to all the States. It is well settled that every highway and all public improvements made by Congress in a Territory, and which the Federal Government has not a right to establish in a State, passes by necessity to the State government when the change from a territorial to a State organization takes place. Congress cannot by legislation for a Territory obtain a power in the future State which it cannot originally exercise without it. This has been frequently decided. The control, therefore, of the Pacific roads can be continued after States are organized along their lines only by the assertion of a power to charter a railway within their limits after their admission.

Such has been the pressing necessity for the exercise of the power to regulate the connection of these roads where they form lines passing through different States that attempts have been made to exercise this indispensable power by authorizing the consolidation of companies chartered by different States. Three or four States get up a new confederation among themselves, under which they attempt to create a corporation by conjoint legislation. What will ultimately be the effect when exigencies occur which call for a legal solution of the difficulties arising

from this legislation cannot be foretold. That great confusion has already ensued no one can doubt. What are the powers of a consolidated railroad company whose several charters contain the most conflicting provisions? How can a mortgage be foreclosed upon a railroad in several States? No American court, State or Federal, has jurisdiction beyond the State in which it sits. We see to-day the disgraceful spectacle presented by the Erie Railroad war. Gentlemen take a boat in the evening and row themselves and their corporation out of the jurisdiction of the courts. If followed, no tribunal can be found in which can be impleaded more than a fraction of the property and persons concerned. These facts show the necessity of the exercise by Congress of the power conferred by the Constitution to regulate commerce among the several States, a commerce not limited either in fact or by constitutional definition to the navigable waters of the country, but for the most part carried on over the great national highways extending in every direction through the length and breadth of the land.

The practical question is, Can Congress regulate the vast and increasing commerce among the States carried on by means of railways, or must that commerce be regulated by monopolies whose power over such commerce is limited only by the amount of capital at their command? It will be seen that the details of this bill have been framed with care to prevent the creation of fictitious capital stock, to prevent heavy charges, to prevent unnecessary delays; and it is confidently believed that the road can and will be built should this bill become a law, and a speedier, cheaper, and better communication be established between this capital and New York.

I conceive that the great difficulty with the railroad corporations now existing in the country is that the capital stock does not represent the cost of the road, but represents precisely the amount which in the judgment of the directors or those having control of the road is necessary to carry on its operations successfully. When Massachusetts sought, by legislation, to prevent the increase of the capital stock of her railroads, and also the declaring of dividends greater than a specified per cent., the result was that the usefulness of the roads was greatly diminished, the roads doing no more work than was sufficient to earn the specified rate of dividend upon the capital stock. The only way, it seems to me, by which these evils can be guarded against in a measure of this kind is by fixing, as is done in this bill, the maximum rate of fare and tariff of freight. In other words, we say to this company, "You may earn all

the money you can; but you must impose no greater charge for passengers or freight than we here specify; you must make the trip in a certain number of hours; you must comply with certain regulations as to the time of starting and arriving." If this bill should become a law it will be found that, so far as the traffic over this road is concerned, the commerce will be effectually regulated for the interest of the public.

CHARLES O'NEILL [Pa.].—I wish to inquire whether the object the gentleman seeks would not be better accomplished if he would prepare and present to the House a measure to be enacted by Congress as a general railroad law? I think he has shown most clearly the power of Congress to pass a bill of this kind, but, if his object is to assert that power, why not urge upon the House the passage of a general railroad law which might extend, if capital could be raised for the purpose, a railroad from the Atlantic to the Pacific?

MR. COOK.—In the first place, the Committee on Roads and Canals were under instruction, if in their opinion Congress had power over this subject, to prepare a bill regulating commerce on railroads, not authorizing the building of roads, but regulating commerce over them. Now, I agree that until some members of the House shall be able to give time and study to this subject, to the exclusion of every other, and shall be furnished with the necessary statistics and other information, it will be impossible for us to adopt such a law as will be fully operative and effectual. I believe the importance of the subject demands that we should have a bureau of statistics upon the question; that the statistics should be prepared as other important statistics are prepared, by a commissioner, whose attention should be devoted exclusively to this subject.

Now, as to the inquiry of the gentleman from Pennsylvania [Mr. O'Neill], "Why not report a general railroad law?" the answer is very evident. Our power to charter a railroad grows out of the necessities of commerce. We must in each individual case decide upon our sworn responsibility as legislators that in our opinion it is necessary for the purposes of free commercial intercourse that a road should be built upon a particular route. I submit that such being the nature and extent of our power, we cannot authorize a general system of railroads, which might extend anywhere at the pleasure of those who might choose to build them.

On February 9 Dennis McCarthy [N. Y.] supported the bill. Referring to the monopoly of the Camden and

Amboy Railroad exercised in fixing discriminating charges in favor of inhabitants of New Jersey by agreement with the State and without consent of Congress, he said that this was in opposition to the Constitution, which forbade a State, without the consent of Congress, to lay any duty on tonnage, etc.

It is said that this levy upon passengers and freight is not impost or duty. What is it? Direct taxation upon the people of the United States, a violation of the Constitution and the rights of all the people, except those of New Jersey; a monopoly of the carrying trade, conferred upon a corporation and road by that State, thus preventing that healthy competition which insures to the public safety, speed, comfort, and cheap fare, all of which the advocates of special privileges and powers, yes, technical interpreters of the Constitution, forbid to the people at large. The Constitution says:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Certainly, then, no State has the right or power under the Constitution to lay imposts on the citizens of other States who are compelled to cross her domain. Other States occupy an equally important position for controlling commerce, the public defence, and transmission of mails, and will also claim a royalty if Congress shall refuse to regulate this claimed power where it exists. Our remedy is to create and incorporate companies with power to raise capital, secure the right of way, and build roads from this city to New York, or from such points in States, to and through other States, as the wants of the people demand. Look at the condition of this capital, almost isolated from the people outside, subject to great annoyances and cost of time and money from the want of competition; and yet under a claim of vested rights these incorporations hold the people and country under impost and tax for the benefit and use of their stockholders. The power to provide for the "common defence of the nation" confers the right and the necessity of creating competing lines of railroads, running from center to circumference of our vast country, as a means of national defence and safety in times of peril, thus furnishing cheap and rapid transportation of troops and all the materials and munitions pertaining to the nation's safety and defence. The want of this competition added largely to the delay, suffering, and

expense of suppressing the rebellion. The creation of competing lines of railways is of vital importance as an auxiliary means of defence, and demands immediate action. By them we overcome time and distance; we prevent rebellion, or we speedily subdue it; we shall prevent Indian barbarities and allay Indian wars; we bring extremes convenient to each other, encourage social and friendly intercourse, hasten emigration, binding the whole people together in one family—one in agriculture, manufactures, commerce, art, sciences, mechanism, labor, and all the interest of our common country.

This great power of commerce diffuses intelligence, destroys prejudice, advances all interests, almost as generally and as rapidly as the rays of light travel over and benefit the earth. "The power to establish post roads" is another of those powers sufficient for all time. No man will claim that the mails can be lawfully held in abeyance by the legislation or power of any State, much less the power created by it on the old idea of post roads; yet to-day nearly all the post office business of the country in the transportation of mails is only allowed and performed by sufferance, by the railroads refusing to enter into contracts as to time, safety, convenience, or cost. This state of dependence on the part of the Government must not be allowed. This great element in the power of government is for the people, and confers benefits and happiness upon all equally; it is a great power of the diffusion of intelligence, stimulating energy and action, aiding prosperity; and when to it is added the telegraph, equally free and equally cheap, and when the shackles of State and individual obstructions are stricken off then will be settled for all time the question of regulating commerce, bringing it into harmony with the other great powers and duties of the Government.

Charles E. Phelps [Md.] opposed "the extraordinary measure."

It is nothing less than the inauguration of a system, now for the first time in the history of this Government, which looks to nothing short of the ultimate consolidation, under congressional auspices, of the forty-two thousand miles of railway already constructed in every State of this Union, and the ultimate Federal control of the $3,000,000,000 of capital which has already been invested by corporations and States in this vast network of internal improvement. The assumption of power extends to the absolute claim of eminent domain over the soil of

every State, the absolute claim to enter upon, seize, and condemn the land of every freeholder in each State deemed necessary for the opening and construction of new lines of communication, and, in addition, the complete control, regulation, and management of every mile of railway in operation and every dollar of capital invested through the agency of one or more mammoth corporations, creatures of the national Congress.

It not only does that, but it goes further. It wrests from every one of the thirty-seven States of this Union all the jurisdiction their courts now exercise over rights and remedies affecting these lines of internal improvement, as they come in contact with the citizens and with the property of the various States. It absorbs to the general Government and brings within the sweep of the Federal courts that enormous mass of jurisdiction, civil and criminal, at law and in equity, over cases involving property, liberty, and even life, which of necessity travels with these great lines of intercommunication wherever they penetrate society.

It does more—a consideration which I should think would compel every man who wishes to keep this Government as honest and as pure as circumstances will permit to oppose any such measure as this. It invites the lobbies of thirty-seven State legislatures to pack their carpet-bags and move at once upon Washington. It concentrates these railroad rings, with their intrigue, their log-rolling, and their corruption funds, at the seat of the Federal Government, and intrenches them in the corridors of this Capitol. It exposes members of Congress, not to danger, for they are pure and innocent, but to the annoyance and importunity of solicitation, and subjects their stern and incorruptible virtue to the schemes and manipulations of a combined horde of speculators unprecedented in congressional experience.

William D. Kelley of Philadelphia characterized the measure as a "job."

It is a provision for the incorporation of a number of unprofitable roads into one and a sacrifice of the interests and rights of all save the stockholders of these roads; and it is to be enacted just when the great want which we have always felt is being supplied.

I grant that the conduct of the Baltimore and Ohio road in refusing to make connections with other roads is a great hardship. I am ready to remedy it by the law proposed in the last

Congress compelling roads running to State lines to connect with roads of other States. But this is not necessary in this case, as the Potomac and Baltimore road is nearly completed and will enfranchise travel from the monopoly hitherto maintained by the Baltimore and Ohio company.

Austin Blair [Mich.] supported the bill.

I am not surprised to see gentlemen on the other side of the House unite to raise the cry of State rights against this bill. They live in the ideas of fifty years ago. We cannot convince them that the world moves. If we tell them that the power to regulate commerce between the States is the power to build trans-State railways; that commerce abandons the lakes and the rivers, and even the ocean itself, and speeds across the continent upon the iron rail, the Democratic party only stares at us. The magnetic telegraph itself can give it only a spasm as it feebly croaks "State rights!" If a great nation demands national highways for the encouragement of its industries and the development of its resources, no matter how great the necessity, it must yield to every State the right to veto the project. And thus local jealousies, private greed, and ignorant stupidity must be allowed to defeat the most necessary and beneficial measures. I insist that the only security for cheap and speedy transportation must be looked for in the power of Congress to open the way for trade and that intercourse which is a part of trade by annulling repressive State laws or by providing national highways over which the people of all the States may pass upon equal terms.

We have been solemnly warned that the passage of this bill will bring down upon Congress the terrible lobby from thirty States. There is no danger from the lobby when there are no subsidies, and the virtue of Congress does not need to sound an alarm before the temptation is offered. If the legislatures of Pennsylvania and Maryland have been able to withstand the terrible lobby while voting special privileges, then I will trust the virtue of Congress while it goes about to destroy those monopolies.

The gentleman from Maryland [Mr. Phelps] evidently fears —and I think we all share in that fear—that the time will speedily come when cars will run past Baltimore by steam. Farewell then, sir, to the charming omnibus line; farewell to the great horse teams which, with the crack of the whip and the sound of a tin horn, take us at the rate of two miles an hour

through the metropolis of Maryland with a cheery "Gee-up" and "Gee-ho!" It will be some compensation that we shall no longer see women and children, the aged, the halt, and the blind tumbled out of the cars coming in from the Northwest at all times of night and day and in all weather, and delivered over to the howling gang to whom they are compelled to intrust themselves in passing through the Monumental City.

Mr. Speaker, the spirit of American enterprise refuses longer to be bound by these vexatious restrictions upon the speed and comfort of travel. If the States will not furnish the highways required by the people the country calls upon the national Congress to supply the defect, and we shall not long refuse to respond to the call. Let us pass this bill and put upon record our determination to remove out of the way every obstruction placed across the great avenues of commerce and business, whether by State monopolies or otherwise.

On February 12 the bill was passed by the House—yeas, 99; nays, 54. It was not acted upon by the Senate.

CHAPTER VIII

Forfeiture of Railroad Grants

Joseph N. Dolph [Ore.] Introduces Bill in Senate to Restore to the Government Certain Lands of the Northern Pacific Railroad—Debate: Wilkinson Call [Fla.], Sen. Dolph, Charles H. Van Wyck [Neb.], George F. Edmunds [Vt.], James Z. George [Miss.], John H. Mitchell [Ore.], Henry W. Blair [N. H.]; Bill Is Passed—Barclay Henley [Cal.] Proposes Substitute Bill in the House Making a General Forfeiture by the Company; Bill Is Passed; Senate Non-concurs, and Conference Is Appointed—Preston B. Plumb [Kan.] Introduces in the Senate a Bill to Forfeit All Unearned Railroad Grants—Debate: Sen. Dolph, Henry M. Teller [Col.], James H. Berry [Ark.]; Bill Is Passed—Debate in the House: William S. Holman [Ind.], William J. Stone [Mo.]; Bill Is Passed with Amendments; Senate Non-concurs, and a Conference Is Appointed.

AS time passed the people began to regret the lavish donations which their Representatives in the national legislature had made to the railroads, especially since these corporations were not fulfilling the spirit of the grants, and, indeed, in a number of instances were not complying with even the letter of their contracts with the Government, in that they were entering into land speculation before the title to the grants had been completed by construction of the roads.

The Northern Pacific Railroad was especially condemned for this practice, and a loud popular demand was made for forfeiture of the grants with the conditions of which it had not complied. In order to forestall action in the matter, the corporation very shrewdly inspired a bill for that measure of forfeiture which it would accept, the concession being so framed that its acceptance by the Government would confirm the railroad's title to the remainder of the land.

On April 19, 1886, Joseph N. Dolph [Ore.] intro-

duced in the Senate from the Committee on Public Lands a bill

To restore to the United States certain of the lands granted to the Northern Pacific Railroad Company to aid in the construction of a railroad from Lake Superior to Puget Sound, and to restore the same to settlement.

Forfeiture of Northern Pacific Railroad Grants

Senate, May 27-June 15, 1886

On May 27 Wilkinson Call [Fla.] opposed the measure on the ground that it was an attempt to appease the public (justly outraged at the retention of vast land grants by the trans-continental railroads to which they had forfeited title by non-performance of obligations imposed in the grants) by a forfeiture of an insignificant portion of the grants, which might be construed as strengthening the title to the remainder.

The bill, he said, was in effect handing over to the corporation 27,539,840 acres of the public domain, worth $100,000,000.

The whole question is before the Senate whether the demand of the people, and their rightful and just demand, that where a railroad company has failed to comply with the provisions of the law the Congress of the United States shall declare that the law which created the grant and which provided that at a certain period of time the grant should expire, and the land should belong to the public domain and be open to settlement and occupation by the people under the homestead laws, shall be observed, or whether Congress will make a new grant of perhaps a hundred million dollars or more of the public money in the form of a land grant to a few individuals.

Instead of complying with the just demand of the associated laboring men and women of the country to enact some measures by which the burden of their toil and poverty shall be lightened, this bill proposes to lay still heavier burdens on them, and to place beyond their reach 27,000,000 acres of the public domain, which partly belongs to them.

There is no question of the construction of the railroad presented by this bill. There is no question that this great high-

way failed to be constructed within the time limited by the act, and that by emigration and the increase of the population of the country these lands have become immensely valuable. All the circumstances which require and justify the original policy, if there was justification for such a vast donation of an empire of land for any purpose whatever to a few individuals, have changed and no longer exist.

The power of Congress to declare forfeited a grant of the public lands, made to either a corporation or a State, by an act containing a clause providing that the lands should revert upon failure to build the road within a specified time, is established beyond all controversy by repeated decisions of the Supreme Court.

It is specifically so held in United States *vs.* Repentigny (5 Wall., 211) and Schulenberg *vs.* Harriman (21 Wall., 44).

Following these cases is another which even more unequivocally defines the power of Congress in this regard. In Farnsworth *vs.* Minnesota and Pacific Railroad Company (92 U. S., 66), the court, considering the question, said:

"A forfeiture by the State of an interest in lands and connected franchises, granted for the construction of a public work, may be declared for non-compliance with the conditions annexed to their grant or their possession, when forfeiture is provided by statute, without judicial proceedings to ascertain and determine the failure of the grantee to perform the conditions."

Mr. President, when you consider the fact that has been developed before the Senate in the reports of its Committees on Interstate Commerce, that a taxing power upon the people of this country greater than that exercised by Congress, upon every man, woman, and child, has imposed a debt of $3,000,000,000 upon this people in the shape of fraudulent and fictitious securities, and that, while we are here pretending to exercise the powers of legislation in this most important of all subjects, the power of taxation, the power to oppress the labor of the country and take from its hire for public purposes, has been exercised without our knowledge or consent, and a debt greater than the war debt has been imposed and now rests upon the people by virtue of the issue of fraudulent securities issued by transportation companies with the power to tax for all locomotion and transportation to pay the interest on their securities—when we reflect that this expanse of public land is now proposed to be appropriated to the same purpose, to float additional securities with the power of taxation upon the people of this country, the magnitude of the question involved in this bill may be somewhat appreciated. The passage of this bill in its present shape will be a menace to all the property interests of the country. It

will be a defiance by the Senate of the people and their just demands. It will be a declaration that the Senate will use the powers of legislation in the interests of corporate power and against the people.

On May 28 Senator Dolph supported his bill. The Canadian Government, he said, had been subsidizing the Canadian Pacific Railroad. The Northern Pacific Railroad Company, on the contrary, had to contend with threats of forfeiture of their land grants, greatly impairing their credit, and yet it was making heroic efforts to complete the road.

Thus it appears to me that we owe something to the stockholders of this company, the people who put their money into this enterprise. It seems to me unjust now as an equitable proposition when hundreds of thousands of dollars are being expended upon this link, this 75 miles in the Cascade Mountains, when it is partly graded, when surveying parties have been seeking to find a practicable route through the mountains ever since the company was incorporated, when a great tunnel is being constructed—it seems to me, I repeat, that it is unjust now to declare that they shall be deprived of that land if the road is not completed when this act shall take effect. If they were not now prosecuting the work with energy, if it could be shown that they were not being diligent in the construction of the Cascade branch, if they were delaying the construction and seeking to hold on to the grant, I would not say a word; but with the diligence that is now being used it appears to me that we ought not to throw an obstacle in the way of the construction.

Something has been said here in regard to the conditions of this grant and the character of it. I do not believe that there is a lawyer in this body and there are few out of it but who know that this grant is a grant *in præsenti,* that it transferred the title upon conditions, that when the conditions are performed, no matter whether within the time limited in the act or afterward, the title becomes perfect and beyond the power of Congress to interfere with it; that as this road was to be constructed in sections of 25 miles, and it was provided that whenever a section was completed the President of the United States should appoint commissioners to examine it and accept it and then patents should issue to it; whenever a 25-mile section was constructed and commissioners were appointed to examine it and it was approved by the President of the United States, no matter whether the patents were issued or not, the title of the company became perfect to the lands so far as the road had been accepted. The grant is in its nature divisible, and under the provisions of the act every section stands upon precisely the same basis as if there had been a separate act for each 25-mile section; and no lawyer under a grant with such conditions, in my judgment, after a thorough examination of the question, would contend that the provision as to the completion of the entire road at all affects the condition as to the sections of the road which had been completed, examined, and accepted in accordance with the terms of the act.

He also pleaded for the settlers who had in good faith bought lands from the company.

The Northern Pacific company issued a circular and advertised that, if people would go on the lands and settle on them and improve them, when they had been earned by the company by construction of its road, they would be graded and settlers should have the first right to purchase at an appraised value or in some cases at $2.60 an acre. Some people went onto these lands under those provisions, and have fenced, cultivated, and improved them, and there are great fields of wheat growing on them to-day. Many of the settlers have exhausted their homestead and preëmption rights, and if Congress should not make any provision for such persons they would be liable to lose their lands and we should have them coming here at another session of Congress for relief; others would jump their claims under the land laws, and we should have a great deal of trouble growing out of the matter.

Charles H. Van Wyck [Neb.] opposed the bill.

This land was given to the Northern Pacific on the ground that their road would benefit the remaining land and that the benefit to the Government from this donation would be the enhancement of its other property by building the road; but they delayed building the road for reasons best known to themselves, so that it was not completed until the land had become valuable. I think there would be no injustice even now in saying to this railroad company, "Half the grant at the completion of your road is worth more than the whole would have been had you completed the road within the lifetime of the grant."

George F. Edmunds [Vt..].—How much would it have been worth if the road had not been built at all?

Senator Van Wyck.—The American citizen went in advance of the road.

Senator Edmunds.—And would not that be true in the great and growing State of Nebraska, which through her Senator is now asking Congress to help build railroads there?

Senator Call spoke again on June 2.

When a measure of great public importance is pressed upon the attention of Congress by a large body of public opinion, when it has been presented by the platforms of both the great political parties of the country, when the Democratic party in the last canvass presented distinctly to the country the pledge that all unearned railroad grants should be forfeited, that the policy of granting the lands in homesteads to actual settlers was a necessary one for the well-being of the whole country, that the policy of these large land grants to railroad corporations was a hurtful one in every respect, when the great body of the associated labor of this country has indorsed that view and has spoken in the most emphatic terms recently to the country, it can scarcely be justified that we should fail to take action upon it, and it is certainly true that a failure to act when the question is presented and the passage only of a law which relates to a very small portion, an insignificant portion of this vast domain, thus evading the question raised before us by the public opinion of the country, will be regarded as a denial, as hostile legislation, and, whatever the motives, it will in effect and in fact be a denial of this proposition and of this demand by the public opinion of the country.

It does not matter that this small proportion of this unearned land grant shall be forfeited and that it is right that it should be. The great question upon which the people of this country demand Congress to take action, and upon which in my judgment the very stability of our republican institutions depends, is left untouched; and it is left untouched in the interest of these vast land grants; it is left untouched in the interest of accumulation without consideration of vast properties in the hands of a few individuals; it is left untouched in the interest of that great amount of taxation upon securities issued without consideration and taxing the productive power of the people of the United States without the authority of law, but which is as practical and as effective in oppressing the industries

of the country as if imposed by an act of Congress itself. And for one, therefore, I am not in favor of allowing this question to pass without some expression of opinion on the part of the Senate.

In the report of the Committee on Education and Labor, the intelligent representatives of the associations of labor presented the views and the opinions of that large and influential body of our fellow citizens upon that subject. Since that time the subject has continued to grow in importance. I will read a few extracts from the testimony taken before the committee on this subject, the testimony of Mr. William Godwin Moody found on the seven hundred and twentieth page of the first volume of that report:

> The amount of the public domain that has been absolutely granted to the railroads is 250,000,000 acres—an area equal to the Austro-Hungarian Empire and the Kingdom of Italy, with Switzerland and the Netherlands thrown in.
>
> The hurt is manifold. One of the most manifest features of it is that it has driven our American people off the farms. Under the conditions of the grants of the homestead lands the amount of land so granted to each American citizen was limited to two quarter-sections at the most; one acquired by homestead right or purchase and the other by tree culture, making altogether 320 acres. Under the grants to the railroads no limitations have been made, and no conditions have been imposed as to the disposal of the lands. The railroads take them purely as speculators, and they enter upon the disposal of them as upon a gigantic speculation. They are filling our country with these great estates; estates that sink to insignificance the *latifundia* of old Rome, which were the cause of her destruction. They are planting upon our soil a social system that is in utter and direct conflict with all our institutions, and it is growing with a rapidity that is almost beyond belief. That system is driving from the soil those who should there find their homes with full occupation, abundance, and happiness. Hundreds of thousands, aye, millions, of our people are driven off the land into the towns and cities, where they are hived up in hovels and tenements such as the gentlemen of this committee have seen, I believe, to some degree, and the sight of which, I understand, was so exceedingly offensive to their olfactory nerves that they abandoned that method of investigation—at least it has been so reported by the papers. The facts are that while there are hundreds and thousands and millions of acres of our lands, cultivated and uncultivated, in the hands of private owners, without a single fixed inhabitant upon them, we have here in the city of New York a population so dense that it is reckoned at the rate of 500,000 people upon a single square mile; a mass of people living in a state of wretchedness unendurable to the sight of gentlemen of this committee, and absolutely unendurable to the life of those people themselves—for we find that the mortality in those districts is double what it is in the other sections of New York."

This testimony has been verified in the report of the Commissioner of Labor, in the fact that there are a million of un-

employed people now in this country, in the fact that labor is disturbed and there is unrest everywhere, in the fact that there is among our people a disposition for change, for new legislation, or something that will cure the manifest evils that affect the family, that affect the comfort and well-being of the entire community. We are not at a loss to understand why that is when we understand that between three and four thousand millions of securities which have no consideration but, as was said by the Senator from Texas [Richard Coke], the ink and the paper upon which they are made, but which carry with them a taxing power upon every man, woman, and child to meet the gross amount of nearly $900,000,000 a year, that being the total gross earnings of these corporations, and between three and four thousand millions appears to be the most reasonable estimate of this character of securities bearing a proportionate part of this vast amount of tax paid for railroad transportation.

Mr. President, we have here this vast grant of something like thirty or thirty-two million acres which are involved in this question of forfeiture, which were not earned within the time specified in the granting acts, which were given upon the express condition, so specified in the law, that it should not be a grant unless that condition was complied with; and we find upon an examination of the reports that have been made to the two Houses of Congress and a careful estimate of the facts that between thirty and forty million dollars will be made from this land grant by the few projectors of this enterprise, those who hold and control its stock, over and above the entire cost of the construction of the road. We find that the indirect effect of this action of Congress is to tax the people who shall occupy these public lands not only with the actual cost of the construction of this road and then give it to a few individuals, but with thirty or forty millions above and beyond the cost of the road.

JAMES Z. GEORGE [Miss.].—Do I understand the Senator that the Government paid enough to build and equip the road fully from end to end and $30,000,000 besides?

SENATOR CALL.—That is the effect of it.

SENATOR GEORGE.—So as to make them a present of the road and $30,000,000 as a bonus for building it? Is that the idea?

SENATOR CALL.—That is the idea. I have been informed that there has been offered by an English syndicate an amount nearly equal to $300,000,000 for the land if the title can be confirmed.

Now, Mr. President, here is a great public question, a question involving the safety of the Republic, for both political parties have asserted, and it is plain to the eye of reason and argument that there can be no republican government if there be several hundred millions of dollars in value of the public land granted without consideration and as a gift to individuals. Upon that proposition there can be no kind of doubt or question that the people of this country will not sustain this Congress, and that it cannot be covered up by any delusive and illusory propositions and arguments in regard to the consideration of the construction of a railroad. The necessity of railroads, the advantage to the public, the necessity of them to the civilization of the country is one thing in which all will acquiesce. The construction of them even by donations from the Federal treasury is another thing, which does not concern that question. If it be expedient that the public policy shall be established of building these great public highways by donations from the public treasury, none will contend but that it should be limited to the cost of the road. None will deny that in the case of the subsidy to the Northern Pacific Railroad it should be a lien upon the property returnable to the people in some shape or form. No one can justify the imposition by law (being the direct effect of a grant of the public lands) of the burden of building a railroad upon the settlers upon the public lands, taking from them and their hard-earned toil the entire cost of a railroad, and then adding to it as much again as the cost paid by them, and then give this enormous sum of from sixteen to forty million dollars and the franchise and the completed railroad built by the labor and toil of these people to a few individuals who manipulate and control and own the stock of the road. That is the question that is presented from which there is no escape and no denial, and the question is how are we going to deal with this condition of things.

I am in favor of a final settlement of this question. I have no enmity to corporations. I recognize them as an instrument of modern civilization. Associated effort, which can only be effective in the form of corporate authority, is the great instrument of modern civilization; but it is a distinct question whether they should be left without restraint, whether railroads should be built by impositions upon the settlers and the hard earnings of those who toil upon the public lands, and then give them away with two or three times their cost with the power of taxation of those people. That is a different and a distinct question. That has nothing to do with the utility of railroads, nothing to do with the policy of aiding them either by grants of public money or otherwise. It is that question of abuse of the legislative power of government in making donations of public

lands and increasing the power of individuals to impose unreasonable burdens on the country which we have to deal with.

It is no answer to this line of argument to say that the public in carrying into operation a transportation system has been greatly benefited, that freights have been reduced, that transportation has been made easy. We have a right to demand that it shall be done with the least cost to the people consistent with a reasonable and liberal profit to those who engage in these enterprises.

How did that distinguished man, whose great capacity none will deny, the lamented President of the United States, deal with this question when it came before him? I refer to the late President Garfield. What did he say to the American people, with the authority of his great name and reputation, with regard to that question which the Senate proposes to set aside and not deal with as demanded by the people—the question of this vast corporate interest unrestrained by law, the question of the donation of millions upon millions of acres of the public land without reference to the cost of construction? President Garfield, in his address upon "The Future of the Republic," delivered before the literary societies of the Western Reserve College, of Hudson, Ohio, on the 2d of July, 1873, said:

> All railroad experience has verified the truth of George Stephenson's aphorism, that, "when combination is possible, competition is impossible."
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> It is easy to see that we are repeating the experience of Great Britain on a vast scale. We have doubled our miles of railway in the last eight years.
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> The process of consolidation of our leading lines of roads has been even more rapid than that of construction, and whatever dangers we may expect from the system are rapidly culminating to the point of full development. In antagonism to these and to similar combinations of capitalists are the combinations of laborers in trades unions and labor leagues. The indications are abundant that we shall soon see, set in full array, a conflict between capital and labor—a conflict between forces that ought not to be enemies, for labor is the creator of capital, which is only another name for accumulated labor. It is the duty of statesmanship to study the relation which the Government sustains and ought to sustain in this struggle, and to provide that it shall not be the partisan supporter of either combatant, but the just protector of both. The right to labor has not been sufficiently emphasized as one of the rights of man. The right to enjoy the fruits of labor has been better secured.
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> In view of the facts now set forth, the question returns, What is likely to be the effect of railway and other similar combinations upon our community and our political institutions? Is it true, as asserted by the British writer quoted above, that the state must soon recapture and control the railroads, or be captured and subjugated by them? Or do the phenomena we are witnessing indicate that general breaking up of the social and political order of modern nations so confidently predicted by a class of philosophers whose opinions have hitherto made but little impression on the public mind?
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> The analogy between the industrial condition of society at the present time and the feudalism of the Middle Ages is both striking and instructive. In the darkness and chaos of that period the feudal system was the first important step toward the organization of modern nations. Powerful chiefs and barons intrenched themselves in castles, and in return for submission and service gave to their vassals rude protection and ruder laws. But, as the feudal chiefs grew in power and wealth, they became the oppressors of their people, taxed and robbed them at will, and finally, in their arrogance, defied the kings and emperors of the mediæval states. From their castles, planted on the great thoroughfares, they practiced the most capricious extortions on commerce and travel, and thus gave to modern language the phrase "to levy blackmail." The modern barons, more powerful than their military prototypes, own our greatest highways, and levy tribute at will upon all our vast industries. And, as the old feudalism was finally controlled and subordinated only by the combined efforts of the kings and the people of the free cities and towns, so our modern feudalism can be subordinated to the public good only by the great body of the people acting through their governments by wise and just laws.
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> States and communities have willingly and thoughtlessly conferred these great powers upon railways, and they must seek to rectify their own errors without injury to the industries they have encouraged.

Now, Mr. President, these words of Mr. Garfield, who unquestionably, whatever may be said of him, was a man of great thought, a man of profound reflection, come to us with great force when we are considering the question of dealing in our discretion with a grant of thirty-odd millions of acres of the public land over which Congress has plenary and absolute power for a railroad constructed outside the terms of the law with notice to everyone that the law giving that grant had expired, for I undertake to say that there is not a single ground of argument to the contrary.

It has been said that no lawyer would express an opinion that this grant was not vested up to the point of the present completion of the railroad company. Why, there is not a decision of the Supreme Court and there is nothing but a single decision of the district court in Oregon and one or two others that Congress has abdicated its sovereign power of legislation and created a vested right, in defiance of the power and the duty of Congress, to an empire of public land under an act which in express terms required that if a certain thing was not done, to wit, the completion of the road by a certain time, it should be without force and effect, or, as the Supreme Court

says, in the decision that I have before me, in words the law is a law as well as a grant and the grant is controlled by the law. Without the law it has no existence, and the law says it shall exist only upon condition, a condition which was never performed, and to this force and effect is every word of every decision, and the single fact that the Supreme Court has said that the words "there shall be and is hereby granted" create a present interest is the only foundation of an argument without reason and without countenance in the authorities which seeks to overturn the fact that the law controls the grant and that it is an act of sovereign legislative power for a great public purpose limited by time, because it is absurd to say that to do that a hundred years hence which to do to-morrow would be of great public service would be a compliance with the public necessities and the public uses. Therefore time is of the essence of the law, made so expressly by the reason of the act itself, sustained by the reason of the law and by the public policy upon which it was based. Therefore I undertake to say that neither can there be an argument or pretence of an argument or reason for the assertion that the power of Congress is not absolute and discretionary over this subject.

I undertake further to say that it is a demonstrable fact that if we are to aid this railroad corporation, if this franchise to this great corporation of the road built by it does not furnish a compensation for its cost, we had better pay for it out of the public treasury and pay the reasonable and proper and just cost of the construction of the road than to impose upon the people of this country the burden of paying two or three times its value, or to impose it upon that portion of the people of this country who live in Oregon, who live in Idaho, who live in the States and Territories along the line of the road. The policy of this law was to say, before that country was occupied, "We will give this land if you will construct this road within the time limited," and in doing that from this enormous empire, greater than has been acquired by conquest almost at any period of the history of the world by the armies of one nation from another—from this great empire of public land, this act of Congress making the grant undertook to say there should be paid out of the labor and toil of the people who settled upon it whatever might be demanded as the cost of the construction of the road, which even at the present value of this land would realize to the grantees probably $100,000,000 more than the entire cost of construction of the railroad.

Certainly the intendment of the act was that it should be a

reasonable cost of construction, but, as Mr. Garfield said, these grants were made unreasonably, recklessly, without the limitations which sound policy would have imposed, and from the report to the two Houses of Congress the report of the president of the company, the report of the auditor, and in estimating, as the committee of the House did, the mean between the two reports they find that in addition to paying the entire cost of the construction of the road there was a difference of from sixteen to thirty or forty million dollars of profit over and above the estimated cost of the road, even taking the completed portion of it, and that was at the valuation of two dollars and a half an acre for the land.

Now, Mr. President, it cannot be disguised that what is proposed and what is sought to be done is a gift of an amount estimated from $16,000,000 to $93,000,000 to some few persons, and that this is sought to be covered up under the pretence of vested rights—vested rights under a law that gave notice to everyone that they should have no existence until the condition upon which the grant was made was performed. Now, what does the Supreme Court of the United States say on that matter? The law, as I have said, required the completion of this railroad by 1879. It has been said that there is an equity that arises against the United States because it was not enforced, because Congress took no action, that the law, which is mandatory, which by its very nature cannot be a law except it is absolute and is notice to everyone, was set aside and repealed. That is not the nature of law. It is not permissive, but it is commanding. It is an exercise of sovereign power; it admits of no distinction and of no qualification. The law said there shall be this grant made on condition that this road is completed by a certain time, and not otherwise.

John H. Mitchell [Ore.].—Suppose, after the time has expired for the completion of the whole road as designated in the act, that then the Congress of the United States, instead of declaring a forfeiture as they undoubtedly had the right to do at that time, proceeded to pass an act granting the same company further privileges in connection with the road by giving them the right of way through Indian reservations, and all that, what effect, if any, in the judgment of the Senator from Florida, would that grant have on the question now under consideration?

Senator Call.—It would depend entirely upon the language used, and the purpose as declared for which such extension was made. The mere fact of perfecting its right to go through an

Indian territory would have nothing to do with the land grant. It would not touch the question. It could not destroy the effect of the exercise of sovereign, absolute legislative power in the original grant.

Senator Mitchell.—Can there be such a thing as a waiver in law upon the part of the general Government in reference to a land grant by failing to proceed to take advantage of the failure to complete the road within the time and declare a forfeiture?

Senator Call.—I think not. I think such a thing as that would be a clear denial of the force and effect of the law. Nothing can waive a law or repeal a law except the sovereign legislative power that enacted it, and which by constitutional authority has express power to do it. But that question has been decided in The United States *vs.* Clarke (8 Peters, 436), confirmed and affirmed by repeated decisions subsequently, and especially in the case from which I read, The United States *vs.* Thompson (98 United States Supreme Court Reports), where the court then said:

> The United States possess other attributes of sovereignty resting also upon the basis of universal consent and recognition. They cannot be sued without their consent. (United States *vs.* Clarke, 8 Pet., 436.) If they sue, and a balance is found in favor of the defendant, no judgment can be rendered against them, either for such balance or in any case for costs. (United States *vs.* Boyd, 5 How., 29; Reside *vs.* Walker, 11 *id.*, 272.) A judgment in their favor cannot be enjoined. (Hill *vs.* United States, 9 *id.*, 386.) Laches, however gross, cannot be imputed to them. (United States *vs.* Kirkpatrick, 9 Wheat, 720.) There is no presumption of payment against them arising from lapse of time. (United States *vs.* Williams, *supra.*) They can maintain a suit in their own name upon a non-negotiable claim assigned to them. (United States *vs.* White, 2 Hill, N. Y., 59.)
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> The rule of *nullum tempus occurrit regi*[1] has existed as an element of the English law from a very early period. It is discussed in Bracton, and has come down to the present time. It is not necessary to advert to the qualifications which successive Parliaments have applied to it.
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> The common law fixed no time as to the bringing of actions. Limitations derive their authority from statutes. The king was held never to be included, unless expressly named. No laches was imputable to him. These exemptions were founded upon considerations of public policy. It was deemed important that, while the sovereign was engrossed by the cares and duties of his office, the public should not suffer by the negligence of his servants. "In a representative government, where the people do not and can not act in a body, where their power is delegated to others and must of necessity be exercised by them, if exercised at all, the reason for applying these principles is equally cogent."

[1] "No time lapses against the king."

That answers the Senator from Oregon. If no laches can be imputed to the Government, if the negligence of the servants of the Government cannot affect the law, but it stands until repealed, where can the waiver be? A law by your Constitution is repealed, is deprived of its force and effect, only by a certain exercise of sovereign legislative power. It cannot be modified, it cannot be diminished, it cannot be altered in its force or operation except constitutionally by the exercise of the sovereign legislative power that enacted it. Therefore, if it cannot be altered or affected or qualified or repealed, there can be no waiver of it. Considerations of equity address themselves to the general legislative discretion of Congress.

But what did Mr. Garfield say upon the subject of this question of vested rights which are so often interposed to deny and qualify the exercise of the sovereign legislative power of the Government? The very existence of property depends upon its use in such form that it shall not burden the people of the country with such taxes and such impositions as will make life uncomfortable, as will deprive it of ease and comfort. The existence of corporate power and property depends, as he says, upon wise and just and temperate legislation by the Congress of the United States and by the State legislatures within their respective spheres. He says:

> Since the dawn of history the great thoroughfares have belonged to the people—have been known as the king's highways or the public highways, and have been open to the free use of all, on payment of a small, uniform tax or toll to keep them in repair. But now the most perfect and by far the most important roads known to mankind are owned and managed as private property by a comparatively small number of private citizens. In all its uses the railroad is the most public of all our roads; and in all the objects to which its work relates the railway corporation is as public as any organization can be. But, in the start, it was labeled a private corporation; and, so far as its legal status is concerned, it is now grouped with eleemosynary institutions and private charities, and enjoys similar immunities and exemptions. It remains to be seen how long the community will suffer itself to be the victim of an abstract definition.
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> It will be readily conceded that a corporation is strictly and really private when it is authorized to carry on such a business as a private citizen may carry on. But when the State has delegated to a corporation the sovereign right of eminent domain—the right to take from the private citizen, without his consent, a portion of his real estate to build its structure across farm, garden, and lawn, into and through, over or under the blocks, squares, streets, churches, and dwellings of incorporated cities and towns, across navigable rivers, and over and along public highways—it requires a stretch of the common imagination, and much refinement and subtlety of the law, to maintain the old fiction that such an organization is not a public corporation.

In the famous Dartmouth College case it was decided, in 1819, by the Supreme Court of the United States that the charter of Dartmouth College is a contract between the State and the corporation which the Legislature cannot alter without the consent of the corporation; and that any such alteration is void, being in conflict with that clause of the Constitution of the United States which forbids a State to make any law impairing the obligation of contracts. This decision has stood for more than half a century as a monument of judicial learning and the great safeguard of vested rights.[1] But Chief Justice Marshall pronounced this decision ten years before the steam-railway was born, and it is clear he did not contemplate the class of corporations that have since come into being. But year by year the doctrine of that case has been extended to the whole class of private corporations, including railroad and telegraph companies.

But few of the States, in their early charters to railroads, reserved any effectual control of the operations of the corporations they created. In many instances, like that of the Illinois Central charter, the right to amend was not reserved. In most States each Legislature has narrowed and abridged the powers of its successors, and enlarged the powers of the corporations; and these, by the strong grip of the law and in the name of private property and vested rights, hold fast all they have received. By these means not only corporations but the vast railroad and telegraph systems have virtually passed from the control of the State. It is painfully evident, from the experience of the last few years, that the efforts of the States to regulate their railroads have amounted to but little more than feeble annoyance. In many cases the corporations have treated such efforts as impertinent, intermeddling, and have brushed away the legislative restrictions as easily as Gulliver broke the cords with which the Liliputians attempted to bind him. In these contests the corporations have become conscious of their strength and have entered upon the work of controlling the States. Already they have captured several of the oldest and strongest of them; and these discrowned sovereigns now follow in chains the triumphal chariot of their conquerors. And this does not imply that merely the officers and representatives of States have been subjected to the railways, but that the corporations have grasped the sources and fountains of power, and controlled the choice of both officers and representatives.

The private corporation has another great advantage over the municipal corporation. The jurisdiction of the latter is confined to its own territory; but, by the recent constructions and devices of the law, a private corporation, though it has no soul, no conscience, and can commit no crime, is yet a citizen of the State that creates it, and can make and execute contracts with individuals and corporations of other States. Thus the way has been opened to those vast consolidations which have placed the control of the whole system in the hands of a few and have developed the Charlemagnes and Cæsars of our internal commerce.

In addition to these external conquests, the great managers have in many cases grasped the private property of the corporations themselves; and the stocks which represent the investment have become mere counters in the great gambling-houses of Wall street, where the daily ebb and flow of the stock market sweeps and tosses the business and trade of the continent.

[1] Daniel Webster presented the arguments which were sustained by the court.

This is the answer which has been made by a great leader of the Republican party. This was the answer which the platforms of the Republican and Democratic parties gave to the question of leaving this vast unearned land grant in the possession of a few individuals. No proconsular power in the Roman Empire was ever so great as the dominion of the thirty-odd millions of acres of magnificently fertile land, to be inhabited by millions of the people of this country, in defiance of the public law of the country which dedicates that land to homestead settlement, to actual settlement, which recognizes the principle that the land of the country belongs to the people who toil and work upon it, which the public interest demands shall be in their hands with the least possible cost. This is the answer that is given to the proposition now made, which is involved in the Senate's turning its back now upon the proposition of forfeiture and attempting to appease the public mind by a forfeiture of an insignificant portion of the territory, not desired by the corporation, over which it has built no road, while the great practical question before the country, Shall the unearned grant, unearned within the time specified in the act, be forfeited, is answered by non-action and by indirect efforts to confirm it?

On June 15 Senator Van Wyck offered an amendment to the bill repealing the exemption of the railroads' right of way through the Territories. This was adopted by a vote of 26 to 20.

Senator George moved to amend the act by express statement that the Government did not waive any right to have any other land grant than the one in question forfeited for any failure, "past or future," of the company to comply with the conditions of the grant. This was adopted without division.

The opposition, with one exception, feeling that the rights of the Government were fully protected, did not oppose the bill, and it passed by a vote of 42 to 1, the negative vote being that of Henry W. Blair [N. H.], who believed that the way should be left open to restore to the people all the lands granted to the railroads.

The bill was referred in the House to the Committee on Public Lands, which, through Barclay Henley [Cal.],

the chairman, reported a substitute measure declaring the forfeiture of all grants the conditions of which had not been complied with, and throwing them open to settlement.

The bill was passed on July 27 by a vote of 187 to 47.

The Senate refused to concur in the House substitute and a joint conference committee was appointed. It failed to agree, and was discharged during the next session, and a second conference committee was appointed. This also disagreed, and a third conference was appointed.

The subject came up again during the first session of the Fiftieth Congress (December, 1887-October, 1888).

On January 13, 1888, Preston B. Plumb [Kan.] introduced in the Senate a bill to forfeit all unearned grants of lands to railroads. It was referred to the Committee on Public Lands, which reported the bill on January 23. It came up for discussion on April 17, when various amendments were proposed, some of which had the effect of exempting certain lands from forfeiture.

Forfeiture of Railroad Grants

Senate, April 26-May 8, 1888

Joseph N. Dolph [Ore.] on April 26 charged the Democratic party in Congress with partiality toward the South in the matter of forfeiture of land grants to railroads.

I call attention to the fact that in one of the acts forfeiting railroad land grants there is excepted out of the provisions of it the grant to the Gulf and Ship Island Railway Company for the express purpose of allowing the company to earn those lands, and that in another that thing was done which has been the subject of so much discussion in the Senate and of which some Senators stand in such mortal fear. There were confirmed to a railroad company, not to the original grantee, but to the assignee of the original grantee, the earned lands, and their title was placed by the act beyond the power of Congress to reach them.

Can it be that the location of these grants had anything to do with the action of Congress and accounted for the silence of my friend from Florida [Wilkinson Call] and my friend from Louisiana [Randall L. Gibson]? If so, how can we account for the fact that the clarion voice of the then senior Senator from Nebraska [Mr. Van Wyck] was not heard protesting against such action? There was no protest. There was silence on that side of the chamber and silence on this side of the chamber; and in the year 1886, without a dissenting voice, the time was extended to enable this Southern railroad company to earn its grant by the construction of its road, and even the Democratic House of Representatives consented to it, and a year later consented to the great iniquity of confirming to another Southern railroad company lands which had been earned by the construction of road after the time limited in the grant.

On May 8 Henry M. Teller [Col.] spoke in the interests of settlers on the lands proposed to be forfeited.

Is it the Government that is to be benefited? Not at all. The moment it is declared that these are void entries, that moment the land is open under the settlement law, and Mr. Jones and Mr. Smith and everybody else jump onto it, and the man who had cultivated it for fifteen years and put fences on it and houses on it and had made it a garden, who has held it and paid taxes on it, is deprived of his property that some saloonkeeper who hung around the town and did nothing may go upon it and receive the benefit of the enhanced value by the labor of the former occupant.

What I mean to say is that, when the Government has by its decision misled its citizens and justified them in buying land of the Government or of a railroad company, the Government, while it is not in law, is in morals and in decency estopped from despoiling its citizens in that way.

James H. Berry [Ark.].—I want to say to the Senator that a very large portion of this land which we are discussing is not agricultural land; it has no houses and no ditches and no farms upon it. It is mineral land; it is iron land of great value. The Senator says that the Government would not be benefited. The law requires this land to be offered to the highest bidder. If it is offered to the highest bidder to-day it will bring from $25 to $30 an acre, it is said. If there is any reason why these men who purchased in fraud of the law, in the face of the instruc-

tions of the Commissioner of the General Land Office, shall be given by this Government the difference between a dollar and a quarter an acre and that which the land will bring at public sale to the highest bidder—if there is any reason why we should donate and contribute this to these corporations and these syndicates that do not occupy the land, I shall be glad if the Senator from Colorado would tell me what that reason is.

SENATOR TELLER.—I take issue with the honorable Senator. There is not any law that requires the land now in controversy in Michigan to be put up and sold at auction. It is discretionary with the department. They may withdraw it from the operation of the settlement law and put it up. The Senator knows that upon pretty nearly every one of these pieces of land there are now four sticks laid out in the shape of a basement of a house. He knows that there is a little something done upon it by some speculator, and it is not a question whether the Government of the Unitetd States is to get what the value of the land is, but it is a question whether somebody else who has not had anything to do with this land up to the present time shall step in and have the enhanced value produced, perhaps not by the labor that these men have put upon it in Michigan, but by the holding of it until circumstances have made it valuable, upon which they have paid taxes for fifteen or eighteen years, and some man who has no claim at all upon the Government, who has never been misled by the action of its officials, who never has paid a dollar in State tax or anything else, or paid for the land, is to come in and take it as a homesteader or preemptioner if he sees fit.

SENATOR BERRY.—The Senator has just admitted that it was in the power of the department to withdraw it from settlement and offer it to the highest bidder.

SENATOR TELLER.—So as to the men who bought the land in the vicinity of Denver, who bought it from a railroad company that had a patent to it, and, after there had been two determinations in the department that it was railroad land and not public land, it is in the power of the President of the United States to put up that land that has now enhanced in value, having passed through the hands of half a dozen owners, and sell it for a thousand dollars an acre; but it would be downright robbery if he should do it; and there has not been any President who has ever sat in the chair of Washington who would have thought of doing it. The people of the United States are not so poverty-stricken and so poor that they want the Government of the United States to engage in robbing the citizens. They are

willing that the Government should do what any individual would be compelled to do by the decent and respectable people of the community in which he lived, and that is to make good his contracts and not to resort to technicalities of law. I say that the Government of the United States cannot afford to take from anybody the land it has conveyed to him when the purchaser believed that he was getting a title from the Government, there being no fraud on his part.

If there was a mistake, what is the rule of equity? That the man who made it must suffer for it, and not the man who acted in good faith. If it was ignorance on the part of the Government officers, then the Government should suffer. If it was fraud on the part of the Government officers, then the Government should suffer and not the citizen, unless the citizen participated in the fraud.

Now, Mr. President, it may be that you could save fifteen or twenty or thirty thousand dollars of money by these proceedings; it may be that by resuming control of the land I have spoken of that is covered with houses in the city of Denver the Government of the United States can add to its overflowing treasury; but does the Senator from Arkansas want that done? Does he believe the respectable people of this country want it done when it comes out of the pockets of some citizen of the United States who is himself without fault?

Mr. President, money of that kind would be a disgrace to us, and ought to bring misfortune to us as well.

SENATOR BERRY.—Mr. President, the Senator from Colorado is horrified at the idea that this Government should attempt to take lands because of a mere technicality, and he says the trouble arose from a mistake of the Government. I read six letters from the Commissioner of the General Land Office at Washington to the local officers at Marquette, telling them again and again, "These lands are not subject to private sale"; and in subsequent letters, "You have disobeyed the orders, and I again remind you that they are not subject to private entry." In the face of that the officers at Marquette went on and sold 800,000 acres of these lands, three-fourths of which were sold to twenty corporations and syndicates, and the same register of the land office is now in partnership with the parties who purchased; and yet the Senator from Colorado says that is a mere technicality, and it would be robbery on the part of the Government to claim the lands. That may be called a technicality in the courts in which he has practiced, but in those in which I have appeared that would be called fraud, and any man who would doubt that

these corporations had full knowledge of the fact that the Commissioner of the General Land Office was instructing the local land officers not to sell these lands at private entry—I say the man who would doubt that knows little of the operations of the corporations of this country.

Mr. President, the whole history of land grants to corporations of every character and description has been that in every instance almost the corporation has failed to comply with the conditions contained in the grant. The history of it is that, wherever they have secured an advantage by the decision of any court over any poor settler, they have with merciless hand driven him from his home; and yet when they have made a mistake, when they thought they could purchase in the face of the law, when they knew they were violating the law, when this land would have brought thousands upon thousands of dollars if put up at public sale, when these favored individuals were permitted in the face of the law to take it up at $1.25 an acre and now come and make a pathetic appeal to Congress when they have possession of lands said to be worth to-day millions of dollars, the proposition that these men who paid $1.25 an acre for 800,000 acres of land should receive back only the money paid the Senator from Colorado thinks would be a great hardship, and he seeks to make an appeal to the Senate and to its sympathy in behalf of these syndicates.

I assert that no man can read the testimony taken before the House committee, no man can read the majority report, without coming to the conclusion that in nine cases out of ten these parties had knowledge of the fraud, and they knew they were gambling, they knew they were speculating, and they have no hold upon this land, but they have secured by paying a dollar and a quarter an acre lands of immense value, and that their hold is uncertain, and the department having decided against them they come here now and seek to foist it upon a bill known to be popular, a land-forfeiture bill forfeiting lands granted to railroads. They know they cannot get their claim through on its own merits, and their only hope is to tack it onto a bill that the whole country is in favor of, and then they hope by that means to confirm a title which was conceived in fraud and which was known to be a fraud at the time it was done.

I insist that this land-forfeiture bill, which we all protest that we want to pass, ought not to be clogged and loaded down with amendments which will have a tendency to defeat it, and then Senators go before the country and say the Senate of the United States passed the land-forfeiture bill, but the House of

Representatives did not agree to it when they are placing amendments on it which they know that no man who understands that testimony can conscientiously agree to.

The bill was amended and it passed without division on May 9.

FORFEITURE OF RAILROAD GRANTS

HOUSE OF REPRESENTATIVES, JULY 5, 1888

The House referred the bill to the Committee on Public Lands, which reported it three times, with amendments, the House recommitting it twice. The third report was debated on July 5. William S. Holman [Ind.], who presented it, explained its nature.

The House proposition would have the effect in the case of the Northern Pacific road and all the others to restore to the people a large body of land, an aggregate of lands double the area of the great State of Ohio, subject, however, to bona fide sales. Is there an absence of power in Congress to do this? Is it inequitable? This House has decided more than once that it was within its power to declare these forfeitures.

Here the speaker reviewed the debate on the Northern Pacific grants.

Can any person say it is unjust to restore those lands to the public domain, subject, of course, to the equities that might arise on behalf of the purchasers of land opposite to completed railroad?

The country was teeming with people and the great land grant increasing in value under their enterprise and labor before this railroad corporation thought proper to even take the first step toward completing in good faith its part of the engagement to construct this railroad. The facts were known to the corporation as to the nature of their grant and the object for which it was made, as well as to Congress or to the officers of the Government. No laches of Congress or of the Government officers can impair the rights of the people. They have a right to demand that if the contract was not carried out in good faith it should be declared void. I think the right and duty of Congress to declare this forfeiture is clear beyond question upon

every consideration of law and justice, and I am confident it is sound upon the high consideration of public policy, for the grant was made without justification, to build up private fortunes, and not for the public good.

Indeed, sir, that grant cannot be defended. Can any just man defend any of these grants?

I admit that so far as the Union Pacific road is concerned it stands solitary and alone. Its construction was authorized for a purely political reason, in the midst of great public disorders, and when it was deemed essential for high public reasons that there should be closer relations between the Atlantic and the Pacific States. I admit that at the beginning there was some uncertainty whether the bond subsidy which the Government provided for the construction of that road would be sufficient, but when the act of 1864 finally passed, under which the road was completed, then all men knew that the grant of 28,000,400 acres of land in addition to the enormous subsidy in bonds was without any possible justification, for it was well known at that time that the two series of bonds authorized were more than sufficient to complete the road. The land grant was a naked gift. That grant was opposed on this floor by Elihu B. Washburne [Ill.] with the great ability and marvelous energy of which he was master. I was glad to follow his lead. He opposed these grants as earnestly as the distinguished gentleman from the same State [Lewis E. Payson] has favored their forfeiture.

This Union Pacific grant was passed on the very heels of the homestead law, and was the beginning of that extraordinary system of land grants to corporations which has so fearfully reduced in a few years your public domain. Grants followed in rapid succession. This Northern Pacific grant was one of them. Look at the time when these events occurred.

While your people were watching with patriotic solicitude the movements of your armies, while those the most interested of all men in the public domain were rushing into the ranks of your armies to steady and uphold the tottering pillars of the Union, at that very time ex-governors of States, ex-members of Congress, men of high social and political standing were here upon this floor lobbying for these grants and securing by the favor of Congress vast portions of your national wealth—your public lands—of especial and inestimable value to the men—the laboring men of the country—who were then imperiling their lives in the national defence. In that unpatriotic and mercenary spirit these grants were obtained by which the people were robbed of their rights and imperial fortunes were secured.

Congress was engaged in the work of parceling out among mercenary capitalists your public domain when the clash of arms could almost be heard in this hall!

Are great grants of land obtained under such circumstances to be carefully guarded by Congress and the courts of justice? Will Congress refuse to declare their forfeiture when a just ground for forfeiture is presented? You have a right to declare the forfeiture of these millions of the public land wrongfully granted, and justice demands that it shall be done.

I do not wish to enter into a political discussion over this matter of the public lands, but gentlemen in a recent debate here talked as though the Democratic party had no special reason for championing measures for the annulment of these grants. I think the Democratic party have a special interest in the subject; that party can look back with great satisfaction to the record of its representative men on the land question.

Here the speaker reviewed the history of the Virginia Cession, the Louisiana Purchase, and the Homestead Law.

While the Homestead bill was pending in the House on the 18th day of December, 1861, I submitted a proposition that the act of March 3, 1855, which had secured allotments of public land to the soldiers of every successive war prior to that which was then waging, should be extended to the soldiers of the then existing war for the Union. That proposition was made in view of the uniform policy of our Government in all former wars, and because no act could be more becoming a Republic than to give the soldiers who fought in its defence a freehold in the soil of their country. The argument against it was that its tendency would be to monopolize the public lands, that bounty-land warrants assignable would certainly produce that result. That was the only argument that could be urged against it, for the public lands were then ample for the purpose; but it was successful, and my provision failed by the action of the gentleman who controlled the bill in the House. The debate on my proposition to grant bounty lands to the soldiers of the war for the Union, in view of the results, was one of the most interesting debates that occurred during the war. John F. Potter, of Wisconsin, who controlled the bill, indignantly declared, in his speech against my amendment, that "the issue of land warrants under previous acts has absorbed nearly 100,000,000 acres of our public lands and thrown nearly that amount into the hands

of speculators." William Windom, of Massachusetts, was still more indignant, and declared, in substance, that it was mere demagogy. James A. Cravens, of Indiana, a gallant soldier of the Mexican war, was the only member who stood by me with a speech. This debate will be found in the *Congressional Globe*, second session Thirty-seventh Congress, volume 67.

But, Mr. Speaker, what an extraordinary result followed! Within ten years afterward grants of public lands to an extent unexampled in the history of any country were made to corporations, commencing with the same Congress. How does the account stand?

It appears, therefore, that while it was not thought proper on February 22, 1862, to grant bounty lands to the soldiers of the Union army on account of its tendency to land monopoly, yet, beginning with July 2, 1862, with a grant of 28,000,400 acres to the Union Pacific Railroad corporations, Congress within ten years gave directly to corporations and to States for corporations 181,419,569 acres of land, a territory eight times greater than the State of Indiana. All this in ten years! While from the year 1787 down to this day all the grants made by Congress for common schools, the foundation of the grandest system of education the world has ever seen, including the sixteenth section of every township of the public domain down to the formation of the Territory of Oregon, and the sixteenth and thirty-sixth sections in every township of every State and Territory organized since, including also all grants for universities and colleges, and all grants for military services in all the wars from the Revolution down to the war with Mexico, aggregate 146,678,061 acres.

A careful inquiry will reveal the fact that the present Administration has absolutely reversed the land policy of the Republican administrations. Instead of a policy that favored the grants to railroad corporations, the Spanish and Mexican grants, and the enormous claims under entries made for speculation, every effort is now made consistent with justice to restore the public lands to the bona fide settler. General Sparks and his able successor, Colonel A. M. Stockslager, pursuing the same line of policy under the earnest approval of the President, have restored by Executive order 52,437,373 acres to the public domain.

You have, gentlemen, at the present session of Congress passed a bill for the first time classifying the public lands and securing to actual settlers all the remaining public lands adapted to agriculture, protecting your remaining coal fields and streams of water from monopoly, protecting your forests from destruc-

tion, and repealing all laws under which speculation in the public lands is possible. You have declared in that bill that the public lands shall be held to secure homes for our people, and for no other purpose. Had that bill been passed as a part of the homestead measure of May 20, 1862, how many generations would elapse before the peril would approach that comes to a nation from a homeless, hopeless, and discontented people! The promise of a home on your public lands has through generations past inspired with hope the hearts of millions of laboring men of the United States. Every laborer at the forge, in the shop, and everywhere has been buoyed up with the hope that after a while by patient industry he might secure for his family an independent freehold upon the public domain. It has been not only the source of your greatness, but the ark of your safety. But, unfortunately, the spirit that inspired the homestead law died with its enactment; the vast body of your public lands were left exposed to speculation for the benefit of those for whom the homestead law was not intended.

In that bill you have passed a homestead measure which does not leave one acre of public land open to the speculator. By that bill you have set apart your public lands for homes for your people. If the Senate, yielding to just public sentiment, should pass that bill, and this measure now pending of public justice should become a law, much will have been done to retrieve the past.

Let this measure proposed by your Committee on Public Lands pass. Let it become a law. Restore the land to the people from whom it has been unjustly taken; restore to them these millions of acres which have been so unwisely and improvidently granted to favored parties; restore the land to its rightful owners and dedicate your remaining lands for homes for your people and then those whose praise is most to be desired, the unfortunate, the poor, the landless, will rise up and pronounce their blessings upon the Fiftieth Congress of the United States. [Great applause.]

William J. Stone [Mo.] defended the Democratic land policy.

The Republican party, forgetting or ignoring the history of the past, created corporations by congressional enactment, invested them with great privileges and powers, and put charters into their hands which authorized them to go out upon the fairest domain on the earth—the property of the American people,

acquired and until then held by the Democratic party as the future homes of our fast-increasing population—and appropriate it by the tens of millions of acres; and, not content with that, they must issue them more than half a hundred millions of bonds, bearing a high rate of interest, to be paid out of the earnings of honest labor. Instead of having landlords among the titled nobility of Europe, holding by authority of the Crown, we have corporation landlords, holding by authority of a Republican Congress—corporations whose stock is largely owned and held in Europe.

This system of corporation landlordism is, if anything, more dangerous than the one against which our fathers drew the sword. It is full of menace and danger to every man who looks into the future of our country. The very idea of a single corporation, especially one whose stock and bonds are principally owned abroad, like the Northern Pacific, holding as the free gift of the Government of the United States a territory as large as the fifth State in the Union and capable of sustaining twenty-five or thirty millions of people, cannot but excite the gravest apprehensions in the minds of thoughtful men.

Our homestead laws were enacted with a view to serving the needs of actual settlement. They were intended to facilitate actual occupation of the public lands, and to promote the interest of those who should venture to establish homes upon the frontier and lay the foundations of great commonwealths. It is undeniably true that these well-intended statutes have been a great blessing to many thousands of poor men who have found homes under their provisions; but in later years they have also been grossly abused by the grasping and the vicious in a way totally at variance with the public right, the public interest, and the public weal.

Rich men, syndicates, and corporations have employed thousands of people to make fraudulent entries for their benefit under the preëmption, desert-land, and other laws, by means of bribery and perjury. The laws have been evaded and many millions of acres of the public domain have been literally stolen. Laws that were intended to protect the public lands from speculation and preserve them as free homes for the homeless have been so administered under administrations previous to the present one as to enable a favored few to acquire lordly estates amounting to tens of thousands of acres. I have not time to go into this phase of the question with anything like detail. It is sufficient to say that so startling and universal had fraud become, and such a storm of protest was rising from the people

SERVING TWO MASTERS
THE SORT OF THING THAT WILL CHARACTERIZE SENATOR BECK'S BILL BECOMES A LAW
Cartoon by Joseph Keppler in "Puck"

against loose and dishonest methods of administration, that President Cleveland, after having had a thorough and exhaustive examination made into the subject, in his first message to Congress asserted that the tide of fraud and corruption had risen so high and become so strong that the only remedy was to repeal the laws under which such things were made possible.

Following the lead of the President, the Democratic House of the Forty-ninth Congress passed a bill, reported from the Democratic Committee on the Public Lands, repealing the commutation clause of the homestead law, the preëmption law, and other laws under which the public lands had been fraudulently appropriated during a long series of years, and holding whatever was left of the public domain exclusively for actual settlement.

That bill was sent over to the Senate, and that Republican house of lords refused to concur in the measure unless the House would agree to insert a provision confirming all entries, without regard to their character, which had been made up to that time. That the House refused to do, because it was a known fact, ascertained as the result of exhaustive investigations begun and prosecuted by the officers of the present Administration, that frauds upon a large scale had been committed. Many fraudulent entries, involving millions of acres, were then hanging up in the General Land Office, undergoing investigation, with a view to cancelation because of their fraudulent character. The House would not consent by an act of confirmation to sweep all of that work of the department aside, and permit the thieves to walk off with the plunder, bearing the sanction of our approval; and hence the bill did not become a law.

None the less the President, through his subordinates, has been going steadily on with the work of investigation, canceling fraudulent entries, eradicating evils of various kinds, and perfecting the methods of administering the laws. In addition to the forfeitures made by the Forty-eighth and Forty-ninth Congresses, the Interior Department, by executive action, during the present Administration has restored over 52,000,000 acres to settlement.

The land thieves had a harvest of twenty years, and they made hay while the sun shone. But the blizzard came with Cleveland. Under his administration the first staggering blow in twenty years was struck at this monstrous corruption. The wolves showed their teeth, snarled and snapped, but the "man of destiny" at the White House has been steadily beating them back.

I come now, Mr. Speaker, to consider briefly the bill immediately under consideration. At the beginning of this Congress a number of bills were introduced in the House to forfeit lands granted in aid of the construction of railroads, which have been favorably reported, and are now pending on the calendar of the House. Some six weeks ago the Senate passed a bill entitled "An act to forfeit certain lands heertofore granted for the purpose of aiding in the construction of railroads, and for other purposes." That bill has been considered by the House Committee on the Public Lands, and, as it is general in its character, it has been made the basis of the pending measure.

The Public Lands Committee have reported it back to the House with amendments. Indeed, there are three reports from that committee. It may not be inappropriate to remark that a consideration of those reports will forcibly illustrate the position of the Democratic and Republican parties on the subject of forfeiting these railroad land grants.

The bill, as it came from the Senate, proposes to forfeit and restore to the public domain all that part, and only that part, of the lands granted by Congress to aid in the construction of railroads which lie along that portion of the routes over which no road has been built up to this date. That is the bill our committee have been considering. Out of it three propositions have grown and are brought here into the House by the various members of the Public Lands Committee.

First. Four distinguished Republican members of that committee, namely, Lewis E. Payson, Joseph McKenna, Augustus J. Turner, and Binger Hermann, file a report in which they recommend the passage of the Senate bill.

Second. A majority of the committee, through Judge Holman, file a report in which they recommend an amendment to the Senate bill extending its scope so as to embrace and forfeit not only the lands where no road has been yet built, but also all lands across which no road had been built at the expiration of the period limited in the granting acts for the completion of the whole road.

Third. My colleague on the committee, Thomas C. McRae [Ark.] and myself have filed a separate report, in which we recommend a forfeiture of the entire grant where there has been a failure of compliance by the corporations with the terms and conditions of the grant. We propose simply to go a little further than the majority recommend in the report filed by Judge Holman.

If the Senate proposition should prevail, the forfeiture would

amount to 5,627,436 acres. If the majority amendment should prevail, the forfeiture would amount to 54,323,996 acres. If my proposition should be adopted the forfeiture would amount to 78,503,088 acres.

As to most of the features of the bill proposed by the House committee we are all substantially agreed. We propose to except from the forfeiture the rights of way of the companies, and sufficient lands for depots, machine shops, and so forth. We also except from the forfeiture all lands appropriated for town sites, lands in the possession of actual settlers, and all lands held by bona fide purchasers for value. I am in favor of all that. The committee is in accord as to that. I would freely give to the companies whatever lands are reasonably necessary to the convenient operation of their roads. I would not disturb titles and create confusion where towns and cities have been built; nor would I disturb or distress actual settlers, or persons who have in good faith purchased lands from any of the companies for a valuable consideration. Whatever defect there may be in such titles I would remove by an act of confirmation. The reasons for such a course, I assume, are too manifest to require elaboration.

If the companies are protected in their rights of way; if town sites are left undisturbed because excepted from the forfeiture; if honest actual settlers and bona fide purchasers for value are protected from harm by having their titles confirmed; if all equities and all questions of this character are eliminated from the legislation proposed, then there is nothing left but a naked and unincumbered issue between the Government of the United States, representing the people on the one hand, and the railroad companies on the other. It is a simple issue between the grantor and the grantee, with all intervening rights protected.

If the corporations receiving the grants have any equities to urge in their own behalf, they have neglected their opportunities to do so, though they may expect to have it done for them upon the floors of the House and Senate. In the committee room they have combated the forfeitures upon purely legal grounds. They claim the lands as a matter of legal right, and deny the power of Congress to disturb them. And it is purely a question of law. I claim that the grants were made upon such conditions as vest in the Government the right to reenter and take possession after a breach thereof.

I shall not discuss the legal phases of the proposed forfeitures at this time. The *Record* is full of speeches made by the

best lawyers in the House upon the subject. I shall quote but one authority, that of the distinguished gentleman from Illinois [Mr. Payson], who wrote the minority report on the pending measure, in which he advises the House to adopt the Senate bill. During the Forty-seventh Congress that gentleman was a member of the Judiciary Committee. A bill had been introduced and referred to that committee forfeiting the lands granted to the Northern Pacific. That was the pioneer forfeiture bill. That company was required to complete its road in 1879. Its grant was made upon the condition that it should do so. It did not construct its entire road by 1879. At the expiration of the period limited for its completion only a comparatively small part had been constructed. The road is yet unconstructed, and so the question of forfeiture was fairly presented in the bill to which I have alluded. The gentleman from Maine [Thomas B. Reed] was then chairman of the Judiciary Committee, and, acting for the majority of that committee, made an adverse report upon the bill. The gentleman from Illinois [Mr. Payson], acting with the Democratic minority, prepared and presented a minority report advocating the passage of the bill. From that report, made July 24, 1882, I quote:

> We conclude, then, on the legal question of power in Congress, that it has the right to declare the title to all unpatented lands in the grant forfeited and revest the United States with it, so that it can be restored to the public domain, open to sale and settlement under existing laws.

On July 6 the bill was passed by a vote of 179 to 8. The Senate refusing to concur in the House's substitute, a conference committee was appointed. It did not report during the session.

forward the program for its discussion. He explained the situation as follows:

The subsidy bonds covered by the bill amount to over $61,000,000. The amount of indebtedness on the 1st of next January will be, in round numbers, $111,000,000. The Government has a second lien for this on 2,293.4 miles of railroad, with the appurtenant property of the road. All of the prior liens upon the property remain unpaid, and hence the amount involved in the question to be considered is the Government claim, plus the prior liens, amounting in all to over $172,000,000.

The President tells us in his message that on January 1, 1897, there will be due on the bonds of the road $19,000,000, and by January 1, 1899, an additional amount of more than $41,000,000. It is contended—I do not know with what truth—that if a foreclosure is had the Government will realize but very little out of its claim. That, I trust, is a point on which we will have ample discussion and full light.

On March 3, 1887, an act of Congress was passed authorizing the appointment of three commissioners to investigate the whole subject of the relations of the bond-aided railroads to the Government. On January 17, 1888, President Cleveland transmitted the report of that commission, known as the Pacific Railroad Commission, to Congress, closing his message with these words:

> The public interest urges prompt and efficient action.

To the second session of the Fifty-second Congress President Harrison said as to the subsidy bond debt:

> We must deal with the question as we find it, and take that course which will, under existing conditions, best secure the interests of the United States.

And he renews his recommendation of the preceding year:

> That a commission with full power be appointed to make settlement.

To the second session of the Fifty-third Congress President Cleveland, indorsing generally the department recommendation, transmitted the annual report of the Secretary of the Interior, wherein that officer recommended action by Congress on the subject, and referred approvingly to the report of the Government directors, calling attention to the approaching maturity of the subsidy bond debt and renewing the recommendation so frequently made by their predecessors for a prompt and complete

CHAPTER IX

Pacific Railroads Funding Bill

H. Henry Powers [Vt.], of the Committee on Pacific Railroads, Introduces Bill in the House to Remit Obligations of the Union Pacific and Central Pacific Railroads to the Government; Charles K. Bell [Tex.] Presents Minority Report—Debate: David B. Henderson [Ia.], James G. Maguire [Cal.], Mr. Powers, Joel D. Hubbard [Mo.], Mr. Bell, Galusha A. Grow [Pa.], Grove L. Johnson [Cal.], William C. Arnold [Pa.], John C. Bell [Col.], William P. Hepburn [Ia.], Henry A. Cooper [Wis.], William W. Bowers [Cal.]; Bill Is Defeated.

IN the session of 1895-96 H. Henry Powers [Vt.], of the Committee on Pacific Railroads, reported in the House a bill which declared in its title that its purpose was

"to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all their indebtedness to the United States."

The true purport of the bill will transpire in the debate upon it. The measure related particularly to the Union Pacific Railroad.

The measure was postponed to the next session.

In the ensuing presidential campaign the Democratic platform declared specifically against the bill as condoning and confirming a default by the railroads concerned of debts justly due to the Government.

On December 10, 1896, Charles K. Bell [Tex.] filed a minority report of the committee against the bill.

Pacific Railroads Funding Bill

House of Representatives, December 19, 1896-January 11, 1897

On December 19 the bill came forward. David B. Henderson [Ia.], of the Committee on Rules, brought

adjustment of the financial relations between the railroad companies and the United States.

This he renewed in his subsequent messages.

The Committee on Rules, urged by the people's interests and by these different officers of the Government, have unanimously brought in this rule, so that the House might have an opportunity to determine whether or not it will take up this question and consider it. If they decide to consider it, then they must determine whether or not it is their intention to confess to the country that they have not the ability to bring forward a remedy by legislation. It may be that when this is considered no method can be pointed out that will show how the Government can save this vast sum of money. That is a matter for discussion, but at all events every Representative should have the courage to let this matter come up for full consideration and discussion, and see whether or not we can save these many millions to the country, or whether we must abandon them to the chance of foreclosure, knowing a prior lien is upon every dollar of that which we have a second lien upon. [Cries of "Vote!" "Vote!"]

JAMES G. MAGUIRE [Cal.].—Mr. Speaker, I am well aware that, under the rules of the House, clôture, which the committee invokes for the bill, applies to the consideration of the report, and I know also that a number of gentlemen who are opposed to the bill will not vote against the committee on this question.

But, sir, I cannot permit the statement just made by the gentleman from Iowa [Mr. Henderson] to pass unchallenged. Several of his statements are misleading and some of them absolutely erroneous. The Government is not menaced by any such danger as the gentleman suggests. It is not the interest of the Government, but the interests of the debtor companies that are to be promoted by the Powers bill. The Government is amply protected by the Thurman Act, under which foreclosure proceedings will shortly be instituted, unless Congress as a favor to the defaulting companies shall relieve them from their obligations under that act by extending the time for the payment of the debt.

That the companies interested should be anxious to have the bill brought on speedily for consideration is quite natural, because their interests are to be promoted by it, but the interests of the United States Government are now protected by the best safeguard of which existing conditions will permit, namely, the right of foreclosure and such rights as it may have to pursue

diverted assets and the unpaid subscriptions of stockholders. The provisions of the Thurman Act are far better for the Government than the proposed refunding act. The Thurman Act was a settlement of the Pacific Railroad question. It presented the alternative to the companies to pay or submit to foreclosure. They did not pay, and this urgent proposition is to relieve them of the alternative. That is all. The only defect so far developed in the Thurman Act is that it does not vest jurisdiction in any particular court (nor, in my opinion, any court) over the interests of the United States Government in the roads.

If any change of existing law is needed, it is that jurisdiction be vested in the Supreme Court of the District of Columbia, or some other particular court, to adjudicate and determine the interests of the Government in the roads.

The gentleman from Iowa [Mr. Henderson] says that the question is how to get the most money for the Government. That question should properly be discussed when the bill is up for consideration on its merits. It is the question presented by the bill. That may be the ultimate question, but the gentleman is mistaken in stating that the Secretary of the Interior, Mr. Smith, suggested that refunding is the best method. He did not. He stated before the House committee and testified before the Senate committee that, in his opinion, foreclosure was the best means of getting the most money for the Government out of these roads. Messrs. Anderson and Coombs, Government directors of the Union Pacific Railroad Company, who have investigated the matter fully, in like manner stated and testified that, in their opinion, foreclosure is the best method of procedure for the protection of the Government.

Mr. Coombs, government director of the Union Pacific Railroad, testified before the Senate committee, and stated before the House committee, that $12,000,000 can be obtained by foreclosure sale of these two roads, which would net the Government about $60,000,000. This is about $40,000,000 more than it will ever get if the bill now proposed to be given consideration shall pass. Mr. Anderson, government director of the Union Pacific Railroad and author of the majority report of the Pacific Railway Commission, in which refunding was recommended, as stated by the gentleman from Iowa [Mr. Henderson], testified before the Senate committee, during its hearings last spring, that he had changed his mind on that subject, and that in his opinion foreclosure and not refunding was the best remedy.

The gentleman refers to the President's message to Congress

at the opening of the present session, urging action, or, rather, declaring that if action be not taken by Congress by the 1st of January next there would seem then to be no further reason for delaying foreclosure proceedings. It seems to me that neither this House nor the country has anything to fear from that alternative. The House and the country may well permit every reason which has heretofore influenced the President to delay foreclosure proceedings to be removed by the failure of further congressional action in the interest of these companies.

Let the course of judicial procedure ordinarily adopted in such cases among citizens be followed.

For my part, I am not only opposed to the bill, but opposed to the consideration of any such measure. It is neither necessary nor useful.

On January 7, 1897, Mr. Powers supported the bill.

If there be any attempt during the progress of this debate to make appeals to the prejudices of men, the opponents of this bill will have a monopoly of that privilege. It is a straight, simple, business proposition that we intend to submit to the consideration of the House. Very likely I can best serve the purpose that I am charged at this time with forwarding by calling attention for a few moments to the history of this Pacific Railroad legislation.

The act of 1862 provided that the two companies, the Union Pacific Company and the Central Pacific Company of California, should have, as substantial aid for the building of their respective portions of the road, a magnificent land grant of each alternate section of land on either side of the line for a distance of ten miles—five sections for every ten miles. These lands were granted to these two corporations for the purpose of enabling them to construct the railroad which the Government so much desired. In addition to that, Congress gave to these companies a subsidy. That subsidy consisted of this, that the Government should issue thirty-year 6 per cent. bonds and deliver them to the companies as fast as they completed the several sections of the road.

In the open country between the Missouri and the foothills of the Rocky Mountains the subsidy should be at the rate of $16,000 per mile. The act further provided that in crossing over the Rocky Mountains, and also in crossing over the Sierras on the California end, the subsidy of $16,000 per mile should be tripled, making $48,000 per mile, and that between the

Rockies and the Sierras, where the work of construction was more difficult than on the outside ends of the line, the subsidy should be twice the original amount, or $32,000 per mile.

Now, Mr. Chairman, it is important for us to remember that to-day the building of a transcontinental line of railroad from the Missouri River to the Pacific Ocean is not a difficult work. But when you go back to 1862 you find that this was looked upon as an almost impossible venture.

But these companies went forward. Under the act of 1862 they endeavored to enlist private capital in the enterprise. But it looked so chimerical—it looked to business men so practically absurd—that very little money was raised, and the scheme seemed to be paralyzed from the start. So those men came back to Congress in 1864 and said to the members of both Houses: "We cannot raise the necessary capital to construct these railroads; we are hampered by the fact that the Government itself, under the act of 1862, is to have a bottom mortgage on the railroad; we cannot raise money ourselves to build the road. But we ask you to permit these companies to place upon the road a first mortgage underlying the claim of the Government; and with the sale of the bonds and the proceeds of that mortgage, plus the aid that is to be rendered by the Government, we can assure Congress that the road can be constructed."

In 1864 Congress had the same patriotic ardor for the construction of these roads that it had in 1862. It very readily, therefore, granted this request, and the distinctive characteristic of the legislation of 1864 is the fact that the Government stepped back one pace in the lien which it was to impose on these roads and the securities for the repayment of the subsidy which had been given them, and allowed the companies themselves to place beneath the mortgage of the Government a mortgage of prior obligation upon which they could realize money for the prosecution of this enterprise.

Now, those two acts—the act of 1862 and the act of 1864—contain the charters of the Union and Central Pacific Railroads, so far as the provisions of these charters are important for us to consider to-day.

Now, the Supreme Court has decided that under this legislation the security of the Government rests upon that portion of the railroad line that was actually aided by the Government. As everybody knows, the Union Pacific Railroad is now or was until recently a great system of railroad lines embracing nearly 8,000 miles, whereas the original line as projected under the legislation of 1862 and 1864 embraced only about 1,800 miles.

The Central Pacific Railroad of California, as it existed under the original legislation, embraced only the line from Ogden, in the State of Utah, to San José, in the State of California, a distance of about 860 miles; but to-day the Central Pacific system embraces a large number of additional lines that have been brought into it by purchase and by new construction.

It is easy to see, Mr. Chairman, that with this magnificent land grant given to the Union Pacific and the Central Pacific system, as well as the subsidy granted to each, it became a question of rivalry between them as to which should get the largest share. It became a race of diligence between the Central road, building from the west, and the Union Pacific, from the east, to see which could get the most of this grant by the Government, because the land grant and the subsidy were paid to both of them by the mile, and the more miles that any road could get in, the more land and the more subsidy it would be entitled to. The result of it was that these roads built right by each other in the vicinity of Salt Lake for a distance of about 80 miles, which was graded by the Central Pacific east of Ogden, the present terminus of the road; and the Union Pacific had shot by where the work of the Central Pacific was going on; and then each of the roads came to Congress claiming the land grant and subsidy for the additional mileage thus constructed. Congress settled the matter by the act passed in 1869, which provided that the point of junction between the two roads should be at a certain point about five miles west of Ogden.

This diligence resulted in another strange fact. Under the legislation of 1864 the roads had up to July 1, 1876, to complete the line, a distance of more than 2,000 miles. They had to cross the Rocky Mountains, the Sierras, as well as to traverse the great intervening arid space between the two. But this race of diligence enabled these companies, under the most formidable obstacles, to build the complete roads to the satisfaction of the Government, and they were accepted by the Government on the 10th day of May, 1869, four years after they had struck the first blow in the work.

Now, why did the Government want these roads built? I will show you. They were paying for the transportation of the mails overland to California, as well as to other points on the Pacific coast, a sum total of between seven and eight million dollars a year. After the roads were built this was cut down from $8,000,000 a year to a little over $1,000,000. They were compelled, before the building of the roads, to incur very heavy expense in the transportation of their supplies for the Indian

agencies, their munitions of war, their troops, and other matters of freight. By the building of this road they were enabled to cut down this expense in an equally large ratio.

Not only that. Prior to the building of these roads that great and almost boundless empire that lies between these two ranges of mountains, with millions of public lands for sale, was practically cut out from the world. No man wanted to go there and settle, and therefore no man would buy an acre of that land. But by pushing this line of railroad through it opened these lands to sale and to settlement, and thousands and millions of inhabitants are to-day living in that region that was opened up by the enterprise of these men that had this matter in charge. And I may say right here in passing that, if the Government of the United States should lose every dollar of its indebtedness against these companies, should make a free gift of it, it could still credit the companies and itself with more than ten times as much in dollars and cents as it has ever expended in the construction of these roads. Why, the building of this Union Pacific through Nebraska and Kansas has strung together towns and cities like beads, and has carried civilization out through that country and across the Rockies, through its open portals to that great plain beyond; and we to-day are enjoying the blessings of it, not least among which is the presence on this floor of the genial gentlemen from Colorado and Utah, and Nevada, and other States out there that we should never probably have heard of had it not been for the building of this road. It opened up the great silver-mining industries of the country. Colorado, Utah, and Nevada were opened up, and the mines of that country were worked. Why, we never should have heard of a free-silver party if it had not been for the opening up of that country. I do not know that that is any argument in support of the passage of this bill. [Laughter.]

Now, in short, this is the way in which the Government got into this fix. The Government away back, under the act of 1862, undertook to secure to itself the payment of these subsidy bonds, and the plan which they then adopted, in the light of the facts then existing, was undoubtedly a safe one to calculate upon. They provided that the issue of these subsidy bonds upon the completion of each forty miles of railroad—the delivery of these bonds to the companies—should *ipso facto* create a statutory lien upon that section of road, and to secure payment they provided that this statutory lien should be a first lien, and that the roads, in addition to that security, should pay into the treasury of the United States a sum of money equal to 5 per cent.

of its net earnings after the road was constructed. It was supposed that this 5 per cent. of the net earnings would be sufficient to meet the current obligations of the Government as they matured.

At that time, as you will remember, this was the only line in contemplation. Nobody dreamed that the Atlantic and Pacific, the Texas Pacific, the Northern Pacific, the Canadian Pacific, or three or four other competing lines that have since been built, would ever be constructed. Everybody supposed that all the freight and all the passengers that were moved between the East and the West were to go over this line and that the business therefore would be immense. But, in the progress of time, these promoters, having demonstrated that a road could be built over the Rockies, other men interested themselves in competing lines, and in a very short time four or five of these lines have been constructed. Therefore the receipts of these two companies have been lessened by that active competition on the part of other lines.

We are not to say that the Congress of 1862 acted in a short-sighted manner, because as things then appeared to them it was doubtless a sound piece of reasoning to say that the 5 per cent. of the net earnings of these companies paid into the sinking fund would pay off this indebtedness in the end.

Now, matters ran along in this way until 1878. Mind you, the road was finished in 1869 and accepted by the Government.

It was soon seen, after the roads started in and these other competing lines were projected and completed, that the provision made under the legislation of 1862 and 1864 would be insufficient to meet the debt at its maturity.

The Supreme Court of the United States had meantime decided that the interest upon the subsidy bonds was not due from the companies until the maturity of the bonds. The provision in the statute is that the bonds shall be issued running thirty years, the interest thereon payable semi-annually, and that these companies should meet and pay that interest. But the court says, and I think it is a unanimous opinion, that under the language used in that enactment the interest upon the subsidy bonds paid by the Government could not be taken from the company until the principal of the debt matured. And the result of that is the interest has been accumulating against these companies, and to-day we are confronted with a vast amount of unpaid interest, as well as the balance of principal.

In 1878 this matter was again taken in hand by Congress, and Judge Thurman, then a Senator from the State of Ohio,

prepared and secured the passage of a bill known as the Thurman Act, the essential provisions of which, so far as this question is concerned, are these: That instead of paying into the treasury 5 per cent. of its net earnings, which upon an actual experience had proved to be insufficient, that there shall be 25 per cent. of the net earnings paid in. I ought to have said, in passing, what the two acts of 1862 and 1864 provide. The act of 1862 provided that the whole amount of the indebtedness from the Government to the railroads for the transportation of mails, for the transportation of its troops, and for other purposes should be retained by the Government.

In 1864 Congress modified that by providing that of these transportation charges only one-half should be retained in the treasury and the other half paid to the company. You observe that the Government thus was one of the very best customers of these roads. It had to pay these roads an enormous sum, and they took care to provide in the act itself that they should not be charged any higher rate than that charged private individuals for similar service. These transportation charges, which were enormous in amount, were to be retained, under the act of 1862, altogether in the treasury; under the act of 1864 one-half only, and under the act of 1878, the Thurman Act, the whole was to be retained, but one-half of it should be applied to the current interest on the subsidy bonds, and the other half go to the sinking fund, the theory of the Thurman Act being that one-half of its transportation charge, plus some other reserve, would take care of the current interest on these bonds, and the sinking fund itself would at the maturity of the bonds be large enough, if well invested, to take care of the principle.

Now, I will restate these propositions, because it is a pretty important piece of arithmetic. Under the act of 1862 the security retained by the Government was a first mortgage on the road, plus 5 per cent. of the net earnings and the whole transportation charges; under the act of 1864 the security of the Government was a second mortgage on the road, plus 5 per cent. of the net earnings and one-half the transportation charges; under the Thurman Act of 1878 the security of the Government was 25 per cent. of the net earnings, made up in this way: First, the transportation charges that the Government would be owing to the road as a debtor; second, 5 per cent. of the net earnings; third, such a proportion of the aggregate sum of $1,200,000 in the case of the Central Pacific, and $800,000 in the case of the Union Pacific, should be paid into the treasury of the United States, which, with the other two reservations,

transportation charges, and 5 per cent., would aggregate in the whole 25 per cent. of their net earnings.

Now, then, Judge Thurman, in one of the most elaborate discussions of this question that has ever been made in its entire history, practically demonstrated, as the reader will see, the facts that his provision amply secured the repayment of this money. Why did it fail? Why, it failed, Mr. Chairman, just as many times the best laid plans of men as well as mice fail. The reduction in the rates of transportation was a very important contributing factor to bring about this result. The freight rates from the East to the West have been going down, down, down, as time advanced, to such a point that they hardly pay the charge made necessary by that transportation. This, however, is not peculiar to the history of these roads. It is peculiar to the history of all railroads in this country. How many of these roads have gone into the hands of receivers from the same cause exactly? Not only that, but the Government itself has divided this patronage with the Pacific roads. Instead of sending all its freight, all its transportation business over this line, the child of its own creation, the child that it should nourish and encourage, especially if it expected a repayment of its debt, it has divided its patronage. Some of it has gone to the Central Pacific, much of it to the Santa Fe, and much of it has gone to the other roads, thereby reducing the receipts in the treasury of the company, and to a corresponding degree the receipts in the treasury of the United States have necessarily been cut down.

But that is no fault of the railroads. It was a wise policy that promoted the building of these other lines. Other sections of this country needed opening and development as well as that central portion, and therefore the Government was wise in encouraging it, and no man has a right to criticise that policy; but the necessary result of it was to diminish the earning capacity of these roads which the Government itself had assisted in building, and therefore that policy contributed very largely to bringing the road into its present insolvent condition.

The Thurman Act was based upon the theory that government money was worth 5 per cent. interest, and, if that theory had proved correct, no doubt the Thurman Act would have worked out the result anticipated by its author. But, instead of the Government borrowing money at 5 per cent. interest, it can borrow at a rate nearer to 2 per cent., and this appreciation in the credit of our Government, which ought to thrill with pleasure the heart of every patriotic American, has

also contributed very largely to the disastrous result which has overtaken these roads.

The Government said to these Pacific road companies: "Gentlemen, we want a line of railroad constructed from the Missouri River to the Pacific coast; we want to open up our great possessions between the two great ranges of mountains; we want to lessen the cost of transporting supplies and munitions of war across the continent, and supplies for the Indians to the interior of our country; we want a cheaper mode of transportation. If you will take all the risk and peril of building the road and will construct it to our satisfaction, we will give you so much money, we will give you such and such a land grant, and we will lend you each $33,000,000 by way of subsidy, which you may repay according to the terms of contract. If these conditions are acceptable to you, go on and build the road."

Now, if those companies went on and built the road, what man is there outside of a lunatic asylum who will say that they have got rich out of the Government? They have gotten out of the Government just exactly what the Government contracted to give them; no more. Not only that, but under the provisions of the acts of 1862 and 1864, as well as the Thurman Act of 1878, they have paid into the treasury of the United States, notwithstanding the fact that the Union Pacific Company during the last three years has been in the hands of a receiver, every dollar that the Government required of them. Not a cent has been defaulted. Where, then, is the ground for saying, as my friend from Louisiana [Charles J. Boatner] will say when he comes to discuss this question, that the men who built this railroad ought to "disgorge" and pay this debt themselves? They are nothing but stockholders in a railroad company. If any of you gentlemen are stockholders in an insolvent bank, do you pull out your own pocketbooks and pay its debts, or do you insist that the bank itself must pay?

Why, gentlemen, the result of those requirements exacted of those companies has been this, that the Union Pacific Railroad Company has returned to the treasury of the United States the total principal of the subsidy bonds issued to it plus $5,000,000, and the Central Pacific has returned into the treasury under those various requirements a sum that lacks only about $10,000,000 of the amount originally granted to that road. That leaves, therefore, this difference of $5,000,000, plus the accrued interest; and that is the subject-matter of this proposed legislation.

This Congress is confronted with this condition: These sub-

sidy bonds have some of them already matured, and the balance of them mature on the 1st day of January, 1898, and the 1st day of January, 1899. The time for action has come. The Government must do something to close out its relations with these roads. The President of the United States under the act of 1887 already has authority to foreclose the lien of the Government, and, if necessary, pay off the underlying first mortgage. The first question, therefore, that presents itself to us is this: Is it wise business policy for the Government to foreclose its lien or to seize the property, as some gentlemen contend it may be seized under the act of 1862, and get out of it what it can by the foreclosure?

Supposing that these gentlemen are right—that the Government can seize this property; the act of 1862 provides that upon a default in the payment of this interest as it matures the Government shall be authorized to take possession of the property; but every lawyer knows that that does not mean at all that the Secretary of the Treasury can walk into the office of this company and demand possession of the road and its property, and by force of arms or otherwise actually take possession. It means that he can take possession only by judicial process. He must resort to some judicial process if his request is not granted peaceably. That implies litigation. That raises all the questions that the company might raise as to the right of the Government to do that. It does more: It would require that the Government pay off its underlying first mortgage in order to realize any benefit from the seizure. Suppose that the Government, instead of taking that course, should foreclose the mortgage by proceedings in the courts. Now, under the practice of the Federal courts, where this case would go, the Government does not have what is known in New England as a strict foreclosure; that is, when the mortgage upon the foreclosure takes the property itself.

Under the Federal legislature the procedure must be to expose the property to public sale. The Government, therefore, if it forecloses the mortgage, must put the road and its property up at auction subject to the lien of the first mortgage, or it must pay off the lien and sell the fee of the property. Is that wise? Now, let us consider that matter for a moment. What would it amount to? It will cost the Government, to pay off the underlying mortgages upon the road, between sixty and seventy millions of dollars. Does the condition of the treasury at this time, and the condition of the business of the country, warrant us in imposing on the treasury a burden of sixty or

seventy millions of dollars for the purpose of trying an experiment—for the purpose of trying the experiment of foreclosing the mortgage, and trying to get something for the property or the land that is left behind? Is it a wise proceeding? Would we do that in our dealings with individuals?

Why, gentlemen, it seems to me that the absurdity of the proposition needs no illustration. Take a common case familiar in your own business experience and illustrated in everyday life. If you have a man who owes you a debt—and every man who hears me has undoubtedly some time in his business life had an insolvent debtor to deal with—if he had an insolvent debtor, and he held a second mortgage on the farm, a farm encumbered by an underlying mortgage big enough to sweep it all away, would he send for the debtor and say to him what you propose to say to these railroads? How would he conduct the business? Would he do it by pounding his debtor, swearing at him, calling him a thief, abusing him for the faults committed in the past; or would he deal with him on a business footing and proceed to get the very best settlement available? Would he say to him, "My dear sir, you are a gambler, or a thief; you are dabbling in politics, or, worse, you have been dabbling with Polly, and to punish you for your sins I decline to deal with you on a sound business basis or on ordinary business principles. I will sacrifice your property as a punishment for your past sins, although probably by the same operation I lose the amount of my debt." Would any sensible man act in that way? That would be the act of a child.

As individuals dealing with an insolvent debtor we would be very likely to say: "My dear sir, what I want to find out is your debt-paying capacity; the ability of your farm to meet the obligations. I want to know the average income of your farm under ordinary conditions." When we have ascertained that fact we will adjust the burden to his shoulders in such way as he can bear it. Now, if by reducing our rate of interest and extending the debt for four or five years, it will enable him to work out from under the load and permit him to pay in full, why, manifestly every man here would adopt that plan. We have adopted the same plan in all of our dealings heretofore. We say that a foreclosure would be unavailing; that the receipts of the property would be unavailing from the fact that the thing you seize or foreclose is nothing in the world but an interior or underlying property.

If we are going to foreclose the mortgages, it is important for us to consider what we are going to get under that proceed-

ing. Instead of getting a road with terminals, and with these branch lines, a network of which, as you will observe, runs all along in connection with these roads; instead of getting a system that can be worked as a railroad, we get an empty trunk, without terminals anywhere, and we have got to take our chances in dealing with somebody else.

Not only that. This road would have to be put up at public sale under foreclosure proceedings. Who on earth would be likely to bid it off? Would you or I or any outside party take the risk of stepping in and bidding on that property that was nothing but an interior property, without terminals or anything else? Certainly not. We should not dare to. The ownership of these branch lines, the very ownership of these terminals, the very ownership of everything essential to make that railroad worth a copper is in the hands of other parties and probably hostile parties. Now, where will you find the man with capital, the man who has millions of money to invest, who will step into a hornets' nest of that kind and make a bid? What is the practical result? These very men whom you are now scolding about, the very men who own the terminals and own these connecting lines are the only ones who can safely bid on the property, and probably they will be the only bidders. They would get the property at their own figures.

Every man can see what that would necessarily lead to. So that the procedure of a foreclosure compels the Government to raise sixty or seventy millions more of money to put into this hopper, and also leaves the Government with an insecure property after they have got their decree.

Now, it struck the committee, and it has struck every committee that has ever considered this subject since the Pacific railroads have been built, it has struck all the railroad commissioners, everybody who has investigated the matter, and they have all reported with one voice, that the true way to solve this problem was to fund this debt by an extension at a lower rate of interest, get a security upon a line which, if we are obliged to take it, will be a railroad line and not a section of a railroad line.

This committee have therefore proposed this bill, the essential features of which are these: That the amount of the Government indebtedness shall be ascertained as of July 1 next. The present bill before you reads January 1; but, as I said before, this will have to be corrected, and I will ask for an amendment. On the 1st of July this indebtedness is to be ascertained by getting at the present worth of the subsidy bonds that have

not yet matured, bringing them down to the 1st day of July, 1897, so that on that day we will know just exactly what is the debt from the railroad company to the Government; and that thereupon the companies themselves shall issue first-mortgage bonds, taking up the existing mortgage, not only on the aided portions of the lines, but on their entire system, issuing a first mortgage equal in amount to the principal of their existing first mortgage; and that the Government shall take a second mortgage, lapping over the same property, lapping over the terminals, the Omaha Bridge, worth $2,000,000, and lapping over the Denver and Pacific road that runs from Denver to Cheyenne, and lapping over the branches forming the Union Pacific. In other words, a blanket mortgage, resting upon all this property, from branch to branch, to the same extent as the first mortgage that we allow to be put on.

Now, will we gain anything by that? We get a mortgage on a system of roads. We get a mortgage on a railroad instead of a mortgage on a portion of a line. It covers the whole thing, the terminals at Council Bluffs, the Omaha Bridge, the Omaha terminals, and on the line clear through. Essentially it covers also this line from Kansas City out to the three hundred and ninety-fourth milepost, where it now ends, to Denver, together with all the branches and feeders that supply this line. So that, if the worst comes to the worst in the end and the Government is obliged to foreclose its indebtedness, it can then take a property that can be operated as a railroad.

Joel D. Hubbard [Mo.] opposed the bill in a long speech in which his statements were enforced by financial statistics. In conclusion he said:

This bill does not require the Union Pacific to mortgage its bonds and stocks. The bill further permits the Central Pacific Railroad Company to remain under lease to the Southern Pacific of Kentucky, which is certainly in violation of laws passed by several of the States, and in violation of a principle which has been recognized even by Congress, feeble as it has been in its effort to legislate to prohibit the consolidation of parallel or competing lines of road.

The time that the bonds are to run under this mortgage is eighty-six years for the Central Pacific and eighty-three years for the Union Pacific, taking a second-mortgage 2 per cent. bond, which is practically worthless, and giving away these

properties, because if they should fail again it would require over a hundred million dollars to come in and clean off the underlying mortgage, whereas now it can be cleaned off for less than thirty millions and give the Government a clear road to sell. The bill is inadequate to guard the interests of the Government, delusive, and visionary, and the results of its practical application will be to destroy, not conserve, the rights it vainly assumes to protect. [Applause.]

Charles K. Bell [Tex.] opposed the bill.

I do not agree at all with the gentleman from Vermont that the owners of the stock of the Union Pacific and the Central Pacific railroad companies are in an attitude which entitles them to the least favorable consideration at the hands of this body. I did not suppose there would be anyone who would attempt to defend either the builders of these railroads or those who have subsequently operated them. The scandals that grew out of their construction, and particularly out of the construction of the Union Pacific, are a disgrace to the civilization of the age and ought to be a warning to all who might be inclined to loan the credit of our Government to the prosecution of private enterprises. I do not, however, intend to be diverted from a discussion of the real merits of the proposed settlement by questions of this kind, and would not refer to them except for the fact that it has been assumed that those who have been the beneficiaries of outrageous peculations and frauds had conferred some great favor upon our country, and especially upon that section of it which is traversed by the roads which they constructed and have subsequently wrecked.

It has been asserted that it should make no difference to us, and was none of our concern, if the Government of the United States was not directly defrauded, whether the manipulators who constructed the roads acquired a fortune or not. From this proposition I utterly dissent. I entirely agree that, if any man by his labor, or by his superior judgment, can accumulate a fortune honestly and honorably, he ought to do so, and that he ought to be commended for doing so; but I dissent entirely from the proposition that it is honest or honorable to accumulate a fortune in building railroads, or in other public enterprises, by watering stock or issuing bonds which do not represent an actual investment. I deny that those who accumulate fortunes in this way are public benefactors, and I particularly dissent from the suggestion that we, as representatives of the people, are

not interested in preventing such transactions, or in preventing those who have been the beneficiaries of them from enjoying the fruits of their ill-gotten gains. If gentlemen see proper to build a railroad, and, if they issue stock or bonds in excess of the actual cost of the enterprise, the excess represents so much indebtedness which the public, who from the very nature of the thing are compelled to patronize the road, have to pay the interest upon.

Enormous land grants were made to the railroad companies, but it is unnecessary to discuss the disposition which has been made of those lands, as they were a gift and not a loan, but so far as the subsidy bonds are concerned the case is entirely different. It was not intended, and never was suggested, that these bonds should be given to the companies, but only that they should be loaned, and it was always understood that the Government was to be repaid the entire principal and interest upon them; but it has been suggested by the gentleman from Vermont that, inasmuch as there had been repaid to the United States an amount equal to the original amount of the bonds granted, therefore, the Government ought to deal more leniently with its debtors in collecting the remainder of its debt. It is a familiar principle of law that partial payments upon a debt must be applied first to the payment of the interest, and this was in contemplation at the time the bonds were loaned.

If those who constructed the railroads had used the money which they realized from the sale of the bonds secured by the first mortgage, as well as from those which had been loaned by the Government, in the construction of the roads, and had issued no stock except for the money which was used in the construction of the roads, the annual charges against the companies would not have been so great but that the amounts which were to be applied under the law of 1864 to the Government's debt would have been sufficient to have paid the interest on the Government's debt, and inasmuch as that was not done, and as those who constructed the roads made use of these moneys to accumulate immense fortunes, and did so, I think they at least are in no position to ask favors at the hands of this body.

Nor do I agree at all with the statement that these companies have built up and turned into a garden the waste places which formerly existed where the roads now run. It is a great mistake to suppose that the railroads make the country. The hardy and honest people who have settled up our frontiers have made the railroads possible, and the railroads have shared but not occasioned the prosperity, so far as it has prevailed. Prosper-

ous communities were planted on the banks of the Mississippi and Ohio, and the fertile lands of Illinois and other Western as well as Southern States were occupied before there was a railroad.

I maintain that, from the time the first contract was made for the construction of either of the roads concerning which we are now legislating, every step has been taken with a view of rendering it more difficult, if not absolutely impossible, for the Government to collect its debt; but at the same time we are not in nearly as bad a condition as some of the gentlemen seem to imagine. For instance, it was stated by the gentleman from Vermont that, inasmuch as our lien did not attach to that part of the Union Pacific road which was within three miles of its eastern terminus, therefore we could not use it in the event the Government should become the owner of the road, or that the purchaser of that part of the road upon which the Government has a lien could not do so. There is an express provision in section 15 of the original act chartering the road which covers this case, and no one need have the least fear of such a catastrophe as the gentleman anticipates.

The bill proceeds upon the theory that we ought to accept the proposition made by the railroad companies themselves instead of making a proposition of our own for them to accept or decline. No business man would ever make a settlement upon that principle. When people are dealing with others, they get the best offer they can, instead of taking the most favorable offer from the other party to the proposed contract. We have accepted, or it is proposed that we shall accept, the offer of the railroad company, just as if they were entirely insolvent, and as if all we could do is to take what they are willing to give us. Now, I believe that by submitting a fair and reasonable offer to the companies, with the distinct understanding that they may accept or decline it, we can reach a satisfactory adjustment of our debt; that is, an adjustment that will be satisfactory to all those who are simply trying to collect the Government's debt, instead of trying to secure legislation by which their particular section would be benefited to the exclusion of other portions of the United States. It is true that these roads have not been making satisfactory earnings for several years past, but the reasons for this are very plain. It is not to the interest of those who have managed and operated these roads that they should make money.

There are two reasons for this: First, and one which by all means should be considered, is the fact that if the roads had

been making a satisfactory showing this body would not be disposed to settle on so liberal terms as they otherwise would; and another reason is the one which I have explained—that is, that one-fourth of the net earnings of the roads would have to go into the sinking fund. But the settlement proposed by the committee proceeds upon the theory that we should take the present net earnings of the roads as a basis for settlement, and that we should fix only such charges as the present earnings of the road would meet. I think this is entirely an erroneous basis upon which to proceed. If those who own the stock in and the properties of the companies are not going to raise money in some way for the purpose of putting the corporations on a more solid basis than they are now, then we had better refuse to treat with them and let some other person get control of the property who will be disposed to do right by the Government. What is it that we propose to do for these companies? If they, or others who may be their successors, have to go into the market and borrow money, they would be compelled to pay probably 6 per cent. per annum interest upon it.

I do not discuss the proposition to extend the debt at the rate of 2 per cent. per annum, because I do not believe that proposition will meet with favorable consideration at the hands of any considerable number of the members of this body, but at the rate of 3 per cent. per annum there is a saving in round numbers of $3,000,000 per annum to these companies in interest charges alone. This is a bonus greater than has ever been conferred by any government upon any corporation. It is one which we ought not to be compelled to consider the propriety of extending, but we must face the conditions as we find them. Without any fault of ours the conditions exist, and if we do not act cautiously and wisely our Government may lose its enormous debt. So, then, it is proposed that we confer upon these corporations a privilege which is equivalent to loaning them the credit of the Government, and thereby saving them $3,000,000 annually for an average period of forty-four years. What is it we ask in return? According to the bill recommended by the committee, absolutely nothing. We do not ask that they materially increase our security and make our debt more safe; in fact, that they do anything that will place the Government in a better condition than it has heretofore been. But I assert that we are in a position which enables us by exercising some degree of firmness in dealing with these corporations to compel them to deal justly with the Government in settling its debt, and if they will not do so there are others who will.

I think the theory upon which the committee has proceeded—that is, that we determine what the companies can pay and accept that—is entirely wrong. We must insist, if we are going to confer the great favor of loaning our credit, and thereby enabling these companies to obtain cheap money, money, in fact, so cheap that no other company has ever been able to get money at nearly so low a rate—we ought to exact something considerable of them in return. But if the theory of the committee that the earning capacity of the roads affords a correct basis for determining the amount of the debt which could be placed upon them is accepted, then I maintain that what the roads can earn is not properly shown by returns of recent years.

Mr. Chairman, I think the facts which I have stated show that we would not materially improve the condition of the Government and not increase to any considerable extent the prospect of the collection of the Government's debt by adopting the bill reported by the committee. For that reason I oppose the legislation. But I do not wish to appear in the attitude of antagonizing measures that others recommend without suggesting some other remedy.

There are three courses which naturally suggest themselves as those which ought to be pursued in attempting to settle the Pacific Railroad debts.

First. That the Government should pay off the indebtedness which is secured by a prior lien, and should thus become the owner of the roads. I do not desire to enter into a discussion of the merits of this proposition. I do not at all favor the proposition that the Government should become the owner of railroads or engaged in the railroad business. I am aware that there are very few members of this body who favor that policy, and so it is useless to consume any time in attempting to antagonize it.

Second. A foreclosure of the Government lien and a sale of the property. Of course, if the property would bring the amount of the Government's debt, as well as that which is secured by the prior lien, this would be the most satisfactory way in which a settlement could be effected; but there has been no evidence before the committee, and, so far as I know, no one believes, that if the property should be sold at forced sale it would bring anything like enough to satisfy the debt due us; that is, after satisfying the debt secured by the first lien. Hence, if it can be avoided, we ought not to adopt the second proposition.

Third. An extension of the debt due the Government by the respective railroads for a long period of time, at a low rate

of interest. If it was likely that at a forced sale the property would bring very nearly enough to satisfy the Government's debt after paying off that which is secured by the prior lien, I should be in favor of having the Government take what it could realize and sever itself entirely from the railroad business; but the debt is so enormous that, if there is any possibility of our being able to secure a reasonably satisfactory settlement, we ought to forego our individual preferences and attempt by every possible means to preserve the Government from loss.

The bill recommended by the committee provides for funding the Government's debt at 2 per cent. per annum interest. Inasmuch as the Government cannot obtain money at this rate, but must pay 3 per cent. per annum, I do not think we ought to entertain any suggestion of a lower rate.

The other question then is, How can the company secure the Government in the collection of its debt? I have prepared a substitute for the committee's bill which I propose to offer at the proper time. This substitute provides that the moneys in the sinking fund shall be applied as a payment upon debt which is now due the Government, and that if the companies will pay off and discharge the debts which are secured by mortgage, which is prior to that of the Government, then the debt shall be extended for an average period of about forty years at 3 per cent. per annum interest.

Galusha A. Grow [Pa.] supported the bill.

Mr. Chairman, if I had my say, I would say to these people, "Pay the Government the largest amount of money that you can raise," and let us pocket the loss of the difference.

Mr. Maguire.—Is not that the thing to be done by foreclosure and sale?

Mr. Grow.—The evidence is that foreclosure and sale will not give you your debt.

Mr. Maguire.—We have testimony that they will sell for $120,000,000, which would give the Government $60,000,000.

Mr. Grow.—There are some more suppositions and beliefs. With the testimony before us that these roads are not worth the first and second liens, what is the use in talking about somebody giving more than that amount on a supposition or belief?

Mr. Maguire.—That testimony was unsworn statements.

Mr. Grow.—What is your statement but an unsworn statement? [Laughter.] Your statement is just as good as theirs.

MR. MAGUIRE.—Exactly; and theirs is worthless and should not be acted upon.

MR. GROW.—You have not got the money and do not guarantee that any amount of money would be paid. Money is the most timid of all things; and there is nothing more timid than $1,000,000 except $2,000,000. [Renewed laughter.] Money-eyed men do not invest their money in any kind of enterprise without knowing as to its value; and when they have the net earnings of a railroad they know how to invest. If the evidence as to the net earnings do not show that they are sufficient to pay the interest on the first mortgage and on our lien, which is second, at a rate of interest not greater than 2 per cent. on the bonds, why expect moneyed men to put their money into this property and give us a first lien and they take a second? There is no money circle in the world charitable enough to do that for our Government.

Should these roads be put up for sale on foreclosure, the Government would have either to take out of the treasury money enough to pay the first lien, or the owners of the first lien will make the same combination that was always made when we made a sale of public lands by the Government, fixing the price at $1.25 per acre. There would be no probability of the Government realizing anything unless the Government paid the first mortgage. Are we ready to raise money and pay off the first lien? Right here let it be distinctly understood the Government has no more right in this case than any other junior creditor that has invested his money in an enterprise, I do not care what it is. We are bound in good business faith to do the same as we would as individuals (without any vote or power to coerce a particular course of action) of a board of directors in reorganizing a road in which we had individual interests as junior creditors.

The question before us is not one that we can settle by the main strength of our votes if we propose to act fairly and justly with the men who invested their money in this great enterprise which originated in legislation for the unity and benefit of the country and of mankind. [Applause.]

On January 8 Grove L. Johnson [Cal.] supported the bill.

Mr. Chairman, when we are called upon to settle the question as to what the United States shall get out of its second mortgage, which is the only matter before us, we are met by

the gentleman from Louisiana [Mr. Boatner] and other gentlemen with this old talk that the men who built these roads made money. All right; suppose they did make money. They did only what everybody else would do if they had had the chance. Just imagine! If these gentlemen who now denounce so fiercely the men who built the Pacific railroads had only been in their positions at the inception of that enterprise, how differently they would have acted.

Suppose that they had built the road, and after they had completed it, seven years ahead of time, and when all the nations of the earth were rejoicing that we had succeeded in binding together the East and the West, they had presented themselves before the then President of the United States, and the gentleman from Louisiana would have been the spokesman, and he would have said:

"Mr. President, we have built this road, and we have built it seven years ahead of time, but we find that by some strange miscalculation we have made some money out of it. [Laughter.] We have kept every agreement we have made with you, but, *mirabile dictu*, we have made money, and our consciences will not permit us to retain it; so we come now to pour it back into the treasury of the United States." [Laughter.]

The gentleman from Wisconsin [Henry A. Cooper] might have said that he would like to have some of the money saved for the improvement of the harbor of Manitowoc. [Laughter.] The gentleman from the Fourth district of California [Mr. Maguire] would probably have expressed a desire to have some of it appropriated for the propagation of the doctrine of the single tax. [Laughter.] And the gentleman from Louisiana [Mr. Boatner] might have asked for some to pay the expenses of his contested elections. [Laughter.] Some of it might have gone in the interest of my colleagues to Petaluma Creek, and some to erecting a public building at Oakland, Cal. [Laughter.] But the balance would certainly have been covered into the treasury of the United States. [Laughter.]

Now, Mr. Chairman, would those gentlemen really have done that? Why, if Adolph Sutro, who has been bombarding Congress with letters on this subject, or if that blackmailer, William Randolph Hearst, who runs the *Examiner* in San Francisco, had been connected with this great enterprise, they would not only have made all the money that the other men made, but they would have brought the Government itself into contempt and ruin, and would have usurped the entire control. [Laughter.] But, Mr. Chairman, the real question for us to

consider is, How shall we get back our money? It is purely a business question with us. Abuse of the men who built the roads, animadversion upon their motives, or denunciations of their acts will not avail us. We must deal with the matter as it is in 1897. Our ancestors made the mistakes, if any were made, that resulted in the present status of the case.

Now, there are three ways to deal with this question. The first is to sell these roads under foreclosure to the highest bidder; the second is for the Government to take the road and run it; the third is to extend the time for the payment of the indebtedness. I apprehend that everybody in this House is opposed to the government ownership of railroads. The next question, then, is, Shall we foreclose? If we foreclose, how much shall we get? Who will bid? I do not ask any of these gentlemen from California to answer that question, because they are all wealthy, and if they did not have the money themselves they could call upon the committee of fifty in San Francisco and get the money from them—from Sutro or from Hearst—and thus they could bid on this property. [Laughter.] But I ask gentlemen from other parts of the United States, who would bid in these properties if they were offered at auction? There are just three parties that could bid. One would be the United States. The United States could, of course, bid, could pay off the first mortgage, and then carry on the railroads. But nobody wants that to be done. The Vanderbilts could bid, because they own a line of road leading into Omaha. But they say they do not want the property. The only other parties that could bid would be the same men who now control the Central Pacific and the Union Pacific roads. They might bid the property in at their own price, and thus get rid of paying the debt due to the Government.

The next question is—and this I understand to be the agreement of all who have spoken—whether or not this debt should be extended. It is said that the Government ought to get a larger rate of interest. Let us examine that question. Every man knows that a railroad is valuable only for the money that it can make. Everyone knows that a railroad company can only pay its debts out of its earnings. Everyone knows that the United States Government itself could not pay its debts if they were all presented at once. A railroad company in debt is not in a different position from anybody else, nation, corporation, or individual, who is indebted. There is not a bank in the United States, except one, I believe, that could pay its debts if they were all presented at once.

Should we estimate that the companies can refund their old debt at 4 per cent.? I do not think so. Money is not plentiful for railroad corporations at such a low rate of interest. I think they would have to pay at least 4½ per cent., and, if so, that will use up all of the surplus and consume all the earnings of these roads.

The opposition in California to the bill is unreasonable and hollow. It makes up in noise what it lacks in solidity. It mistakes vituperation for argument, abuse for reason, caricatures for facts.

The traveler across the Western plains has frequently been deprived of needed rest and felt compelled to mount guard all night by hearing the most unearthly and hideous noises coming seemingly from every quarter of the horizon, and apparently from the lungs of a thousand wild animals anxious to rend his limbs and feast upon the bodies of his horses, his family, and himself. Often has he paced the weary rounds of his camp with heart quickly beating, rifle in hand, finger on trigger, nervously waiting an assault while praying for the morning to come that he might face and fight in daylight the fierce wild beasts that, as he thought, encircled him. When at last the glorious orb of day came rising above the eastern horizon, illumining the whole earth, driving darkness away and giving renewed vigor to man and beast and flower and shrub alike, he has carefully scanned the country round about him that he might see the hordes that he thought had all night watched and waited for his death, when lo! he found that two measly, gaunt coyotes had furnished all the noise and given him all the terror of his wasted night. So with this California opposition to this funding bill. If you turn the sunlight of truth upon it, destroy its secrecy, and show its true relations to the subject, you will find that all this noise, this opposition, this denunciation of the funding bill and its friends, all this fearful wail against Huntington and the railroad and the friends of funding comes from two persons gifted, like the coyote, with leather lungs, innate wickedness, and an infernal desire to injure all that they cannot control.

These two are Adolph Sutro, by some mischance the mayor of San Francisco, and William Randolph Hearst, by the gift of his parents the proprietor of the San Francisco *Examiner*—*arcades ambo*.[1]

Of Sutro but little need be said. He admits his opposition to be founded upon personal spite against Collis P. Huntington.

[1] "Pals."

Of the other of this precious pair of literary coyotes, William R. Hearst, much could be said.

He is a young man, rich not by his own exertions, but by inheritance from his honored father and gifts from his honored mother. He became possessed of the idea that he wanted to run a newspaper. Like the child in the song, "he wanted a bowwow," and his indulgent parents gave him the *Examiner*. By the reckless expenditure of large sums of money he has built up a great paper.

The *Examiner* has a very large circulation. It did have a great influence in California.

It has done great good in California. It has exposed corruption, denounced villainy, unearthed wickedness, pursued criminals, and rewarded virtue.

At first we Californians were suspicious of "Our Willie," as Hearst is called on the Pacific coast. We did not know what he meant. But we came to believe in him and his oft-repeated boasts of independence and honesty. Daily editorials written by "Our Willie's" hired men praising his motives and proclaiming his honesty had their effect. Besides, "Our Willie" through his paper was doing some good.

We knew he was erotic in his tastes, erratic in his moods, of small understanding and smaller views of men and measures, but we thought "Our Willie," in his English plaids, his Cockney accent, and his middle-parted hair, was honest.

We knew he was ungrateful to his friends, unkind to his employees, unfaithful to his business associates, but we believed he was trying to publish an honest paper.

We knew he had money, not earned by himself (for we knew he was unable to earn any money save as a statue for a cigar store), but given him by honored and indulgent parents; we knew he needed no bribes with which to pay his way, hence, while we knew all these things, we did believe "Our Willie" to be honest.

We thought that he was running an independent newspaper on a plane far above the ordinary altitude of newspapers, with a sincere desire to do good to the world, with an honest wish to expose shams, to speak the truth, and to establish a paper that, while it might be a personal organ, would still be an honest one. We came finally to admire "Our Willie" and to speak well of him and his paper.

When William R. Hearst commenced his abusive tirades against C. P. Huntington and the Southern Pacific Company and the Central Pacific Railroad Company and all who were

friendly to them, and to denounce the funding bill and all who favored it as thieves and robbers, we thought his course was wrong, his methods bad, and his attacks brutal, but we believed "Our Willie" to be honest in it.

When C. P. Huntington told the truth about "Our Willie" and showed that he was simply fighting the railroad funding bill because he could get no more blackmail from the Southern Pacific Company, we were dazed with the charge, and as Californians we were humiliated.

We looked eagerly for "Our Willie's" denial, but it came not. On the contrary, he admitted that he had blackmailed the Southern Pacific Company into a contract whereby they were to pay him $30,000 to let them alone, and that he had received $22,000 of his blackmail, and that C. P. Huntington had cut it off as soon as he knew of it, and that he was getting even now on Huntington and the railroad company because he had not received the other $8,000 of his bribe.

We have lost on the Pacific coast an idol. We grieve over a dead and wicked newspaper.

If it be given to spirits of the departed to know the actions of those left behind them on this earth, the honored and respected father of "Our Willie" is suffering now from the blackmailing conduct of his son. [Laughter.]

And that is the man who has created all this furor in California. He has intimidated people.

Nearly if not quite nine-tenths of the newspapers in California outside of San Francisco favor a funding bill.

I ask every member of this House to drop everything except the common-sense, business view, and to accept the settlement of this question on a business line. Remove it from politics; remove it from Congress; remove it so that the blackmailer no longer can hold it *in terrorem* against men, but will be obliged to allow everybody to carry out their ideas as to them seems proper. [Applause.]

William C. Arnold [Pa.] supported the bill.

I simply wish to say to the House that we are not to legislate for the State of California. We are legislating for the entire Union. Let the fight as between Mr. Sutro and Mr. Hearst on the one side and Mr. Huntington on the other go on to the hearts' content of the combatants. But let us address ourselves to the question before us, which is not their fight, but the question how the Government can save its money.

The proposition to defeat this bill is simply in the interests of Populism pure and simple—the Government ownership of railroads. I might say, as I have stated before, that there are just two questions before this House—either pass this bill or have the Government ownership of railroads. I am opposed, as I believe the vast majority of this House is, to any Government ownership of railroads. We are trying to get out of the railroad business instead of getting into it. [Applause.]

John C. Bell [Col.], a Populist, advocated the Government taking possession of the roads by foreclosure, and running them.

There is no law in morals or elsewhere that requires the people to pay toll to outsiders on their own donations. It is not necessary that there should be any great machinery for operating these roads. They may be operated under a receiver; they may be operated by the Government directors, or they may be operated under a lease.

Mr. Larrabee says, in his excellent work on railroads:

> A number of European states, notably Prussia, France, and Belgium, as well as Australia, British India, and the British colonies in southern Africa, have adopted government ownership of railroads. The motives which led to this step in the various countries differ greatly. . . . The experiment of state ownership and management of railroads has been longest tried in Belgium, and with the best results. With an excellent service, the rates of the Belgian state roads are the lowest in Europe. Their first-class passenger tariffs are, next to the zone tariff recently adopted in the State of Hungary, the lowest in the world, and are, for the same distance, lower than those of American roads. In Prussia the state service, upon the whole, is also superior to that of private companies, and is probably equal to the public demand. In France the government only owns and operates less important lines, but furnishes upon these a more efficient and cheaper service than private companies would either be able or disposed to furnish. The oft-repeated statement of those opposed to government regulation to the contrary notwithstanding, government ownership and management of railroads is a decided success in Europe.

William P. Hepburn [Ia.] supported the bill.

Its opponents, he said, do not want any settlement that does not look to the ownership of this road by the Government, and its operation as a great highway upon which the owners of trains can compete with each other. They propose that we shall inaugurate the new but not untried experiment of government

ownership and operation of railroads. We have had experiences in that line. No less than seven of the States of this Union have, at different times, tried the burdensome and costly experiment, and in every instance the result has been loss to the public, dissatisfaction on the part of the shippers, and emancipation from the business at great loss to the State.

The gentleman from Colorado [Mr. Bell] tells us of the admirable manner in which this experiment is resulting in some of the European countries. I say that it has never been a success in any country as compared with proper management, or with the average management, of railways in the United States. In every instance it has been more expense and less satisfactory. The experiment generally has been a failure. In Belgium, with a dense population, with short roads having an immense traffic, the Government has been enabled to run its roads without loss, and there are two roads in Hungary of which the same may be said; but, with those exceptions, neither the gentleman from Colorado nor any other gentleman in this House can point to a single instance where satisfactory results have been secured.

JOHN C. BELL.—How about France?

MR. HEPBURN.—France has abandoned the experiment in a great majority of instances, though there are still two or three roads in which the Government participates in ownership and in operation.

HENRY A. COOPER [Wis.].—Do you assert that this question of Government ownership of these railroads in the United States is involved in the foreclosure of the Government lien on these roads?

MR. HEPBURN.—I said this was the entering wedge, and that the advocates of it were so persistent now because they recognized the fact that it is the beginning of what they desire. Ask the gentleman from Colorado [Mr. Bell], does he believe that this is the entering wedge? Does he not believe that it will be followed on and on and on, no matter at what expense, until every mile of railway in the United States is under the control and operation of the United States Government? Look at every platform, repeated over and over again as the years go by. If there is any one thing above all others that that somewhat whimsical Populist party is addicted to, it is to this proposition of railway ownership by the Government. Each year it changes, in part, "the fundamental and eternal" principles that underlie its organization, but never this. It is always consistent in insisting that railway ownership and operation by

the Government are essential to the happiness and prosperity of the American people. Ownership and operation by the Government of the Pacific roads is what the gentlemen from California desire. It is because of that desire they fight the pending bill.

Now, Mr. Chairman, I believe that this proposition of foreclosure under the law as it now exists simply means the total loss of all the indebtedness due now from these corporations. Not only that, but it means the expenditure of $61,000,000, which, with delinquent interest, amounts to about $64,000,000, or nearly that, that we shall have to pay before we shall have the title. Now the Government has invested in the roads more than $100,000,000. Then it would have invested in the roads more than $164,000,000. We would have a railroad without terminals on our hands, that we could build or replace for less than the money—this $64,000,000—that we would have to advance.

On January 9 William W. Bowers [Cal.] opposed the bill.

Advocates of the bill seem appalled, and are trying to stagger the House on account of the magnitude of the first mortgage. Sixty-one million dollars seem a large amount of money, but it must be borne in mind that we have $33,000,000 actual accumulated cash in the sinking fund now at our command, available to apply on the first mortgage, and that the roads are actually earning about $15,000,000 a year over and over operating expenses.

The gentleman from Missouri has shown us that it will only be necessary to raise about $30,000,000 to pay off the first mortgage and buy all necessary terminals.

If we are afraid of the first mortgage now, how can we expect our successors to be any braver if we now add to it $47,000,000 more and leave the way open to run it up to $500,000,000 when the accumulated interest of nearly a century shall have done its work?

They tell us, sir, we are weak, but when shall we be stronger?

Never.

The Government directors in their report in 1895 advised foreclosure. In 1896 they renewed the same recommendation. They have never advised funding or extending in any such

way as proposed in this bill. They have from long years of training in the service of the Government become experts and specialists. Their advice should count for something. What are we to do, then? My answer is simply, Do nothing. There is nothing for us to do, unless we want to give away the rights and the money of the United States. The laws creating these railroads provided all the machinery for enforcing the rights of the Government when the fullness of time should come and the default occur. The time has come, and the default. The clock has at last struck the hour. We can now either foreclose or the Secretary of the Treasury can simply take possession of the property without foreclosure, as provided in the original act.

In neither event is Government operation necessary. We have of late years been too well accustomed to seeing the Government operate railroads through receivers to be scared at that.

The enforcement of our rights is now an executive function and not a legislative one, and I for one am willing to rely with confidence on any administration in the belief that the President of the United States will protect the rights and the property of the United States. There are laws enough now on this subject. All they need is enforcement, and if given a chance the President will do it. The Reilly bill of last Congress proposed to give us first mortgage and 3 per cent. interest. This bill offers a second mortgage and only 2 per cent. We who spurned that bill and rejected it by an overwhelming vote certainly can never vote for this.

MR. MAGUIRE.—Mr. Chairman, the bill under consideration is decidedly the worst measure for the settlement of the Pacific railroad debts ever offered to Congress, the worst proposition that has ever come from those companies.

This failure of evidence on the part of the company to establish any of the facts essential to this settlement should of itself cause the House to reject this bill. Yet, with amazing pertinacity, they still ask the House to be satisfied and pass the bill.

I say to you that this House will never be in a position to legislate intelligently for a settlement of these claims until a court of competent jurisdiction shall have tried and determined all questions relating to the validity of all alleged liens and the relation of all valid liens to each other. Such a decree is absolutely necessary as a basis for legislative action, if any legislative action shall then seem wise or necessary, but to legis-

late now in the dark—in utter ignorance—on a question of such importance would be monstrous.

The interests of the Government are not in any danger. The Government will have no payments to make on the first mortgages until foreclosure, nor after foreclosure, unless it becomes the purchaser at the sale. The Government must pay its subsidy bonds, no matter whether the debts are funded or not, and nothing more, except the expenses of the litigation, need be paid at any time, unless the Government buys the roads.

The Central Pacific Railroad Company will cease to exist on the 1st of June, 1911, by operation of the constitution and laws of the State of California, under which it was incorporated.

Its lease of life cannot be constitutionally extended unless it is expected to make an act of Congress override the constitution of the State in a matter of purely domestic concern, such as the life of an artificial person created under the laws of the State.

It is, therefore, absurd to contract with that company for payments to be made after 1911.

I am opposed to the whole refunding scheme. Foreclosure is the only sensible business method of dealing with these properties and claims as they now stand.

I cannot close these remarks without noticing some of the extraordinary statements made by the gentleman from California [Mr. Johnson] in his speech of yesterday. That speech is the most remarkable instance that has ever come to my knowledge of the resident of a glass house throwing stones, but I am concerned only about answering the attacks made and shall confine myself to that purpose.

The gentleman said that I, among other Representatives from California, would support and vote for the Powers refunding bill if left free to follow my own convictions and judgment in the matter, and that I am opposing it against my conscientious convictions solely on account of my fear of the San Francisco *Examiner* and its proprietor, Mr. Hearst. By that statement he sought to brand me before this House as an unfaithful Representative.

He further sought in the same speech to smirch my reputation by stating that I was the personal friend and official defender of Mr. William R. Hearst, whom he attacked in terms of foulest reproach.

With respect to the first statement of the gentleman to which I have called attention, I say that it is absolutely false

and without the slightest shadow of foundation in fact. I am opposing the Powers bill, as I have opposed all similar bills, solely on my own judgment and because I am conscientiously convinced that it is a vicious measure.

As to the second statement of the gentleman to which I have called attention, I say that I am the personal and political friend of Mr. William R. Hearst. I have known him personally since his childhood and known him to be a man of honorable character and strong human sympathy. In his journalistic career he has shown himself a man of the highest genius and of sterling worth. He sympathizes with the afflicted and gives largely of his means to relieve distress. He loves justice and contends for it. He hates injustice and opposes it practically. He hates oppression and fraud and scourges them in high as well as in low places. He has done more than any other hundred men to purify the politics of California, and he is doing more to-day to purify the polities and the political institutions of the United States than any other man within its borders. But he has one grievous fault. He is not merciful to the tyrants or the corruptionists whom he assails. This fault causes bitter and sometimes powerful enemies (I do not refer to the gentleman from California) to rise up against him. Every human reptile that formerly reveled in the corruption with which his efforts have interfered hates him as it hates sunlight and spouts venom at him whenever it gets into a place of comparative safety. In their rage for revenge the vicious ones whom he has assailed are not restrained by any consideration of conscience or veracity. The worst falsehoods that polluted minds are capable of breeding are by them preferred to truth. I am speaking now of the sources of the gentleman's information against Mr. Hearst.

I will not further notice any of the contemptible falsehoods concerning Mr. Hearst's private life, but the charge that he levied blackmail on the Southern Pacific Company is tangible and requires some attention. The facts upon which this charge is based, as nearly as I can remember them, are these: About five or six years ago the Southern Pacific Company made a contract with the San Francisco *Examiner* for advertising, during the World's Fair period, for thirty months, at the rate of $1,000 per month.

The advertising matter was published and the agreed price paid by the company for twenty-two months. Then a controversy arose. The *Examiner* had occasion to editorially denounce some schemes in which the company was interested. The com-

pany insisted that because of its advertising patronage the *Examiner* should refrain from attacking its interests editorially.

Mr. Hearst, through his business manager, immediately replied, repudiating that principle of business, and stating that under no circumstances could the advertising patrons either affirmatively or negatively control the editorial or news columns of the paper. There the matter ended, until Mr. Huntington, a few months ago, in a moment of impotent anger, stated that he, or the company, had paid the $22,000 to the *Examiner* as blackmail. Mr. Hearst immediately published the contract and the correspondence concerning it. The gentleman from California [Mr. Johnson] said that Mr. Hearst had admitted receiving $22,000 from Mr. Huntington as blackmail. That statement is simply false.

The bill came to a vote on January 11, 1897, and was rejected by 103 yeas to 168 nays. The votes in the affirmative were largely Republican. Among the Democrats who voted for it were George B. McClellan, Jr. [N. Y.], and William Sulzer [N. Y.]. Since opposition to the bill had been specifically declared in the Democratic national platform of 1896, the Democrats who voted for the bill were severely criticised by the party organs. The New York *Journal* and the San Francisco *Examiner*, papers owned by William R. Hearst, charged that Richard W. Croker of Tammany Hall had gone to Washington, and, in the interest of Collis P. Huntington, ordered the Democratic Representatives from New York City to vote for the bill. Amos J. Cummings was one who refused to obey the boss, and was punished therefor, it was said, by Mr. Croker deposing him from his place as the candidate favored by Tammany for the next Mayor of New York, a position for which Mr. McClellan was subsequently nominated, and to which he was elected.

CHAPTER X

The Interstate Commerce Commission

George W. McCrary [Ia.] Introduces in the House Bill to Regulate Interstate Commerce (Railroads); Bill Is Passed; Not Acted on by Senate—John Sherman [O.] Introduces in the Senate Bill to Regulate Interstate Commerce; It Is Committed—John H. Reagan [Tex.] Reports Bill from Committee on Commerce to Prohibit Discrimination in Rates by Railroads; No Action Is Taken—He Proposes to Establish an Interstate Commerce Commission; No Action Is Taken—He Introduces Bill in the House to Regulate Interstate Commerce; It Passes the House but Not the Senate—Shelby M. Cullom [Ill.] Introduces in the Senate a Bill to Regulate Interstate Commerce Through a Commission—Debate: Sen. Cullom, Thomas W. Palmer [Mich.], Leland Stanford [Cal.], Johnson N. Camden [W. Va.], Zebulon B. Vance [N. C.], George F. Hoar [Mass.], Samuel J. R. McMillan [Minn.], John E. Kenna [W. Va.], Nelson W. Aldrich [R. I.], E. C. Walthall [Miss.], William J. Sewell [N. J.]; Bill Is Passed—John H. Reagan [Tex.] Reports Substitute in the House—Debate: Judge Reagan, Charles O'Neill [Pa.]; Substitute Is Passed; Senate Refuses to Accept It, and Conference Committee Is Appointed; It Reports Bill Next Session—Debate in the Senate: Orville H. Platt [Conn.], John T. Morgan [Ala.], Richard Coke [Tex.], Isham G. Harris [Tenn.], William M. Evarts [N. Y.]; Speech of Robert M. La Follette in the House: "Honest Railroads Aided by Government Regulation"—Bill Is Enacted.

ON March 3, 1874, George W. McCrary [Ia.] brought before the House a bill he had earlier introduced from the Committee on Railways and Canals to appoint a commission to regulate interstate commerce carried by railroads.

The bill was ably discussed, and at great length, by the leading constitutional lawyers of the House, but as their arguments will be found in connection with the later establishment of the Interstate Commerce Commission they will not be presented here. It was passed on March 26, 1874, by a vote of 121 to 116. The Senate took no action on this bill.

On May 13 John Sherman [O.] introduced a bill in the Senate to regulate interstate commerce, which was referred to the Select Committee on Transportation Routes to the Seaboard. It was not reported from the committee.

On May 2, 1878, Judge John H. Reagan [Tex.] reported in the House from the Committee on Commerce a bill "to regulate interstate commerce and to prohibit unjust discrimination by common carriers." The debate on this bill was long and exhaustive, but as the main arguments were later presented in the discussion on the Interstate Commerce Commission they are here omitted.

No action was taken on the bill during this session.

During the third session of the Forty-sixth Congress [1880-81] Mr. Reagan reported in the House from the Committee on Commerce a bill to establish a Board of Commissioners of Interstate Commerce. It was extensively discussed, but finally the House refused to take action upon it.

In the session of 1884-5 Judge Reagan secured the passage of a bill by the House, by a vote of two to one, to regulate interstate commerce. The debate is omitted here for reasons given above. The bill failed to pass the Senate.

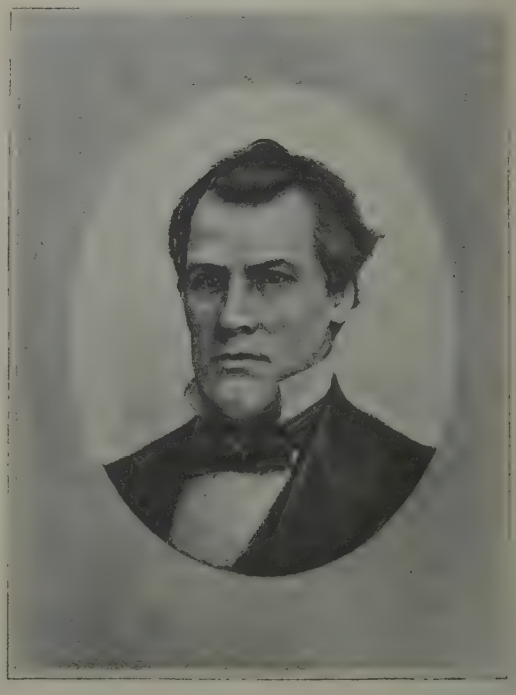
On February 16, 1886, Shelby M. Cullom [Ill.], from the Select Committee on Interstate Commerce, introduced in the Senate a bill to regulate interstate commerce through a commission. It came up for discussion on April 14.

Interstate Commerce Commission

Senate, April 14-May 12, 1886

Senator Cullom explained the provisions of his bill.

If the three propositions are correct, that the public sentiment is substantially unanimous that we should act, that the necessity for action exists, and that the power of Congress is



J. H. Reagan

admitted, the only question left is what kind of an act should Congress pass? The committee has unanimously reported a bill which is the best judgment that it had upon the subject.

The general legislation proposed in the bill is contained in the first seven sections, the remainder being devoted to the organization of a commission and to the details of its operation as a means of securing the enforcement of the act.

The general theory of the measure is that as unjust discrimination in its various forms is recognized as the chief of all evils growing out of the existing methods of railroad management it is the duty of Congress to strike at that evil above all things else. The bill has accordingly been drawn with that end in view. The first section defines and prescribes the scope and application of the bill. The second, third, and fourth sections specifically prohibit and declare unlawful the various forms of unjust discrimination between persons, between different commodities or particular kinds of traffic, and between places. The fifth section requires the publication of rates and declares it unlawful to charge more or less than the public rates. The sixth section provides that shipments shall be considered as continuous from the place of shipment to the place of destination, and prohibits combinations to evade the provisions of the act by breaking of bulk, carriage in different cars, transshipment, or other devices. The seventh is the general-penalty section. It makes the performance of any acts declared unlawful in the preceding sections a misdemeanor and fixes the penalty.

In connection with these sections I desire to call attention to section 20, in which it is expressly stipulated that the provisions of this act shall not in any way abridge or alter the common-law remedies now open to the shipper, but shall be considered as in addition to such remedies, except that the remedy at common law and that proposed in the bill shall not both be prosecuted at the same time. Under the terms of the bill no one is obliged to appeal to the commission, and two courses are open to anyone who may be aggrieved by the violation of any one of these general provisions which I have mentioned. He is simply obliged to elect which course he will adopt, and may at his own pleasure either bring suit in the courts on his own account for the recovery of overcharges or damages, or he may ask the commission to arbitrate the controversy, and, if necessary, to investigate his complaint, the advantage of the latter course being that in the event of a favorable finding by the commission his evidence is collected for him without expense to

himself, and he can if it becomes necessary go into court with a *prima facie* case already established.

It is substantially agreed by those who have investigated the question of railroad regulation that publicity is the most effective remedy for the evils most seriously complained of, so far as it is possible to remedy them by legislation. There are two directions in which a greater measure of publicity is essential and can be secured by legislation. The first is as to the rates actually charged, in order that every shipper may know whether he is treated fairly and without unjust discrimination. The second is as to the methods of management and financial operations of the railroad corporations, in order that the net results of their business may be accurately known, and that the public may be placed in a position to determine the reasonableness of the charges made, which are in the nature of a tax upon commerce. The publication of rates as provided in the fifth section is intended to meet in part the first requirement I have mentioned, and the bill proposes to meet both the first and second by the creation of a commission authorized to secure the enforcement of the law and with ample power to investigate every detail of railroad management, and to enforce the making of complete and accurate reports by the corporations. If the railroads can be compelled to let in the sunlight of publicity upon all the operations, personal favoritism and the chief causes of complaint will to a great extent disappear, and the accurate information obtained will enable the law-making power to devise any further remedies that it may be possible to apply by legislation.

Thomas W. Palmer [Mich.] of the committee supported the bill.

The necessity for the enactment of this measure recalls an Oriental tale: Some fishermen one day drew to the shore in their nets a chest from which sounds proceeded, and on listening the sounds became articulate and intelligible. In reply to their questions a voice told them that its possessor was a dwarf endowed with wondrous powers, that he had been imprisoned by a wicked Genie, and if they would release him he could and would labor for them and enrich them. They forced open the lid and there emerged a misshapen being, black, feeble, and unattractive. Its docility and intelligence were remarkable. It showed the greatest eagerness to serve them. As its strength increased it brought coal, precious stones, and fragrant woods

from the mountains, and fish and amber and coral from the sea. It evinced such capacity, tact, and tractability that they reasoned if he did so well as he was what would he do if they could increase his strength and stature.

Acting on this idea, they fostered him, brought the most nutritious food for him, and did everything they thought would conduce to the desired end. He thrived and grew apace. He expanded, became erect, and in time towered above them all. Then there came a change in his demeanor, and instead of being their servant and benefactor, showing them hidden sources of wealth and teaching them how to cheapen the necessaries of life and multiply its luxuries, he proclaimed himself their master and compelled them to bring to him for his use gems, spices, and costly bales, and assumed all the pomp, circumstance, luxury, cruelty, and rapacity of an Indian prince.

Among the servants of our civilization none have approached in efficiency the railway. It has annihilated distance; it has not only made the wilderness blossom as the rose, but also has enabled the rose to be readily exchanged for the products of cities. It has conducted to the widest diffusion of labor and rendered nations measurably homogeneous. In our own country the cost of transportation of a year's food from the agricultural West to the seaboard has been reduced to the price of a day's labor, so that the mechanic of the manufacturing centers may by the sacrifice of a single holiday be said practically to live by the side of the farm.

It has rendered possible the establishment of great manufactories at centers of population, where labor is abundant and capital present to superintend, instead of the former necessity of placing the manufactory at the point of supply of raw material. The natural advantages of production in each locality have, by minimizing the cost of transportation, been allowed to be exercised to their utmost, and values added to cereals in remote and isolated districts. The surplus corn of the Northwest, which was formerly so cheap as to be used for fuel, has, by reduced transportation, been enabled to compete with that raised near the seaboard. Ores are profitably shipped from the mountain fastnesses, where a plant is undesirable, to St. Louis, Detroit, Philadelphia, and Pittsburgh, for reduction.

Railways are improved highways, not a new, but a developed, feature of the advancement of the race. The question at the front to-day in this country and in Europe is not how to cripple or restrict railroad building or railroad operations; is not how to do away with the vast commercial power, extending

over 265,000 miles of rails laid through developed and developing territory, but how best to promote them, that they may continue to serve rather than to rule the interests of individuals and communities.

That the experience of a little more than half a century under various conditions and under every civilized form of government has not been sufficient to remove the regulation of railways from the field of experiment is shown by the various methods of to-day on trial in Europe and America. In Belgium the government has either built or purchased the main trunk lines of the kingdom. Branch lines are allowed to be built and operated by private capital, the government guaranteeing 4 per cent. interest upon the investment and retaining the practical supervision of the management.

It is reported that the roads are managed satisfactorily to the people, that the rates are fixed and stable; but an early absorption by the government under provisions in the charters of the private lines is predicted, which would indicate a dissatisfaction on the part of private capitalists.

In France the main trunk lines were originally assigned a district or field supposed to be profitable without competition on condition that they should build branch lines into the less productive districts. This proved impracticable, and the government was obliged to lend its aid for the development of the territory. The charters provide that at the expiration of ninety years all railways shall revert to the state, the state purchasing the rolling stock at an actual valuation. Already the government has advanced 600,000,000 francs to the railways, and its policy looks toward an earlier appropriation than that nominated in the charters.

Already a perpetual committee supervises the management, arranges the tariff of charges, and settles disputes between competing lines and between the public and the railways. Rates and time-cards are required to be published, and no change against the interests of forwarders or passengers can be made without thirty days' notice and the consent of the commission. No private arrangements with individuals or corporations are permitted.

In North Germany all concessions are made by the minister of commerce, unless there is to be a largess or guaranty of interest when an act is required. In Prussia, at the commencement of its railway system, each railway chartered was given a field without competition, the state reserving the right of purchase of the road after the lapse of thirty years. In 1882 there

were 9,500 miles of state lines, 1,320 miles of private lines under state management, and 2,400 miles of private lines. The control of the government may be considered practically absolute, and is given over to a special board at the head of which is the minister of public works. Special tariffs are prohibited, correspondence in time-cards in railways insisted upon, persons and merchandise conveyed in the order in which the application is made. No variation in rates or time-table can be had without the consent of the board.

Austria followed the course of France in allowing concessions for the period of ninety years, and in addition the government built several trunk lines, which it retains. It also maintains supervision over passenger and freight traffic. Switzerland has no state lines, but an effectual system of supervising the tariff charges and a perpetual commission to regulate the relations of the corporations to the stockholders and the public, and provide for the constant publicity of railway transactions. Italy owns a portion of its railways and is in negotiation for the remainder. The policy of the government is ownership by the state.

In the history of English legislation on railroads and its results we find the closest resemblance to our own. In 1836 England had, next to Holland, the most complete canal system and service in the world, and its restrictive endeavors were guided not by a proper conception of the problem before it, but by its experience in dealing with oppressive methods in canal management. The popular belief in the power of competition to cheapen rates and control commerce in the public interest was accepted, and in spite of the warnings of the astute Morrison and the terse axiomatic statement of George Stephenson, that "where combination is possible competition is impossible," their early legislation was bent to increase competition between capitalists.

The natural consequences of combination, discrimination, secret rate making, preferences, the building up of seaports, and the oppression of non-competing points followed in spite of the most stringent legislation, until, in 1872, after over 3,300 acts had been passed and the expenditure of about £80,000,000 imposed upon the companies, a joint select committee recommended and Parliament provided for a railway commission, which has since become permanent and been increased in executive and judicial power. Some progress has been made in the regulation of the interests of the general public.

According to the statement of H. R. Hobart, editor of the *Railway Age,* made before the Senate committeee, the railway mileage of the United States and Territories at the commencement of 1885 was about 125,500 miles. In 1828 there were three miles of railroad. The capital stock and bonded indebtedness now show a value of $7,795,000,000, or more than four times the national debt, and 20 per cent. of the estimated wealth of the entire country. They employ about 725,000 persons, and thus support directly more than 3,000,000 of men, women, and children; and indirectly they aid in supporting many millions more concerned in the manufacturing, mercantile, and other interests of which the railways are very large patrons.

These roads are the modern highways for commerce, and should differ only in extent and facilities from their predecessors back to the days of the Roman roads. The laws governing the Roman highways were the bases of the laws of the road to this day. They were built by sovereigns having the right of eminent domain, and their use was common and equal to all. They were supported by taxes upon the bordering people, or by tolls upon those who made use of them.

Under our somewhat complicated system of government the railroads were chartered by States, who bestowed upon them the right of eminent domain, and they were builded wholly or in part by contributions directly from the State or by the people along their lines, and they were intended for the common and equal service of all who chose to make use of them. In their inception they were supposed to bear an analogy to the canal, and traces of this mistake appear in almost all of the early charters. It was believed that the railway, like the toll roads of that day, would be built by one company and used by any and all who chose to prepare suitable carriages.

Liberal legislation and a speculative spirit among our people led to overbuilding and misbuilding, and upon emerging from the crisis of 1857 many railroads found themselves embarrassed and the mortgages upon them were foreclosed.

At this time, under a system of reorganization which appeared plausible and just to the people, to the stockholders, and to those holding other than first-mortgage claims, bankruptcy was given a novel and dangerous turn in railroad financiering, and "additional capitalization," discounted upon the markets of the world, paved the way for the absolute control of this vast value and interest by a handful of men irresponsible to the people for the condition and conduct of their highways.

To-day it is represented that half a dozen gentlemen meeting in an office on Wall street may, by the power derived from ownership in these railway and wealth not obtained by the development of the country or improved transportation but by financial jugglery, dictate the profits or losses of men and communities throughout the land. By their fiat Rochester must stop milling that Minneapolis may thrive. All manufacturing establishments at Niagara Falls save one must suspend that the one may become wealthy. The capital and labor invested in thousands of oil wells and refineries must be lost that one combination may be made powerful. Villages and cities as well as individuals have been selected for development or for destruction.

The Senate committee, whose investigations have resulted in the presentation of this bill, present in their report eighteen specific causes of complaint against the railroad system, which may nearly all be epitomized as "discrimination" in one form or another. They cite among the many instances the case of the Standard Oil Company, which has been enabled by railroad discrimination practically to control the oil supply of the continent, and is reported to have realized $10,000,000 in a single season from diminished freights alone.

A single instance is sufficient to condemn the system. It appears that the company operates the Macksburg pipe line which carries oil to the Cleveland and Marietta Railroad. This road was in the hands of a receiver, who was removed by Judge Baxter upon the investigation of the rates charged for the transportation of oil. It was found that he was charging all independent shippers 35 cents per barrel, and the rate to the pipe line was but 10 cents. It appears that the Standard Oil Company owned the pipes through which the oil is conveyed from wells owned by individuals, with the exception of certain pipes owned and used by one George Rice, carrying oil from his wells, and to get rid of this competition the assistance of the receiver was sought and obtained.

The company offered to give the railroad three thousand dollars' worth of business each month, while Rice could give but three hundred dollars' worth. If its demands were not complied with it threatened to extend its pipe line from Macksburg to Marietta, on the Ohio River.

I do not expect that the passage of this bill and the appointment of any five gentlemen who might be named under its provisions for its enforcement will at once bring the millennium to American transportation. For forty years a constant struggle

of wits has been going on between the grasping corporations and legislatures endeavoring to restrain them, and to-day we are confronted with successful, legalized wrongs remaining uncontrolled and unredressed. But we shall have done our duty when we shall have done our utmost for the future security of the people. I do not believe that this bill will accomplish radical results, but it is a step in the right direction, both for the people and for honest railroad management. For many years a contest between the safe maker and the burglar has been waged. Each failure of the safe to withstand its robber has begotten improvements believed to be final, and each in turn has yielded to human cunning and ingenuity. But it is not for the safe maker to stop in his endeavors. If this bill, becoming a law, should fail utterly to supply a remedy, another attempt must be made. If it is partially successful, we shall have accomplished something and new remedies will be suggested by its partial failure.

An examination of the report and testimony will not show that railroad corporations are making too much money, or that the average rates of transportation are too high. On the other hand, they have been in the main unprofitable, and transportation between competing points in America is the cheapest in the world. The complaint of the people is of discrimination, uncertainty, and secret injury. The complaint of investors is that two-sevenths of the capitalized investment is water, and that through inside combinations the masters of Wall street are able to realize vast profits upon railroad wreckage and the depreciation of railroad property, as well as upon their prudent conduct and honest management. A great stride toward personal liberty was believed to have been made when our Government was organized with the prohibition of entail; but the sovereignty of trunk lines and railroad system, imperishable as they are, present a more dangerous *imperium in imperio* for our consideration than the largest entailed interests of the world.

Railroads are beneficent servants, but they must not become masters. The dwarf has grown large enough for us to impose restrictions upon his growth, else the old fable will be illustrated in practical life. If unchecked he bids fair to develop into an Afrite of gigantic stature and overwhelming and malignant influence. Railroads are no longer dull, insensate things. They are imbued with intelligence, and in intelligence that neither slumbers nor sleeps. They are no longer joint stock companies alone; they are dynasties.

They are already outlined, and in a few years if not supervised and controlled by legislation they will have become as firmly fixed in their grasp upon continued power, commercial, social, and political, as the Hapsburgs, the Hohenzollerns, or the Guelphs. These reigning houses were born of force. They were the triumph of the strong over the weak. These modern dynasties will have been born of law and of concession and will be the triumph of the creature over the creator.

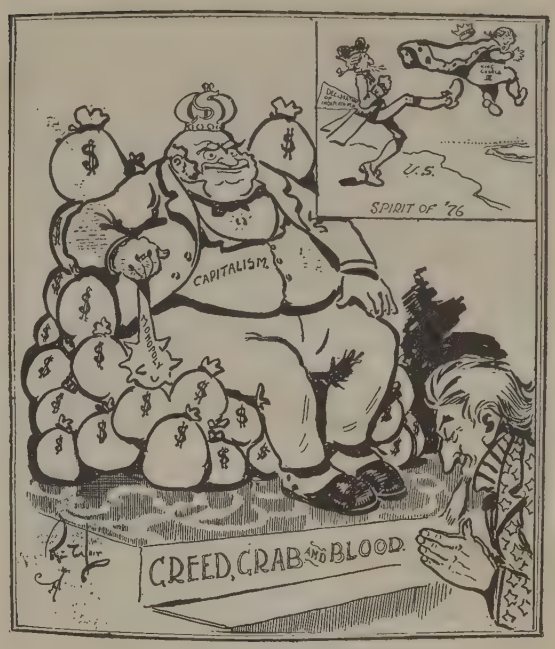
The old cry of the mayor of the palace when he appeared at the window of the Tuileries, "The king is dead, long live the king," may well be proclaimed when the railroad magnate goes to his long home. Not a schedule is changed, not a locomotive puffs less fiercely, not a sardine less is sold in the restaurant. The same intelligence, fortified and intensified possibly by new blood, wields the scepter and utters its mandates.

The fact that the stock changes hands does not detract from its power or alter its purposes. It is more remorseless than man, for the responsibility is divided. The cabinet or ministers who shape its policy and carry out its behests justify their course by the plea of necessity, and feel no tremors of conscience from the fact that their personality is merged in that of the corporation.

Hitherto content has come to the plain people of our land, to the mechanic, to the farmer, to the artisan, because, as he sat by his hearth noting the progress of his fellows who had outstripped him in life's race, his eye turned to the bright boy and the laughing girl with a knowledge that to them America offered every possibility of culture, wealth, and power. He knew that the history of the men whom America had delighted to honor had shown that from the humblest beginnings nothing restricted or directed the development of the American citizen outside of himself. To-day he sees the price of his labor determined not from his surroundings. He sees his village built up or destroyed by a foreign will. He sees the value of his little property decreased and that of the property of his fellow in an adjoining village increased without the action of either and beyond the control of any. He sees his neighbor, by secret arrangement with the railroad company, increasing his store with no extra labor or display of energy or ability, while his fellows are correspondingly depressed.

These things it is the object of this measure to correct.

All the American citizen has asked in the past or will ask in the future is a fair chance; no odds of the Government, but its protection, for which his life is pledged, and its schools, for



"AMERICAN IDEALS"
Cartoon by Ryan Walker in "The Comrade"

which his money is paid. Special privileges for none, equal rights for all.

On April 26 Leland Stanford [Cal.] opposed the bill.

This bill purports to be an act to regulate commerce between the different States. But everything in it is as to the carrier only. The word commerce has a well-defined meaning. It means interchangeable commodities, with which the carrier in

the transaction of his legitimate business has no concern whatever. I therefore think the title of the bill, instead of reading "A bill to regulate commerce," should be "A bill to regulate carriers."

If it were a bill to regulate shippers and owners, whose material the carrier moves, the title would be more appropriate. I may be told perhaps that there are judicial decisions that the regulation of the carrier is the regulation of commerce, but here when we propose legislation it is entirely legitimate to discuss the question as to the original matter and to determine it upon the principles which seem to be involved. There is a great difference between the possession of a power and its exercise.

Of course the Constitution plainly gives Congress the right to regulate commerce between the States. But as the carrier has nothing to do with the control of the shipment of goods, wares, and merchandise, with their ultimate disposal or destination, therefore regulating him or determining the price he may receive for his services can have no relation in determining the commerce between States. As a national question why should the price fixed for carrying freight across a non-physical line between the States be different from what is charged for the same service on either side of that line? Would it not be making of our State lines more or less obstacles to free intercourse? Would it not be converting every State line into something very nearly akin to a frontier? What do my friends say who have been always so anxious to claim that we are of right one great family with free business intercourse between ourselves, and what do my State rights friends say to the general Government interfering and controlling their local institutions?

It has been said that the right to regulate the railroad carrier is peculiar, in that the corporation operating the railroad is the creature of the State.

If there is anything in this argument it cannot apply here in Congress, as Congress has had nothing whatever to do with creating the corporation. Its existence is entirely by virtue of State laws and has under those laws the right only to operate within the jurisdiction of the State. Of course I except some Pacific roads.

It is pertinent for us to inquire into the wisdom of this kind of legislation, assuming that the authority for it exists. The right of association is a natural one and it is the duty of the national and State legislatures to aid that natural right, and that I contend is what legislation by the various States

providing for the incorporation of railroad companies has done. The incorporation is made by individual incorporators as much so as a partnership between individuals is established by the partners themselves. The character of railroad investment as compared with others is set forth by the fact that States can and do exercise the right of eminent domain in order that railroads may be constructed.

The State cannot exercise this right for the benefit of the railroads. It only exercises it because the investment is of that peculiarly beneficial character to the public that it may be said to be a public good. The rule is, moreover, that the railroad companies must pay individuals deprived of the control of their property under the right of eminent domain whatever may be the value of that property. The State pays nothing.

Now, then, if the investment in railroads is so beneficial to the public, why should not the investors be permitted to reap the same full rewards of the wisdom of their investment and of their industry and the management and direction thereof as though the same capital, the same wisdom, and the same industry had been employed in a business so much less important to the interests of the State that the State could not, if solicited, exercise the right of eminent domain in its behalf?

In discussing this question of the right to regulate railroad fares and freights in a manner which will necessarily impair the earning capacity of these roads we should not forget that the investments were made by individuals. If the railroads are so important to the public, surely these individual investors ought not to be discouraged by the apprehension that the value of their investment may be lessened by adverse legislation.

Furthermore, inasmuch as labor enters very largely in the construction of railroads and continues in their operation, any attempt on the part of Congress to fix the rates of railroad companies tends to fix the price of labor.

Further, in all these efforts at regulation I find no protection to the railroad companies, no guaranty against impairment of income. Therefore, if legislation interferes to decrease income, surely the value of the property is affected to the extent of the diminution of the income. This is taking property without compensation. It is confiscation.

I think there never has been a bill introduced into any legislature purporting to regulate railroads against which the owners of the roads did not find occasion to protest on the ground that it diminished the income-producing quality of their property.

Now, then, the investment being a legitimate one and a desirable one, as is established by the exercise of eminent domain not in behalf of the railroad company, for the State has no right to do that, but in behalf of the people, and the State being justified in regarding railroads as public benefits, why should they after their completion have less protection from the laws than other property, or why should they be made the objects of direct and injurious legislation? And in this connection I think it proper to remark that railroads have no legal monopoly of business, since they have no exclusive privileges.

Practically this bill denies to the various railroad companies the right of competition. It precludes the shippers from reaping their rightful advantage of competition, and causes to them and to the railroad companies absolute loss. If the low rates for the long distance mean a reduction of the shorter, the carrier must submit to a loss from the usual rates on the shorter distance, or else abandon the business at the competing points.

Under the force of competition the carriers are often compelled to take business over their roads long distances at a lower rate than they receive for shorter distances. No railroad company would do this if the rate to be charged was a matter under its control.

For this reason rates are oftentimes below the average cost of transportation, and freight of a low value in the market is often moved at less than average cost. Low rates, if they pay anything above the direct expenses consequent upon movement, aid to sustain the railroads and the better enable them to move the traffic at non-competing points. Railroad companies cannot ignore the various circumstances that establish competition, much of which depends on the geographical condition of the country. The shipper for a short distance is not charged more, but the shipper for a long distance is charged less because the carriers cannot help themselves.

All will admit that no legitimate enterprises should be discouraged, particularly those that add most to the convenience and comfort of the people, and to the wealth, strength, and dignity of the nation.

The chief discussion upon the bill was in reference to an amendment offered by Johnson N. Camden [W. Va.] prohibiting a railroad charging *more* for "short hauls of freight than for long hauls."

Zebulon B. Vance [N. C.] on May 6 expressed his

opinion that the prohibition ought to have been more drastic; that the railroads should not be permitted to charge the *same* amount for the two hauls. Nevertheless he accepted the provision as a step in the right direction.

It falls far short of doing justice, but we have been so often warned of the danger of attempting to interfere with commerce, which we are told should be left to its own devices and to work out its own salvation according to the laws of political economy, generally resulting in damage to the people—we have been, I say, so often warned of the danger of interfering, that it seems that legislators are afraid to set the coulter very deep at the beginning, and, instead of saying by the bill that a corporation should not charge as much for the short haul as for the long one, we stop short on the first proposition, to see if the world is going to come to an end before we try something more.

It reminds me very much of the story of a man who went into a saloon in some Western country where they sold a quality of liquor which used to be known in your country, sir [William J. Sewell, of New Jersey, in the chair], as Jersey lightning. [Laughter.] He called for two glasses, which the saloonkeeper accommodatingly poured out for him. He saw an antiquated, odoriferous, and oleaginous African standing near by, and he called to him and asked him if he did not want to take a drink. With a tragic air which would have done credit to an actor, he said, "Boss, I'll tell you no lie about it, I would"; whereupon the colored gentleman drank his spirits, and the white customer who had called for the two glasses went and took a seat. The saloonkeeper asked him if he was not going to drink his spirits. He said, "Please wait fifteeen minutes, and if that nigger don't die I will try mine." [Laughter.]

The proposition here is admitted on all sides that it is not only wrong, but it is an outrage to charge a man who lives 100 miles from Chicago as much for hauling his freight from Chicago 100 miles as is charged to the man whose freight is hauled from Chicago a thousand miles to New York. But so fearful are we of disturbing commerce, so terrible are the dangers which overhang us if we undertake to control a ring, that we have concluded to try the effect of limiting the charge to the same for the hundred miles that is charged for the thousand miles, and then if there is not a great cataclysm and nature is not convulsed we may perhaps yield to the demands of the shippers

of the country and after a while say that the corporation shall not charge quite as much.

Senators on the other side, I believe, do not pretend to justify it upon abstract principles of right and wrong, but they say that it would operate against the man who has the long haul, it would increase his freights, and it would increase the rates from the great West to the seaboard.

Mr. President, what does that admit? It admits that under the influence of competition the railroads are hauling freight from distant points in the great West at rates by which they make no money, and that they are maintaining their roads by an extortion upon the men who live at the intermediate points and whose shipments come within the meaning of the short haul.

So long as Senators give us the reason that we cannot maintain these great lines, that we cannot afford facilities to that great and boundless and fertile West which would enable it to throw its products upon the markets of the seaboard and into Europe without this extortion upon the short haul, then it is a very respectable argument founded upon necessity, and would come well within the meaning of the terms which are usually applied to a high protective tariff.

GEORGE F. HOAR [Mass.].—Will the Senator allow me to make a question to him for his answer?

SENATOR VANCE.—Certainly.

SENATOR HOAR.—I do not myself in my vote agree that the charge for the short haul is an extortion, whether it be less than the charge for the long haul or not, necessarily. I do not understand that that is admitted by any considerable number of persons in the country. There have been such times in the past, but it is not claimed that the railroad rates to-day are such anywhere, unless there may be very few exceptions indeed, that they can be construed as an extortion.

As I understand the proposition, it is exactly this, which I might illustrate by a very simple instance of a stage-coach. Suppose you have got a stage-coach running from a point 20 miles out of Elizabeth City, or any other town in your State, and it can take eight passengers a day, who are dropped on the way, and it charges them a dollar apiece. That charge just pays the entire expense and cost of the line, the drivers' wages, supporting the horses, and repairing the vehicle and harness, and that is all; there is no profit. At the end of the road the stage is competed with by a railroad, which takes passengers from end to end of that road for half a dollar apiece. If the

stage charged the passengers who went the whole length the full dollar which it charges the others, which is a fair price, it would not get any of them; but still by taking in competition with the railroad at half a dollar the few passengers it can get to go through, it enables it to make a little profit and that keeps the line out.

That is precisely a very homely and simple illustration of this railroad problem as it appears to us who vote against the amendment of the Senator from West Virginia; and it does not answer our argument or help us to be won over to the other side to call it a comparison of extortion committed on one set of people for the benefit of another. These railroads are built primarily for the use of the localities through which they go. The land is taken, the right of eminent domain exercised, through these localities, and the railroads are to be compelled by the bill to deal with them at reasonable rates without extortion; and, if they undertake any extortion on a single locality in the United States which is affected by interstate commerce, here is a mechanism which will cure that defect, as we hope and believe.

That being done, and the rights of these parties being secured, here is a railroad running from Chicago to New York or Boston which says: "If I undertake to charge the same reasonable rates for the wheat which I take from point to point, I cannot compete with the water way, I cannot compete with the Canadian railroad, and I cannot get it at all, because the farmer, on paying me that same rate, cannot sell it in the European countries, he cannot afford to raise it, and the community will stop. But having this apparatus of cars and railroad track and so on, running for the benefit of these localities, I can take on this through business at a less rate than I am charging them, and still make something on the whole."

SENATOR VANCE.—Mr. President, I yielded for a question and I got a speech. I yielded for a short haul and I got a long one. [Laughter.] That is another instance of the extortion which is practiced upon short-haulers.

SENATOR HOAR.—If my honorable friend will haul that proposition of mine any distance whatever, I should like to look on at the process.

SENATOR VANCE.—If I were to haul that proposition far I should think I had made a water-haul. [Laughter on the floor and in the galleries.]

I should like to know if my friend from Massachusetts objects in a matter of morals to the proposition that all men

should be charged according to the service which is rendered them; that all men should be taxed according to their ability to pay? I am sure he would not; he has not.

Mr. President, if you will pardon me for giving an illustration in my homely way, I was down in the lunch room but a short while ago. I took a sandwich and a glass of milk, which was a very short haul. A Senator not far from me took a porterhouse steak and accompaniments. That was a long haul. Now, do you not know that if the keeper of the restaurant had charged me more for that short haul than he did my neighbor for the long haul there would have been a disturbance of the peace in this Capitol before many minutes. [Laughter.]

Those of us who favor this relief to the people of this country, who favor this proposition, admit that the Senate of the United States, or Congress, or even the legislatures of the States for that matter, having railroads wholly within their States cannot resolve themselves into a board of directors and determine every individual item of charge that a railroad shall make. Nobody is attempting to do that; but we are attempting within bounds, and within safe and reasonable bounds, to place or limit upon the power of a railroad corporation to charge whatsoever it pleases without regard to service or distance. That is what we are attempting to do by this amendment.

SAMUEL J. R. MCMILLAN [Minn.].—The bill makes a provision that the short hauls shall not be charged more than a reasonable and just price. Now, is there any objection to permitting the same road to haul a longer distance for the same sum if it so pleases?

SENATOR VANCE.—Who is to say what is reasonable?

SENATOR MCMILLAN.—The commissioners under the bill and the courts can determine that question. Now, you deprive the communities of the benefit of all the competition for long hauls where the roads would be compelled to charge a lower price where there is competition.

SENATOR VANCE.—If the Senator will excuse me, that is precisely what I desire to do. I desire to deprive any portion of the American people of the benefits of competition which competition is maintained at the expense of the rest of us.

SENATOR MCMILLAN.—But the competition is not so maintained; the short-haul people have the limitation of the law that they shall not be charged more than a reasonable sum, and the courts can enforce that law. Then the only provision of the bill is as to a long haul, that where competition exists the communities can have the benefit of it; and by placing this

limitation upon it you destroy competition on commerce throughout the country.

JOHN E. KENNA [W. Va.].—The proposition of the Senator from Minnesota, like the proposition of every Senator on this floor who urges opposition to the amendment, that the railroad should not only be allowed, but should be required, to charge reasonable rates, involves us in the old geometrical question as to the size of a lump of chalk. What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary discretion of the railroad commission.

I do not want to interrupt my friend the Senator from North Carolina in his speech, but I do want to reiterate the fact that in the amendment of my colleague which was adopted yesterday, and which seems to be the bone of contention here, the simple principle is announced that without interfering with railroad rates—I dislike to hear the term "rates" mentioned in the line of this discussion, because there is no question of rate involved in it—without reference of any kind or character whatever to interference with the traffic of railroads or their freights, it has been deemed by the friends of this measure a reasonable limitation that they should not be allowed to charge in gross more for a shorter haul, even if that shorter haul be ten miles, than for a longer haul, even if that longer haul be a thousand miles. It is an equalization which is essential to restoring to Congress a prerogative which has heretofore been usurped by the railroad companies of this country to control its interstate commerce and to give to the West or any other section the great markets of the East, giving to the one to the exclusion of the other. That is the real principle involved in it, after all.

Here Nelson W. Aldrich [R. I.] engaged Senator Kenna in a controversy on the subject; he twitted him upon not carrying his "principle" to its logical conclusion and advocating compulsion of the railroads to make a less charge for a short haul than for a long one.

Senator Vance resumed.

Mr. President, it has been so long since I was on the floor that I have forgotten what I intended to say, I believe. I was going to say something, I think, on the subject of all freights having to be reasonable and just, and to comment somewhat upon the difficulty of coming to a conclusion as to what was

reasonable and just, and at the same time practicable. A witty man once remarked that a man and his wife were one it is true, but which one was a big question. [Laughter.]

What enters into the elements of a just freight charge? Will you compare with the charges that were once made by the wagoner on the dirt road? How will you arrive at it? Will you take into consideration the interest upon capital; and, if so, how much and what profit shall be allowed? It seems to me that much the most practical way to remedy this defect is not to trust to the commissioners, whoever they may be, for arriving at a conclusion, however reasonable and just, but to fix a boundary at least beyond which they shall not pass by saying that they shall not charge more.

On May 10 E. C. Walthall [Miss.] spoke on the bill. He advocated dealing directly with the railroads rather than through a commission.

To my mind there are grave objections to such a commission. Congress acts only under delegated powers; and where is the warrant to be found for their delegation by Congress to a commission? Congress may undoubtedly create a commission and confer upon it given powers, if they be so precisely and narrowly described and limited as to leave the commission no discretionary authority in any matter where its action would be final; but they would leave the commission no field for any useful work. Does any Senator feel safe in announcing that Congress can confer on a commission the power to regulate the rates of transportation so as to bind the railroad companies? And, if it cannot fix rates, what good purpose that is practical can a commission serve? But, if the power be conceded, the work is beyond the capacity of any commisison that can be appointed. There are more than fifteen hundred railroads in the United States, stretching over about 140,000 miles of territory. Some of them cost millions to construct a single mile, and, by comparison, some were built for inconsiderable sums, and the cost of none of them is the true test of their present value.

These shipments vary in value, in the difficulty of handling them, in the necessity for speedy transportation and prompt delivery, and in the measure of responsibility for loss, damage, or delay. They may consist of coal worth $40 a carload or silks or laces worth thousands of dollars a case with hundreds of cases in a car. They may consist of ice, or live stock, or

fruits, which must go through with speed; or of lumber or brick, which would neither waste nor perish by delay. The variety of freights is endless, and so is the variety of the questions which the commission must consider, as affecting the rights of hundreds of railroads and millions of people, before it could arrive at a tariff of charges which the commission itself would say is even approximately just to shipper or carrier.

How long would it take the commission to perform even imperfectly the duty of gathering the necessary data on which to proceed advisedly, and then determining, on the material collected, what rates would be reasonable on all the "interstate" roads in the Union? So long, I venture to say, that before the completion of the work the changes in business in this active age and in the conditions of the railroads would make necessary a reëxamination of the subject and a readjustment of the rates.

There are other objections to an interstate-commerce commission, growing out of the fullness of its powers, the disastrous consequences of its mistakes, and the dangers and temptations incident to the position of its members; but those will suggest themselves, and I need not now discuss them. It is enough that such a scheme seems impracticable, even if clearly constitutional, to lead me to prefer a simple one whose constitutionality is beyond dispute.

Judge Reagan, an able, an earnest Congressman from Texas, who for more than ten years has been laboring to master this great question and has been pressing its importance upon the attention of Congress and the country, at the last session secured the passage of a bill through the lower House by a vote of 2 to 1 to regulate interstate railroad traffic. In advocating that measure he expressed the opinion that "no law fixing rates of freight could be made to work with justice either to the railroads or the public," and the same conclusion has been reached by others who have maturely considered the subject from a wholly impartial standpoint. To me this seems clear, and the reasons for it are equally forcible when applied to rates fixed by an interstate commerce commission.

The Reagan bill, as it passed the House, has in it the idea which seems to me the correct one for practical legislation embodied in general provisions, prohibitory and mandatory, to restrain and direct the railroad companies and protect shippers from all unfair, unjust, and unreasonable dealings, with stringent and specific remedies for a violation of these provisions. I think a system built on this idea would be far better than a commission.

I prefer a law which requires that all freight charges between all interstate points as to all persons, all distances, and all kinds and quantities of freight shall be reasonable, and provides speedy redress in case of violation, and imposes penalty, if the violation be willful, in any court of competent jurisdiction, whether State or Federal. Details should be prescribed having preference to the grievances most complained of, such as requiring rates to be published, prohibiting unjust discriminations between persons and places, and forbidding oppression in any mode, direct or indirect. But there is, I think, no longer room for doubt that arbitrary rules which are inflexible as to long and short hauls, or as to shipments in bulk or small parcels, are injudicious and dangerous. It seems now almost agreed, at least in this body, that such iron rules are likely to defeat the object we aim at, the relief and protection of the people.

The objections I have offered to a commission under congressional law do not apply, except perhaps in a very small measure, to commissions under State laws where there is constitutional warrant for their creation. The sphere of action of such commissions is comparatively small, their duties are far less complicated, and their powers are limited and restricted. In a number of States such commissions are working well. For want of a better measure I am ready to vote for the bill in its present shape, though I do not approve the creation of a commission.

William J. Sewell [N. J.] opposed the bill.

If business is going to be demoralized by this legislation, if adopted by Congress, we ought not to pass it. The Senator from Michigan [Mr. Palmer] is perfectly correct in saying that the railroads have brought the price of transportation from 35 cents a bushel charged by water transportation down to from 6 to 9 cents. It has been forced down by railroad competition. Instead of relieving the situation, when you adopt the amendment of the Senator from West Virginia [Mr. Camden] you destroy the whole fabric that we have been building up for fifty years.

It is within the recollection of myself when the extreme limit of transportation by rail was to the Ohio River. By reason of the energy and the genius of our people it has been from time to time, and day to day, and year to year pushed mile after mile westward by the building of railroads, by the

advancement of science, and the laying of tracks, and the running of locomotives, until to-day we present the spectacle to the world of having accomplished what no other nation and no other people ever has done, of bringing grain, cattle, and other products of that kind two thousand miles to the seaboard, and allowing the community to have the benefit of competition.

The capital invested in the railroad transportation lines of this country is enormous when you come to look at the figures—125,000 to 130,000 miles of railroad, from eight hundred to a thousand million dollars of the absolute savings of the people of the country for forty years invested, because it has been probably the best field of investment when applied to bonds, although that does not apply to stocks.

We are told by some gentlemen in the Senate that there is a great deal of water in this. Mr. President, when I had the honor to address the Senate on this subject at the last session of Congress, I admitted that there was water, but that water is limited to a very small percentage and limited to the lines constructed in late years, and with the approval, as we saw here a few days ago, of those very complaining Senators about water who voted deliberately to allow a company chartered lately to issue any amount of securities for the building of its road. The Senate voted on it on the basis that company should have the same privileges as those that preceded it, and that they could not compete with the previously organized and chartered and running railroads unless they were allowed to have water, as though transportation was absolutely to be by water and not by rail. In other words, that the more indebtedness you piled on a corporation the easier it was to run it and pay expenses! It is hardly necessary to talk about it, but such was the argument and such was the vote.

Mr. President, the railroad men of this country as a class are about the best merchants and the brightest minds we have to-day, and necessarily so. They have the best education of any set of men in the country. Gentlemen who occupy seats in the Senate mostly belong to the legal profession. Coke, Blackstone, are the same, and the classics have not changed. You will never build great railroads on them; you cannot follow the progress of the age; you cannot settle this country with them.

It takes all the elements of a great man to be a successful railroad manager; and we have a great number of them who have grown up in the last twenty-five years. They must have all

the education that any gentleman on this floor gets in order to equip himself as a lawyer or as a Senator; and it is but the starting point of what he has to acquire of professional knowledge in order to fit himself for his position. After he has graduated at Yale or Princeton or Harvard he has to go for four or five years to a special institute for the purpose of learning the science of mechanics, chemistry, metallurgy, and then he rolls up his sleeves and goes into a shop and applies himself to the mechanics about which it will be necessary for him to have perfect knowledge in his business as the manager of a railroad.

At thirty years of age that young man, never having up to that time probably earned a dollar, preparing himself in every way, spending money to acquire this knowledge, enters upon his career in a subordinate capacity as a railroad man; and if he has the talent and the brain necessary he rises rapidly, because in our country a man of thirty years of age has practically but twenty years of active business vital force in him. That man applies himself to the business of his life. He has all the knowledge that books can give him; he has all the knowledge that practice can give him. He is not a moneyed man. He does not enter upon the business of railroads for the interest of the community in which he lives, but as a matter to furnish for himself a position, and for his family, if he has any, their bread. He has no prejudice, no feeling. He is as well equipped as any man can possibly be to do as near right as any one man can. And this is the class of men you have to-day in the active management of the railroads of this country.

It is not fair to say that those men, absolutely working for a salary without any interest in the railroads, without any dealing in a share of stock or ever going into Wall street, are going to oppress the people. They are the men to-day who have built up this country to be the great nation that it is. Without the genius and the money and the labor and the education that have been applied to getting these men into the positions they hold, your railroad transportation, with the movement of the products of the mines and of the crops, would not have been what it is to-day, and you would never have been able to reduce the cost of the movement of a ton of corn or a ton of wheat from three cents a mile down to four-tenths of a cent a mile or three mills a mile as has been done within the last two or three years and is being done probably to-day.

Senator Camden's amendment was adopted on May 12 by a vote of 26 to 24. The bill was then passed by a vote of 47 to 4.

It was referred by the House to the Committee on Commerce which reported it back on May 22 with an amendment of the nature of a substitute, which was along the lines of the Reagan bill passed by the House during the previous session. The bill came up for discussion on July 21.

Interstate Commerce Commission

House of Representatives, July 21, 1886

John H. Reagan [Tex.] of the majority of the committee stated the differences between the Senate bill and the House substitute.

The Senate bill related to passengers as well as freights, and to water as well as land transportation; the House bill related only to freights and railroads.

The Senate bill provided for specific damages, the difference between the just and the unjust charges. These, said Judge Reagan, were inadequate.

This is no improvement on the common-law remedy which may now be invoked. The common law furnishes no practicable remedy for the abuses of power and the unlawful conduct of the managers of railroads. Claimants for small sums as damages cannot as a general rule afford the expense of litigation to establish their claims, while the railroad corporations as a rule protract such litigation to such an extent as to wear out the claimants and defeat the ends of justice.

The House bill provides for the recovery of full damages and requires the court in each case of recovery to tax the corporation with a reasonable fee for the plaintiff's counsel or attorney fees. This is an improvement of the common-law remedy in that, in case of recovery, it requires the defendant to pay the plaintiff's reasonable attorney's fees. The remedy should go further and require the payment of double or treble damages. Besides this, the railway corporations have the power by discrimination and unfriendly delays to punish any of their patrons who may attempt by litigation or otherwise to prevent their discrimination and injustice.

The Senate's bill contains the provision that "no common carrier shall be required to give the use of its terminal facilities to any other carrier engaged in like business."

This is a clear attempt at congressional regulation of the corporate rights and franchises of the railroad corporations, and is not within the powers of the constitutional provisions which authorize Congress to regulate commerce among the States. It is a power which clearly belongs to the States as to roads not situated in the Territories and in the District of Columbia. It is also evidently put in the bill to subserve some private purpose and not for the public good. A note to page 82 of Hudson's "Railways and the Republic" shows how the Standard Oil Company got possession of the terminal facilities for handling oil in Philadelphia and Baltimore. This clause may have for its object to invoke the authority of Congress to preserve to it the advantages it then gained. And there may be other like cases. But as the enactment of this clause would be in violation of the Constitution it could afford them no protection in their wrongdoing, and would not avail to establish or perpetuate monopolies.

The fourth section of the Senate bill, the one which deals with the question of the long and short haul, is simply meaningless. To the casual reader it would seem as if it meant to prohibit charging more for the carriage of a like amount and kind of freight for a shorter than for a longer distance, but it does not do this. It does not define or designate the original point of departure. Where is the original point of departure on any railroad? Is not every depot from which freight is sent an original point of departure for that freight? This section can only mean that one person cannot be charged more than another for a like amount and kind of service, and is but a reënactment of other provisions of the bill. It does not prohibit charging more for a short than for a long haul.

The fourth section of the House bill is plain and specific on this subject.

The Senate bill, said Judge Reagan, provides that the commission may exempt railroads from the operation of this section. This is an unconstitutional delegation of the law-making power of Congress to the commission.

The object of this important provision is to protect the people at noncompetitive points from paying for the carriage of the freight shipped from competitive points. It was found difficult to provide a rule which would be entirely equitable. It would not be right to charge the same rate per mile for a long as for a short distance; as the loading, unloading, preparation of trains, and handling would be the same in both cases. In adopting the provision that no more shall be charged for a shorter than for a longer distance, which includes the shorter, we in the House did discriminate in favor of the long haul to the extent of providing that no more should be charged for the shorter than for the longer distance, thus leaving the provision so that if the transportation companies find it necessary they may charge as much for the short as for the long haul. This rule recognizes the territorial extent of the country and the character of shipments to be made.

It enables the transportation companies to carry grain and flour and meats from the productive fields of the West as cheaply as from Illinois, Indiana, Ohio, West Virginia, or from the western parts of Pennsylvania or New York to the seaboard.

Justice and fair dealing could surely require no more. And in preventing charging more for the short than for the long haul it conforms to the rule adopted in the State constitutions of Pennsylvania, Missouri, Arkansas, and California and by the statute laws of Massachusetts and other States.

Besides the injustice and the ruinous consequences to shippers of charging more for a short than for a long haul, the power to do so enables the transportation companies to control the manufacturing interests of the country and to drive them from noncompetitive points and from the rural parts of the country, where living is cheaper and health better, to the great commercial centers, where there is competition in freight rates. This is a power which no government of a free people would dare to exercise, and which no wisely administered government would think of exercising, and yet the railroad companies demand and insist on the right to exercise this vast and dangerous power. And under it they are impoverishing some cities, towns, and communities, without any fault of theirs, and enriching others having no other merit to this favor than the arbitrary power of the transportation companies.

The House bill, said Judge Reagan, requires common carriers, under penalty, to post schedules of kinds of freight, termini of hauls, freight rates, with itemized statements of "terminal facilities," etc., the last being to prevent extortion under cover of a general term.

The Senate bill does not make such requirement.

It also only requires the schedule rates to be made public so far as may in the judgment of the commission be deemed practicable, and that said commission shall from time to time prescribe the measure of publicity which shall be given. This is a serious defect in this bill. Publicity, as provided for in the House bill, is the one essential means of protecting shippers against unjust discriminations by means of rebates or other secret means of discrimination. Can anything more humiliating and demoralizing be conceived than this practice of secret frauds by transportation companies, constantly inviting so large a part of the people to seek to make themselves parties to fraud of this kind? No government and no people ought to submit to such a condition of things.

Another reason for the publication of freight rates, which should be controlling, is that, in questions before the courts involving the reasonableness of such charges, when the rates are not authoritatively published it is not difficult for railroad experts in the interest of the companies to defeat just demands for damages by confusing juries with artful statements of what they term all the elements which enter into the questions as to the reasonableness of rates. Posted schedules of rates would not only advise the people what they would have to pay, but would furnish evidence of what reasonable rates are.

The House bill, continued Judge Reagan, defines what "pooling" is; the Senate bill merely orders the commission to investigate pooling and recommend legislation concerning it.

Pooling by railroads is prohibited by the constitution of the States of Arkansas, Michigan, Missouri, Nebraska, Pennsylvania, and Ohio. It is prohibited by the laws of other States. Pooling is a violation of the common law, because it is a restraint upon the freedom of trade and a conspiracy against the public welfare. And this doctrine is maintained in the following American cases: 8 Mass., 223; 1 Pickering, 450; 35 Pickering, 188; 19 Pickering, 51; 35 Ohio State Reports, 672; 68 Pennsylvania State, 173; 5 Denio, 343; 4 Denio, 349.

Judge Gibson, in the case of the Commonwealth of Pennsylvania against Carlisle (Brightly, 40), says:

I take it that a combination is criminal whenever the act has a necessary tendency to prejudice the public or to oppress individuals by

unjustly subjecting them to the power of confederates. "The object of these combinations is to raise the rate of freight, and the means adopted is to suspend competition and place the traffic under the exclusive control of the combination."

In the early history of railroad construction the anxiety of the people of this country to secure their construction induced them to grant charters without much reference to those safeguards necessary for the security and welfare of the people. It was understood then, as now, that each railroad would have a monopoly of the business of transportation on it. The people relied on three means of protection against monopoly prices:

First. On transportation by water and by other ordinary means of transportation.

Second. On the ultimate increase of the number of competing railroads; and

Third. On the exercise of legislative control and regulation.

Experience has shown that the first two of these means do not protect the public against the unjust exercise of these monopoly powers; and that if not controlled by law they will defeat competition with each other by pooling combinations.

The railroad managers recommend a universal pool, or federation of all the railroads in the country, and its recognition and the enforcement of its provisions by law. This Congress has no power to do under the Constitution. If this could be done it would be the creation of one vast and overpowering monopoly out of the many which now exist, and such a course would enable it to control the transportation and commerce of the country, and soon perhaps to control the legislation of the country, and to become the masters of the people and of their liberties.

As evidence that there is real danger of this, I will refer briefly to four notorious pools in this country, which have each exercised vast power, and inflicted great injury on individuals, on other corporations, and on the whole country.

Here Judge Reagan instanced (1) the live-stock pool, which granted a rebate of $16 per car to a single Chicago firm, giving it a monopoly; (2) the Standard Oil pool, which received in sixteen months rebates amounting to $10,000,000, enabling the company to crush out competition; (3) the anthracite coal pool of six railroads, controlling 195,000 of the 270,000 acres of anthracite coal lands in Pennsylvania, and by this monopoly in-

creasing the price of its product and decreasing the wages of its miners at will; and (4) the transcontinental railways and Pacific Mail Steamship pool, absolutely controlling passenger rates and freight charges, limiting sailings, etc.

As illustrative of the methods by which the railroad companies defeat just competition, establish monopolies, and levy unjust tributes on the commerce of the country, I have before me the printed form of a contract which was to be executed between the Union Pacific, the Atchison, Topeka, and Santa Fé, the Missouri Pacific, and the Galveston, Harrisburg, and San Antonio Railway Companies, and such persons as they might carry merchandise for.

By this agreement shippers were required to bind themselves, in order to avoid excessive rates, to ship all their merchandise during the term of the contract, which, it is understood, was not to be for a less time than one year, by the above-named roads; and the shippers were required to bind themselves, in substance, that if they should ship any part of their goods by any other route it was to be held as *prima facie* evidence of default on their part, and it was then to be optional with those railroads whether they would cancel the agreement and charge their higher rates on shipments, "or collect as liquidated damages a sum equivalent to the charges said goods would have been subject to if shipped by rail in accordance with the terms of this agreement."

This pool, not content with its extensive combination, adopted this extraordinary means of forcing shippers to contract in advance to send all their merchandise over their lines, or pay the penalty of not doing so by paying much higher rates of freight than those specified in the contract. And the terms of the contract, which I cannot take time to read, show that two of the objects which the railroads expected to accomplish by these contracts were to prevent the competition of other railroads and of the Pacific Mail Steamship Company.

The Transcontinental Association of Railroads, in the exercise of its powers as a monopoly, conferred on another great and odious monopoly, the Standard Oil Company, a complete control of the oil trade on the Pacific slope, in the great plains, and in the Rocky Mountain region.

I quote an editorial paragraph from the Washington *Post* of April 8, 1886, going to show how these corporations enrich themselves by the dishonorable means of watering their stocks,

and overtax the commerce of the country, and oppress the laboring people, in order that they may increase the value of their stocks or obtain dividends on this fraudulent stock.

> There is a very general belief that the laboring classes are subjected to much injustice at the hands of the monopolizing capitalists who employ them. There is not a railroad corporation in the country which has not watered its stock to such a degree that its ostensible capital is largely fictitious. To create a market value for these fictitious shares a profit must be earned and a dividend declared, which can only be done by reducing wages to the lowest possible point. There results from this necessity a grinding pressure downward upon labor, which is grievance enough.

It will thus be seen that these corporations boldly enter into conspiracies in restraint of trade, in violation of the principles of the common law, and that with reckless audacity they defy constitutional provisions and statute laws, while they impudently set at naught the great fundamental principle imbedded in all our State constitutions denouncing monopolies as being contrary to the genius of liberty.

Yet these corporations now ask that pooling be sanctioned by law, and claim that the adoption of a universal pool is the remedy for all grievances on this subject.

I trust this House will show a higher appreciation than the Senate of constitutional principles, a firmer purpose to see that the statute law and the principles of the common law shall be respected and enforced, that these corporations are not greater than their creators, and that the interests of the people shall be upheld and their rights respected, by forbidding pooling in unmistakable terms.

The Senate bill, said Judge Reagan, provides for an interstate commission at high salaries with power to hire assistance, etc. Yet it does not order this expensive commission to fix rates.

The House bill does not provide for a commission. It proceeds on the theory of abridging the monopoly powers of the railroad companies, and of prohibiting the greater and more manifest violations of right by them, without attempting a detailed regulation of freight rates, and provides for the enforcement of its provisions through the courts of ordinary jurisdiction, which are within convenient reach of the people, and with whose methods of procedure they are familiar.

The Senate bill proposes to enforce its provisions by bureau orders and the proceedings of courts combined. The American people have as a rule great respect for law and for the action of the judiciary, but they are not accustomed to the administration of the civil law through bureau orders. This system belongs in fact to despotic governments; not to free republics. And I submit with due respect that the House bill will secure more ample, prompt, and perfect protection to the rights of the people, with less friction and embarrassment to the railroad companies, than the Senate bill, if it should be executed honestly and in good faith. The Senate bill is, however, preferred by the railroad corporations, because under it they see greater chances for trickery and evasion; with whatever chances there may be for their controlling in their interest the appointment of the commission, or of controlling the commission in their interest after it shall be appointed; and because the Senate bill puts the commission between the complaining citizen and the railroad, instead of allowing the citizen to appeal directly to the courts for the redress of his wrongs, as the House bill does.

When we remember that this commission is to be composed of five persons only, that all their judgments are to be rendered in Washington city, though it may send members of the board to different parts of the country to make inquiry and to take testimony; when we consider that it will have at least 130,000 miles of railroad to look after and to extend its supervision to, and that the roads cover over the thirty-eight States and eight Territories of the Union, with their 60,000,000 of population, and transport not less than $15,000,000,000 worth of interstate commerce annually, we may be better prepared to understand how futile the attempts will be to attend to all the controversies growing out of railroad management in this country.

But I have other objections to the appointment of a commission. I shall fear that the railroad interests will combine their power to control the appointment of the commissioners in their own interest. The notorious facts as to how railroad managers have corruptly controlled legislatures, courts, governors, and Congress in the past give us sufficient warning as to what may be expected of them in the future. It is not to be supposed that they would directly approach any President of the United States and corruptly propose to secure the appointment of commissioners in their own interest; but they have influential men at command to appeal to the President on account of ca-

pacity to appoint such commissioners as would serve their purposes.

Instead of such a system as that of a commission, the House bill provides that any citizen aggrieved by a violation of its provision may appeal directly to a court and jury for redress, and that he may proceed both by civil suit and by criminal prosecution.

The question as to which of these plans should be adopted has in three different Congresses in the last few years been passed on by this House, and on each occasion the House by a large majority declared in favor of the plan presented by the House bill as best for the general welfare.

Charles O'Neill [Pa.] presented the minority report of the committee on the Reagan bill.

It will be seen at a glance that commercial and agricultural products form the great bulk of the interstate commerce of the country, and it is universally conceded that through the system pursued by the railways in the past these industries have been extensively developed, and the United States brought into a position where a very large portion of its debt has been paid off and its prosperity enormously increased. That this could not have been accomplished except for the extraordinary reductions made by the railways in their rates upon traffic, which reductions have enabled the products of the most distant portions of our country to be transported by rail to the seaboard and thence by water to foreign countries, must be very clear. Certainly no serious ground of complaint can exist when figures show that in the last thirteen years the rates upon traffic have gradually been reduced from about 2½ cents per ton per mile to about 7 mills, and when dividends and interest upon the capital invested in railways during the year 1884 did not exceed 3½ per cent.

It can readily be seen how, in the management of so enormous a traffic, it is absolutely necessary that there should be entire flexibility in the adjustment of rates to meet the varying circumstances presented, and it is not believed that any "cast-iron" rules can be laid down for the regulation of this enormous traffic without seriously interfering with it and directly and vitally affecting the prosperity of the country.

The minority of the committee, therefore, have not favored the insertion of the provision preventing, under all circumstances, the granting of drawbacks or rebates, because cases

were cited before the Committee on Commerce, in hearings, in which drawbacks or rebates were absolutely necessary to enable the domestic shipper to meet his foreign competitor on equal terms; always, however, in the opinion of the minority, having the system of drawbacks or rebates open to all under similar conditions and circumstances.

Nor do the minority favor the provision prohibiting a greater charge for a shorter than a longer haul, as it was shown to a satisfactory degree, as we think, in the hearings, that, where two competing points were connected by water as well as rail, it was impossible for the railways to secure the traffic unless they made their rates as low as the water rates, and that, while they might be able to do this on a portion of their traffic, it would be destructive of their interests to reduce all their rates to those which were forced upon them between certain points by the competition of the water routes. The minority consider that in this, also, unjust discrimination should never be made, but that the idea of charging the same rate for the haul under similar conditions and circumstances should be adhered to.

The minority also differ from the majority upon the subject of "pooling." They believe its absolute prohibition is unnecessary. There should be legislation imposing restrictive provisions, for shippers should not be placed at a disadvantage or competition in freight charges lessened so that transporters only should be benefited. If fairly carried out and not done by secret and private arrangement, if resorted to for the purpose of preventing what is called injudicious "cutting down" of rates, so that reasonable and just charges should be permanently adhered to, "pooling" would not be open to many of the objections made to it.

Past experience in railway transportation has satisfied transporters that the "pool" is the nearest and fairest device yet used to enable them to place shippers upon an equality and prevent grievous discrimination in favor of the large shippers as against the smaller ones.

But we appreciate the difficulty of satisfactorily legislating upon this subject, and would prefer to leave it to the consideration of a board of interstate commerce commission, which tribunal we hope will be created. So much for what the minority suggest as to the drawback or rebate, the longer and shorter haul, and the "pooling" systems. Proper notification of the changing of rates, with the limitation of a reasonable time, publicly posted in stations judiciously selected in accordance with the amount of freight offered, upon an equitable annual aver-

age, might also be conducive of confidence of the shipper in the transporter. A carefully digested section might be incorporated in the law to meet this point.

The conclusion of the minority is, however, unfavorable to positive legislation other than the above suggested. We believe that it is impracticable for Congress to deal directly with the roads, necessarily limited as it is in practical knowledge of railroad movements, and prejudiced perhaps against the railway system by some local disagreements not yet settled, being led to think that an occasional instance of what appears to be unfair dealing with the shipper is the transporter's general course; and we beg leave to suggest that the most available present remedy for imaginary as well as real grievances is the creation by law of an interstate commerce commission.

It is the province of legislators to ascertain by intelligent experience the legislation required, and that experience can best be secured through the proposed commission. It should be a permanently established bureau of an appropriate department; should be composed of the ablest men of the country; salaries should be large enough to attract men from the very highest and most lucrative positions of the varied business life of our citizens. This board should have power to investigate all complaints connected with the management of interstate commerce; power to secure their redress through the voluntary action of transporters or through legal proceedings instituted by it through the proper legal officers of the United States.

We desire to impress the House with our implicit belief in the present advantage of a board of interstate commerce commissioners. We ask you to defer radical legislation until we have tried the commission, which, with powers to hear grievances, will also be required to report annually to Congress, and to suggest from time to time the legislation necessary to create harmony between shippers and transporters.

Mr. O'Neill supported the report with an extended speech at the close of which he said in reply to Judge Reagan:

I assert that in the broad State of Pennsylvania, with her six millions of people, with her vast railroad interests, with her immense volume of freight requiring to be carried from one end of the State to the other and to all parts of the country, there is scarcely a complaint to-day about what the gentleman from Texas [Mr. Reagan] calls the excessive charges and dis-

criminations of these "monopolies." The matter regulates itself. The railroads themselves have worked it out, so that within a few years the rate of freight charges has been reduced from 2½ cents per ton per mile to less than seven-tenths of a cent per mile.

On all important subjects of legislation we hear a great deal through the petition box. Now, the petitions to this House on the one side or the other of this question come from only twelve or thirteen different sources; and almost all of these petitioners, be they commercial associations, supervisors of counties, boards of any kind, or individuals, recommend generally in so many words the Cullom bill, and there is but one of those petitions, and that coming from an almost insignificant town of this country, I mean in population, which recommends the passage of the Reagan bill.

I believe that a commission of suitable men properly selected can better settle these questions than can members of Congress with their crude ideas. Certainly five men as fit, as virtuous, as incorruptible, and as able as the men who compose the Supreme Court of the United States can be selected by the President. Just as the country confides in the decisions of the Supreme Court of the United States, so will the decisions of a carefully selected board of commissioners of interstate commerce satisfy the public mind.

The question was extensively debated by the House along the lines laid down by Judge Reagan and Mr. O'Neill. On July 30, 1886, the Reagan bill was adopted by a vote of 192 to 41. The Senate refused to accept the House substitute, and a conference was ordered between the two chambers.

The following were the members of the joint conference committee:

Senate: Shelby M. Cullom [Ill.], Isham G. Harris [Tenn.], Orville H. Platt [Conn.]; House: John H. Reagan [Tex.], Charles F. Crisp [Ga.], Archibald J. Weaver [Neb.].

The committee reported during the next session on December 15, 1886.

On January 5 and 6, 1887, Senator Platt presented the provisions of the conference bill to the Senate, while opposing its anti-pooling provision.

The Conference Bill

Senate, January 5-13, 1887

Senator Platt.—The discussion upon this bill is narrowed to two issues, and I think the committee and the Senate may be congratulated that the work of the committee has been practically adopted by both branches of the national legislature, with the exception of these two topics which still excite discussion. These two questions are, first, whether the Senate will adopt the modification proposed by the conference committee in the short-haul section, and, second, will it prohibit pooling instead of leaving it for the present to the investigation of the commission.

With regard to the change in the short-haul clause I have this to say: I do not think as an original proposition the change was a wise one. I do not think it is an improvement of the bill as it left the Senate. I think the Senate bill recognized a principle which was sound, and that principle was that the question of what is a reasonable charge upon freight to a station or from a station is not to be determined by the question of what is charged for freight to or from another station. In other words, the question of reasonable freight charges must vary with the location of the place to or from which the freight is shipped, the volume and character of the business to be transacted going to and from that place. I believe that was a wise provision based upon a sound principle, and I do not think it was wise to depart from it; and I think that these words which have been inserted about the shorter distance being included within the longer distance are uncertain and ambiguous. I do not think any man knows to-day what they do mean. I think it will greatly trouble courts and commission to decide what they mean.

It is certain that the introduction of these words makes an exception to the rule. It is certain that the bill, as it stands reported by the conference committee, implies that there are some shorter distances for which more may be charged than for longer distances. It is for courts and the commission to find out what those shorter distances are, for, mathematically speaking, every shorter distance is included within the longer distance. But this bill says on this subject that it shall not be lawful to charge more on the same line in the same direction, under similar conditions and circumstances, for a like kind and amount of freights, for the shorter than for the longer distance

which includes the shorter. Mathematically speaking, we should say that was impossible. Speaking of the words when put into a statute, we know they must have a construction. I have never yet seen the man who was able to say what those shorter distances were in which railroads were to be permitted to charge more than for longer distances. They are there in the bill if it passes, and the courts will have to say what they mean.

But, notwithstanding all this, I stand by the short-haul clause for the purpose of getting legislation on this subject. I am willing to surrender, so far, my judgment as to what is wise and best. Right here I want to allude to an objection based upon a possible construction which I have heard urged against this short-haul clause.

I am told that there is fear in many quarters that this construction will be put upon it: that where two or more independent lines of railroad (independent in ownership and operation) contract with each other to forward freight over the entire line so made up, and for each independent link the railroad company owning and operating it to accept a certain proportion of the through freight as its share, that portion which it so agrees to accept under these circumstances will be made the measure of the charge upon freight shipped over its own road or any portion of it. I do not think that such can be the construction of the bill.

Every road must stand by itself. It is upon one company's own road that the short-haul clause takes effect. If a number of independent companies, having independent lines which together form a continuous through route, contract as to the freights which shall go over those routes, then they, as contracting parties, are bound as to freight which is shipped over those roads as to the price, and may not charge more on freight sent under contract between those points for the shorter than for the longer distance; but the share which each road may receive for carrying such through freight does not, in my judgment, furnish the measure by which any one of those independent and independently operated companies is to measure the rate for other freight upon its own road.

I have said this much to explain the fact that, although I do not think we have improved the Senate bill on this subject, I still take it and stand by it.

But the section of the bill proposed by the conference committee which prohibits pooling under criminal penalties I cannot consent to. I would for the sake of getting legislation assent to it if I did not believe in my inmost mind that it was

impolitic, unjust, and calculated to embarrass and possibly defeat the beneficial operation of the bill.

I do not think that to justify my dissent I must hold affirmatively that pooling contracts are legal and right. I think the burden of proof is upon them who would make such contracts criminal. Can it be that in the Senate of the United States and in the House of Representatives of the United States crimes are to be made and penalties of $5,000 a day are to be inflicted, and the parties who propose it are not to show why the contracts for which those fines are imposed are illegal or wrong? And, to give reasons why I cannot assent to such legislation, must I prove affirmatively that such contracts are right and are according to the common law? It is for those who say that pooling between railroads shall be criminal to show that such arrangements are either opposed to the common law, condemned by the common law, or they are so far wrong in principle, as being opposed to public policy, that it is just and wise legislation to make them criminal offences.

Mr. President, we must get back to definitions. I apprehend that these contracts, which are known as "pooling contracts," are entirely misunderstood in character, in purpose, in results, and it is the evil significance which attaches to this unfortunate word "pool," which railroads never apply to these contracts, which has created an unreasonable prejudice in the minds of the people of the country, upon which it is supposed that, without investigation and without affirmatively showing anything wrong or improper in these contracts, we are to brand the making of them as criminal. It is said that "that which we call a rose by any other name would smell as sweet," but the converse of that proposition does not hold true. These contracts under other names would never be supposed to be against the public interest. Railroad companies have tried to escape from the fateful influence of that name. They have called such contracts what they more properly are—coöperation—contracts for traffic unity—but without avail; that unfortunate name is fastened upon these contracts. But I do not propose, therefore, to strike at what cannot be shown to be wrong, improper, or against the public welfare or opposed to public policy.

What is a pool? What is a pooling contract? It is simply an agreement between competing railroads to apportion the competitive business; that, and nothing more. I repeat it—it is an agreement between competing railroads to apportion the competitive business. It does not touch the local business; it does not reach it; it has no reference to it. The local business

is left to each individual company. It is non-competitive. A pool has nothing to do *per se* with making rates.

And right here I want to call attention to a glaring inconsistency in this proposed legislation. The proposed prohibition of pooling does not prohibit the railroad companies from making rates. Indeed, the whole bill compels agreements between competing roads for the making of rates. The section does not propose to prohibit a hard and fast agreement between railroads to maintain rates. Indeed, it almost compels it. It does not propose to interfere with any other means which railroads may adopt, which are inducements to the railroads themselves to maintain rates. All that it does propose to do is to make criminal the apportionment of freight between competing railroads, or the division of earnings by competing railroads. With that criminal clause in the bill, it would still be open to railroads to enter into any other kind of contracts which they might invent for the purpose of maintaining rates agreed upon. It would be open to competing roads to put a sum of money in the hands of a commissioner or an arbitrator to be used as penalties, as liquidated damages to be recovered by the other companies of any company that should violate the agreement to maintain rates. It does not apply to a hundred means by which railroad companies may in some way make it for their interest to maintain the rates which they themselves have fixed and have legally agreed to maintain under this bill. Is it not pretty remarkable legislation that there should be left the right of competing roads to fix rates jointly for competitive business; that there should be left the right to agree to maintain those rates and not cut or vary from them; that there should be left free to them every means to protect themselves against the violation of those agreements, except just this matter of apportioning between them the competitive business of the roads or the division of joint earnings?

It may be said that perhaps it is not so bad a measure, after all, if it leaves all those things open to the railroads, but the inconsistency of it is intensified many times.

I say, then, that the thing which it is proposed to make criminal is contracts for the pooling of freights of different and competitive railroads or the division between them of the aggregate or net proceeds of the earnings of such railroads. Now, I want to read a word from John C. Nimmo's report, which is called the report on the Internal Commerce of the United States in 1879, showing what a pool really is. Mr. Nimmo said:

> The use of the term "pool" as a designation of the agreements entered into between railroad companies for the apportionment of traffic, or the receipts from traffic, is of recent application. The term has usually been applied to a game of *chance*, in which all the players contribute toward making up the stake or pool, and the winner in the game gets the whole, whereas what is now known as a railroad "pool" is simply an agreement entered into between companies for the apportionment or division of the traffic between roads engaged in competitive traffic. By this arrangement they take no chance, but seek to escape the chances that, under unrestrained competition, they may be able to secure less than what they deem to be their equitable share of traffic and reduce to a certainty the share of the traffic which they shall secure. The main object, however, is to avoid the great losses inevitably resulting from wars of rates. In its application to the apportionment of division of railroad traffic, the meaning of the word "pool" appears to be, in a double sense, the reverse of its ordinary significance in its application to games of chance.

Sometimes the same authority which apportions or divides the traffic agrees upon and fixes the rates, and sometimes it does not. The maintenance of rates is in no sense *per se* part of the pooling contract, and it is not so treated in the bill which prohibits and makes criminal only a thing independent of and distinct from the making of rates and the agreeing to maintain them.

Now I call attention for a moment to Judge Cooley's explanation of a pool, which is to be found upon page 2 of a pamphlet by Judge Cooley in 1884, originally published in the *Railway Age* of Chicago, entitled "Popular and Legal Views of Traffic Pooling." He says:

> The avowed purpose in pooling is to avoid ruinous competition between the several roads represented, and the unjust discrimination between shippers which is found invariably to attend such competition.

Would you believe that in a bill largely and mainly aimed at the prevention of unjust discrimination a clause would be found making criminal that practice to which railroad companies have resorted to prevent unjust discrimination?

A pooling contract is based—that is to say, the percentage of freights or the portion of freights which each company agrees to be satisfied with—is based upon the results of traffic for several years under free competition; and it is a strange thing that, however little or great the competition, the amount of competitive traffic which a road secures remains practically the same.

It may be said that the purpose of pooling is to maintain and establish equal and stable rates. What is this bill for? What

has been the purpose of the committee in this bill? They have heard from all over this land that one of the chief and greatest causes of complaint against railroads was the fluctuation of rates, rates which were up to-day and down to-morrow, up for the retailer and down for the wholesaler, and fluctuating up or down as the caprice of the railroads or the emergencies of the competitive strife should require. Look at the report of the committee, look at the testimony before the committee, and you find that one of the main objects of this bill is to make rates stable and permanent when they have been found to be reasonable. I challenge any man to show that the object or purpose or faithful observance of a pooling contract can be anything else except the maintenance of stable and reasonable rates.

I challenge proof of it. There is not a man who ever studied pooling contracts but will tell you that the main purpose of them is to prevent discrimination; and yet here we have a bill in which we propose to make criminal the means which the railroad companies adopt to prevent discrimination. Others may agree to it for the sake of getting legislation. I will not.

I know this is no place to discuss a legal question thoroughly and exhaustively, but I say the advocates of the prohibition of pooling cannot maintain that these contracts are objectionable under the common law, certainly not that they are illegal at common law; nay, more, I would with confidence stand before the Supreme Court of the United States, or the supreme court of any of the great States of this country, and undertake to maintain that, one thing being assumed, such contracts are legal and would be enforced by the courts, and that one thing to be assumed is that the rates shall be reasonable.

A pooling contract—a contract to apportion between competing roads the competitive business for which reasonable rates have been agreed on—I undertake to say, in my judgment, will be held valid at common law.

I am not unmindful of the general principle that contracts in restraint of trade are held to be illegal—that is, in the sense that they will not be enforced by the courts. I am not unmindful of the fact that combinations wholly to prevent competition in trade would be held illegal by the courts to the extent that they would not be enforced, that courts would say to the parties to such contracts, "these are voluntary agreements of yours; you can get no sanction from the courts, because we think they are against public policy." That is what is meant when it is said such contracts are illegal.

But contracts in partial restraint of trade have been held to be valid for the last one hundred and sixty years in all the courts of England and America. And I hold that combinations for the partial prevention of competition are governed by the same rules as govern contracts for the restraint of trade, and that contracts only for the partial restraint of competition will never be declared to be illegal and void unless it clearly appears that they are injurious to the public interest. (See remark of the commentator in Smith's Leading Cases, commenting on the great case of Mitchell *vs.* Reynolds, which was decided, I think, in 1711.)

And Judge Bradley, of the Supreme Court of the United States, held, in a case reported in 20 Wallace, that that was the doctrine of the common law as it exists in this country.

The common law of England and America is the same. And yet the English courts, law and chancery, each hold just such contracts as it is proposed to declare illegal and criminal to be valid, and enforce them. I want to put this question to the Senate of the United States: England has had as much experience in railroads as we have; it has had the experience of thirty years of legislation; it has experienced all the evils; it has tried all the remedies for abuses; and does the Senate of the United States propose deliberately to-day to say that arrangements which English courts with all this experience hold to be legal and valid shall subject the parties practicing them to criminal penalties of $5,000 a day?

Judge Cooley, in a very exhaustive work, from which I have already quoted, "Popular and Legal Views of Traffic Pooling," goes thoroughly into the question. He says:

> The suggestion of pooling, though likely, perhaps, to occur anywhere, comes to us from England, where pooling contracts in the railroad business and others of a semi-public nature have been held not to be illegal, both when they were made on the basis of an equal division of profits and where the basis was a division of business between the contracting parties.

Judge Cooley in his argument clearly maintains that such contracts ought not to be held illegal in this country, but he says it is impossible to tell what the courts may do on the subject, as the question is still an open question.

Contracts for the division of competitive business of railroads, or of the earnings thereof, are not agreements to enhance or depress prices—are not agreements to control production, or the market for certain products—as in case of agree-

ments to limit the output of coal or iron, or the supply of coal, or iron, or salt, or other commodities.

I must not omit a *dictum* of Judge Deady in the circuit court in Oregon upon this very point, for, although a *dictum*, it is significant.

The State of Oregon passed a law conforming—as nearly as State jurisdiction would admit—to what is known as the Reagan bill in Congress. It was called in Oregon the "Hoult law."

Upon this law Judge Deady of the circuit court gave the following opinion to a railroad receiver:

> Pooling freights or dividing earnings is resorted to by rival and competing lines of railway as a means of avoiding the cutting of rates, which, if persisted in, must result in corporate suicide. It is not apparent how a division of the earnings of two such roads can concern or affect the public so long as the rate of transportation on them is reasonable.

Sound common sense, if not sound law. I apprehend it will be found to be sound law.

But I want to refer to the report of this very Committee on Interstate Commerce on the subject of pooling. The majority of the committee when this report was made believed that to prohibit pooling would endanger the success of the methods of regulation proposed in the bill. What new light has dawned since? How is it that the views of the minority of that committee come now to be the recommendation of a majority of the conference upon the bill? There is but one answer, and that is that what has been believed to be a wise principle has been surrendered for the sake of not imperiling legislation on this subject.

I have taken the testimony of the witnesses before the Interstate Commerce Committee; I have analyzed the testimony of two hundred of them who testified on the subject of pooling, and with what result? About three-fourths of the witnesses examined say: "Do not prohibit, but legalize pooling." I admit that a good many of them were men of vast experience in railroad business. I know that whatever a railroad president may say in this country, no matter how justly it reflects the light of his experience, will go for nothing with a certain portion of the people. But every railroad commissioner and every ex-railroad commissioner who testified before the committee, with one single exception, said, "Do not prohibit, but

legalize and regulate pooling." A large proportion of shippers and business men said the same.

Among the fifty men, more or less, who said "prohibit," there are not three to be found who claimed that pools resulted in unreasonably high rates, and it was manifest that these did not know very much about it when they claimed it.

About a third (fifty men out of two hundred) of those who would prohibit pooling, put it on the ground that it was against public policy to restrain competition, that the pooling contracts were in restraint of competition, and therefore they were against public policy and should be declared criminal.

As I have suggested, there is a class of people in this country who hold that any competition between railroads is for the public interest. It comes from men usually who want this whole railroad question to revolve around their city, or their farm, or their store, their mine, their manufactory, or their bank. There are men who would be glad to have their wheat and their cattle and their coal carried for nothing. There are shippers who would rejoice to get secret rates, or pass rates, if I may use the word, for their freight, and they welcome all competition which puts down prices to unremunerative points. Such individuals gain by such competition, but it is to the injury of every other citizen of the United States; it is to the demoralization of all business; it is the breaking down of all business honesty and lawful trade. There is a competition which is worse than the combination and coöperation of railroads.

I challenge denial when I say that the rates for competitive business in this country are not unreasonably high. It is not true, as the petitions presented this morning stated, that pooling makes excessive rates.

There is a world of figures which might be introduced for the purpose of proving the fact that under pooling arrangements all kinds of rates have steadily on the average diminished in this country. I remember in the testimony before the Interstate Commerce Committee that question came up as to the Union Pacific. It was admitted that the through rate, the competitive rate, was as low, perhaps, as could be asked. It was shown that it had been going down steadily, year by year, until the managers of the road said they did not know what they were going to do. But it was urged that the local rate had not been reduced as the competitive rate had been reduced. The superintendent of that road, by figures, showed that about the same ratio of reduction had taken place in local freight as in competitive freight.

I might turn the attention of Senators to the statement of Mr. Edward Atkinson in the *Century* for the present month, where he gives in a table the charge per ton per mile for moving merchandise over the New York Central and Hudson River Railroad in each year from 1855 to 1885. In 1855 it was 3¼ cents per ton per mile in gold. In 1885 it was 6 8-10 mills per ton per mile. This, of course, includes noncompetitive as well as competitive business.

I do not deny that discriminations exist. It is one of the reasons why this bill should be passed. Discriminations exist in spite of pools by the breaking of pooling contracts, not by the observance of them. Do not, in the name of common sense, declare that a practice is criminal which has for its end the very object which you avow is one of the main purposes of the bill.

I want to look this bugbear of so-called free competition, which it is claimed must not be limited, in the eyes for a few minutes. I have heard the maxim that "competition is the life of trade." I have heard much talk of the so-called law of nature and social life and economic life, "the law of competition and the survival of the fittest." In the sense in which they are invoked, I deny and repudiate them both. There is a competition which is not lawful, which is not legal, which is not honest. There is a competition which degenerates from true competition, and becomes simply war and strife—war carried on and conducted upon the old maxim that "all is fair in love and war." If by "competition and the survival of the fittest" is meant competition and destruction of the weakest, I say it is anti-Christian; it is anti-republican. I say that that kind of competition which results in the destruction of the weakest, the survival of the fittest, if permitted, would draw us back into barbarism. It would be the old pagan idea—the old despotic idea—that "might makes right"; that men are ruled by the strong hand, and not by regard for the moral law. It is expressed in that common phrase, "Every man for himself and the devil take the hindmost." Talk about such competition being demanded on the grounds of public policy! The sooner governments put an end to such competition the sooner humanity will be free to advance along that upward pathway by which it is to reach its final glorious elevation; the sooner governments will come to that beneficent standard designed by the Creator for the happiness of mankind.

You cannot stop competition. Pooling arrangements do not tend to stop it. Their only province is to regulate it. The

regulation of competition is not only not against public policy, but is really in furtherance of the public welfare.

Let me quote a gentleman whom I regard to be the most thoroughly informed student of the railroad problem in the United States, a man who is beyond the suspicion of having an interest in railroads, a man who is so close to the industrial interests of this country that he was selected as labor commissioner of the State of Connecticut. I refer to Professor Arthur T. Hadley, of Yale University. I wish to read a little of what he says about this kind of competition. I read from the May number of the *Popular Science Monthly*, from an article entitled "The Difficulties of Railroad Regulation":

> While railroad competition has been in some respects a beneficent force it cannot be trusted to act unchecked. To the business community regularity and publicity of rates are more important than mere average cheapness. Business can adjust itself to high rates easier than to fluctuating ones. And railroad competition of necessity makes rates fluctuate. It tends to bring them down to the level of operating expenses regardless of fixed charges. If it acts everywhere as in the case of the New York Central and West Shore it leaves little or nothing to pay fixed charges, and means ruin to the investor, followed by consolidation. If it acts at some points and not at others, those points which have the benefit of competition have rates based on operating expenses, while the less fortunate points pay the fixed charges. Then we have discrimination in a dangerous form.
>
> As long as competition exists, there is no escape from this alternative. If it exists at all points, it means ruin; if it exists at some points, it means discrimination.

I read from Professor Hadley's book on "Railroad Transportation," published in 1886, a book which I commend to every student of the railroad question. Referring to combinations to prevent competition, mainly of combinations among laborers, and incidentally of combinations by way of pools to prevent indiscriminate and illegal railroad competitions, he says:

> While the experiments in State socialism have been so often bad, there has been a tendency in a great many cases to go too far to the opposite extreme, and to call everything bad which restricted competition in any way.

That is the only ground upon which you propose to make these pooling contracts illegal.

> Courts and legislators have tried to stop the growth of industrial monopoly by shutting their eyes to industrial facts. They have tried to prohibit such combinations altogether, the courts saying that they would not enforce contracts in restraint of trade, the legislators trying to render it illegal to make such contracts.

> They could not stop such combinations because they were a necessity of business. The result of trying to prohibit them was what always happens when you try to prohibit a necessity; the worse features of the system were intensified. Secret combination was substituted for open; short-sighted and arbitrary policy was encouraged. By prohibiting the whole system the courts deprived themselves of the power of dealing with specific evils, such as secret favors or arbitrary discriminations.

Competition in railroad transportation differs from every other kind of competition in the world. I do not say that it is not to be judged by the same legal rule, but I say in essence and character it is different from competition in any other business. In the first place, it is not competition in trade. The railroad buys nothing of the producer; it sells nothing to the consumer. It simply carries—it distributes; that is all. Contracts in restraint of trade may operate the same with reference to contracts between common carriers as between merchants; but the two kinds of business differ in character. Ricardo is a great advocate of the doctrine that competition is the life of trade; but he writes from a banker's standpoint. In banking, capital is circulatory. If competition drives it out of the banking business it may go into the manufacturing business. But the railroad stays, whatever the result of the competition. If "competition and the survival of the fittest" means the physical removal of the weakest, the pretended law is inapplicable, for you cannot remove the railroad. However many companies may be bankrupted by competition, for each there stands another company ready to take its place and to be bankrupted in turn.

Mr. President, I have heard it suggested in reply to all this that we can pass this law and then pass another law directing the commission to investigate; and, if the commission shall, on the whole, conclude on its investigations that pooling arrangements are not injurious to the public welfare, then we can repeal the section prohibiting pooling. That is after the fashion of what is known in Scotland as Jedburgh justice, for border marauders, "hang them first, try them afterward." That is not a correct principle in legislation. We had better investigate first.

I do not believe that the legislation will fail if this bill goes back to a conference with an indication that the Senate will not consent to brand as criminal practices those arrangements which railroads have made to accomplish the precise object which is intended to be accomplished by legislation in this bill. I believe we may trust to the good judgment of conferees and

of legislators not to do a thing which, upon reflection and investigation, they must be satisfied will probably, I may say almost invariably, break up and demoralize the existing conditions of railroad service in this country.

Nine-tenths of all the interstate commerce business done today is done under those arrangements which are sought to be damned because of the evil meaning which has been given the word "pooling."

Whatever of stability has been given to the railroad business, and through it to other business of the country, has been secured by these traffic arrangements, and in my judgment a bill which breaks them all up ruthlessly within sixty days, which invites the competition which is to demoralize business, will be far-reaching in its injurious results. For one, I prefer to stand by my judgment. I will try to do what I believe to be right, and I cannot assent to a bill which, though I accept its other provisions, contains a provision which I regard as positively vicious and wrong.

John T. Morgan [Ala.] opposed the bill.

I cannot subscribe to the doctrine that interstate commerce can receive protection against the wrongful acts of private persons, or public and private corporations, only through the action of Congress in providing laws and tribunals for their regulation or punishment.

This bill is based solely on that false premise. It opens the door to the interference of Congress with every regulation of trade and commerce, whether sanctioned by universal custom or by express or implied agreements between the parties concerned. It exposes the charter rights of every railroad company given by the States to modification and repeal by acts of Congress.

It multiplies indefinitely the list of crimes punishable by statute in the Federal courts, and correspondingly narrows the power of the States to punish their own citizens for crimes committed within their borders, because the commerce against which the crime is directed is interstate commerce, and is therefore within the exclusive jurisdiction of Congress.

This claim of the exclusive power of Congress to legislate, whether for the freedom of commerce or against it, is made in this bill to depend on the interstate character of the traffic, and that is made to depend on the will of the shipper. The States can make no regulations touching the subject or objects of

interstate commerce, according to the theory of this bill and of the Supreme Court. If they should enact statutes for the punishment of crimes against interstate commerce committed by their own people, in the very language of this bill their laws would fall to the ground because, as this bill assumes, they could not touch the subject.

The States, it appears, can take an officer from the army or navy or from one of the civil departments of the United States and hang him for murder; but they cannot, on the theory of this bill, punish a man for killing an engine or kidnapping an engineer who is about to cross the line of a State and enter another State if he is engaged in interstate commerce, and is for that reason under the sole jurisdiction of the United States.

Congress has power to regulate interstate commerce, but there is a limit to this power, and it is not so far an exclusive power as to annul all acts of the State legislature, as well in the absence as in the presence of laws of Congress, through which this power may be exerted.

For a hundred years the States have assisted and protected interstate commerce by their many statutes and by many hundreds of judgments in their courts. Congress, doubting the extent of its powers, has permitted this assistance and protection on the part of the States, and, in doing so, has blessed the country by its silence and inaction. In that time commerce has hewn its own highways through the mountains and built its grand structures across great rivers and chasms; the arid deserts have bloomed under its footsteps, the wilderness has bowed a welcome to its coming, and every river and bay opening into lakes or oceans has floated the burden of its wealth out among the nations of the earth.

When these laws were enacted they were valid, because the commerce over these lines was, as to the railroads, necessarily commerce within the States; when the lines of railway were extended by consolidation the laws became invalid according to the theory of this bill, because they then applied to interstate commerce. Thus, if the theory of this bill is true, the States, by consenting to such consolidation, gave new powers to Congress and made sudden havoc of all laws enacted by them for the protection of their railways and the commercial traffic they were engaged in. I do not accept the verity of this legislative romance.

If there is any limit upon the power of Congress to regulate commerce among the States, it is not to be found in the nature of the commerce, the points of shipment and destination, or the special character of the business in which the carrier is engaged; for every regulation by Congress based on these circumstances detracts from the power of the States reserved to them in the Constitution over their commerce.

But there is a limit to this power of Congress, and it is found in the purpose for which the power was given. That purpose, I repeat, was to protect interstate commerce in absolute freedom from the power of the States to control it within their own limits by any law or regulation that would operate to the detriment of the people of other States. A State law that imposes no such restraints or burdens on interstate commerce, but increases its freedom and security, is a valid law; but a State law that does impose any such burdens or restraints upon interstate commerce falls under the denunciation of the Constitution; and Congress, as well as the courts, would have the power to annul the offending law and to free commerce from its burdens.

The power of Congress under such limitations is benign and useful. Without such limitations it is dangerous, and will become aggressive and uncontrollable. It will end in making merchandise of politics, while it rules and ruins the commerce of trade.

I dread to set in motion a doubtful and dangerous power which will soon become a factor of immense influence in the party politics of this Republic. It is urged that the railroads will absorb and corrupt the State legislatures if we leave to them the duty of checking their enormous powers. The thirty-eight legislatures number more than four thousand men.

Is it easier to corrupt four thousand men, scattered through thirty-eight States, than it is to corrupt four hundred who are assembled in Washington? Or, is it easier to corrupt these four hundred representatives than it is to corrupt five commissioners intrusted with very broad discretionary powers?

If Congress, instead of holding the States in check by a constant distrust or denial of their powers, will open their way to the full and free control of the men and corporations engaged in domestic commerce, through civil and criminal laws, and will hold over the States its corrective authority, so as to prevent any of them from doing injustice to the other States or their people, the States will soon settle all the knotty problems about long and short hauls, pools, drawbacks, bribes, and bonuses.

As I read this bill, the interpretation of which is so uncertain that everyone must needs adopt his own, it necessitates an

increase of rates on long hauls of freight in every case where the roads cannot sacrifice a large part of their income and still live. In Alabama we have four great staples of commerce. They are cotton, timber, coal, and iron. Each of them must find a market far distant from home. High prices for long hauls on railroads are the best inventions for the destruction of these industries. If I had no other reason for disagreeing to this bill that one would determine my vote.

On January 11 Richard Coke [Tex.] supported the bill as a step in the right direction.

A brief glance at the leading points will, I think, justify this assertion. They are:

First. That all charges shall be reasonable and just.

Second. That there shall be no discrimination between persons or firms, either directly or indirectly, by special rates, rebate, drawback, or any other device, but that all shall be treated equally and alike for like and contemporaneous service.

Third. That no undue or unreasonable preference or advance shall be given to any particular person, firm, company, corporation, or locality.

Fourth. That no greater compensation shall be charged for the short than for the long haul, where both are made under substantially similar conditions and circumstances over the same line and in the same direction, provided that in special cases, upon application to the commissioners, they may upon investigation relax the rule; and provided, further, that nothing contained in the bill shall be construed to authorize the charge of as much for the short as the long haul.

Fifth. It declares unlawful any combination, contract, or agreement between railroad corporations for the pooling of freights of different and competing roads, or to divide between them the earnings of such roads, provides penalties, and declares each day of the violation of the law a separate offence.

Sixth. It requires all schedules of rates plainly printed, and posted at all depots and stations for public inspection. It forbids any advance in rates as published except upon ten days' notice duly published. Reduction of rates may be made without notice.

These are the leading, salient points of the bill, the remainder of it being mainly administrative in its character and devoted to the methods of enforcing the provisions named.

Now, Mr. President, I assert, without the fear of successful

contradiction, that these provisions are in substantial if not literal accord with the common law governing common carriers as known and practiced in the States of the Union so far as the rights of the public and the duties and obligations of the carriers are concerned.

The penalties for violation of the law and the means of enforcing it involve some departure from common-law methods, but this is rendered necessary by the inadequacy of ordinary remedies in the hands of a citizen for the enforcement of the law or the vindication of his rights against powerful railroad corporations. It is this consideration which justifies the appointment of a commission and devolves upon it the important part it is to perform in securing an enforcement of the law.

This bill, except as to remedies, is in substance and legal effect, so far as they are applicable to conditions here, a substantial epitome of the English statutes, which confessedly are only a codification of the English common law of common carriers, the source of our common law on the same subject. There is but one substantial exception to this proposition, and that is as to combinations and agreements between railroad corporations, which, in some cases, are permitted under the English law, but forbidden under this bill. As this fact has been adverted to in the debate in justification of the pooling system here, I will read from an able argument of Mr. Simon Sterne, of the New York bar, made before the House Committee on Commerce, extracts from the English statutes and some of his observations thereon, which show how this phase of the subject has been met in England, from which it will be seen that no argument in favor of the American system of pooling can be drawn from that in England.

Here the speaker read extensive extracts.

The rights of English subjects are guarded and protected and the iron hand of the law placed upon the power of great corporations. English law does allow railroad combinations made, but under its own eye, its own supervision, its own dictation, its own regulation, and its own control. This system grew from a small beginning, and has been perfected as time and experience have suggested, as ours will be if we will only commence it by the passage of this bill. The English Government represents the public and stands between the people and corporate rapacity, as the American people have heretofore demanded, and do now demand, that our Government shall do,

instead of leaving them, as they are now, absolutely defenceless and without appeal, the prey of the unbridled power of railroad pools and combinations, which destroy all competition while they are unregulated and unrestrained.

Pooling builds up some cities and towns, and destroys others. It terrorizes merchants and shippers and traders, who submit quietly to being plundered, because it is in the power of the pool to destroy their business, by advancing their freights and by giving reduced rates to their competitors. They dare not seek redress against the roads over which their freighting is done and with which they deal every day, and upon which they are dependent for the successful prosecution of their business, for there are a thousand ways in which they may be harassed and injured. Under the pooling system there is no uniformity, no stability in rates, so necessary for all legitimate business. The system of rebates and drawbacks, which are secret concessions to favored and preferred shippers, undermines confidence in commercial communities, for no man can tell when his competitors may be thus enabled to undersell him, and subject him to loss in his business.

Without reason, except that the corporations desire more money, and generally when such action cannot be anticipated, rates are advanced. There is now but one limit to the power of pooled roads to tax the products of industry in this country; and that limit is found when to tax higher will stop production and transportation—how much will a given product bear in the way of tax for transportation and leave a pittance for the producer so as to keep him at work producing?

These pools are operative only where there are competing roads. Wherever only one road is found, it may fix its own rates to suit itself. That territory belongs to that road, and is out of the jurisdiction of the pool.

The pools are all for the corporations and nothing for the people. Mr. Albert Fink, the head and chief, or president, of the great New York pool, who is generally admitted to be the ablest man in America in railroad affairs, in one of his arguments before the House Committee on Commerce admitted the illegality of pooling, in this language: "The first step to this end (speaking of pooling) should be to legalize the management of railroad property under this plan, and to abandon the antiquated notion that a government or combination, as it is called, of this kind is against public policy."

Of course pooling would not need to be legalized if it were not now unlawful. The law as it stands now is a dead letter

as against the powerful corporations who violate it, though vital and forceful against weaker trespassers like the canal boatmen, and the railroad men object to an invocation of the power of the Government for its execution and enforcement upon all alike, the strong and powerful as well as the poor and weak.

These people are contending for a vast stake. No greater ever hung upon the chances of human effort. Learned experts estimate the annual commerce of this country at three thousand millions of dollars' worth, three-fourths of which is carried by rail; and three-fourths of that carried by rail is interstate commerce, over which Congress alone has regulating jurisdiction. They are seeking to defeat this bill, as they have defeated all such bills heretofore, because that result will leave them unmolested to handle as they please, and levy such tolls as their avarice may prompt upon twenty billions of dollars' worth of commerce annually.

While this bill is being fought on every clause and section in it, the chief assaults are made upon the section which prohibits pooling, and upon what is known as the "long and short haul" clause. The rule established by this clause is that more shall not be charged for the short haul than is charged for the long haul, but a discretion is vested in the commissioners in special cases to relax this rule and allow more to be charged for the short than for the long haul. I confess that I would greatly have preferred the rule established by the clause made absolute, and the discretionary proviso left out. This clause recognizes that the short haul is attended relatively with greater expense than the longer haul by reason of unloading, detention of cars, etc., in that it does not forbid as great a charge for the short as for the long haul.

It does not seem possible, with the discretion vested in the commissioners to reverse the rule, when upon investigation in special cases it may be right to do so, that it can work any hardship. The objections to this clause amount to this, when reduced to their simplest form, that when the roads find it to their interest to make the long haul for less than a reasonable compensation they should be permitted to recover the deficiency by a higher charge on the short haul. This is the method of discriminating between localities, tearing down some towns and cities and building up others by unjust and unreasonable discriminations.

Railroads are public highways, and railroad corporations are common carriers. "Common carriers" (says the court in Munn *vs.* Illinois) "exercise a sort of public office, and have

duties to perform in which the public is interested; their business is therefore affected with a public interest." Their charges are required everywhere to be reasonable, and to be so must be based on the cost of the service rendered. Their duty to the public in virtue of their "office" demands equality in the treatment of all of whatever locality, subject only to the difference in the cost of the service rendered. It is impossible that the cost of making the short haul, under similar conditions and circumstances, with the like kind of property, in the same direction on the same line, the shorter being included within the longer distance, shall be greater than that of making the longer haul, and this bill simply recognizes this fact, and provides that greater compensation shall not be charged for the short than the long haul.

Railroads are, in their nature, essentially monopolistic under the freest possible system of competition. Competition such as obtains between merchants, mechanics, traders, and others, which regulates prices, is not possible in its fullest sense among railroads. They exclude all other methods of carrying. The vast amounts of capital required to build and maintain them, and the large areas of territory necessary to support them, and over which they are supreme in all matters of transportation and commerce, exclude the numbers which in other cases are necessary to promote active competition; while their terrorizing influence over those whose business is within their power—their power to punish enemies and reward friends—creates such a monopoly as should not be permitted to exist except under the regulating control and active, vigilant supervision of the Government for the protection of the rights of the citizen.

The States are powerless. Congress alone can respond to the great popular demand for relief. The repeated passage through the House of the well-known Reagan bill, a much more radical measure than that now before the Senate, establishes beyond doubt or cavil the will and demand of the American people who support and maintain this Government, and in whose interest it is supposed to be administered, that a law regulating interstate commerce shall be enacted. The Senate has heretofore defeated this plainly expressed popular demand. It remains to be seen if corporate power is so intrenched in this body that the pending bill is to share the fate of its predecessors.

Isham G. Harris [Tenn.].—When all provisions of this bill are considered, and each fairly construed in the light of all the others, I cannot see the possibility of injury to any carrier who

proposes to deal fairly and justly with the public, and be satisfied with the reasonable income of a legitimate business.

Every carrier should be permitted to earn legitimate fixed charges, operating expenses, and a reasonable interest upon the actual value of its plant, but the public should not be required to recognize or pay interest upon either stocks or bonds which originated in the process known as watering, and which represent nothing but the avarice and cupidity of the speculator.

The producer and the carrier are dependent upon each other, and neither can afford to cripple or embarrass the other in a legitimate business, but each has the right to demand justice at the hands of the other.

On January 13 William M. Evarts [N. Y.] opposed the bill.

Pooling, which is equalizing matters as to receipts, is in the same nature as equalizing lineally, and is right or wrong, useful or mischievous, according as unification, stability, equality, and reasonableness are accomplished. Though pooling is assumed to be unpopular, and the name may carry a measure of disfavor by force of the phrase, really the effect of pooling is to give reasonable stability and equality. The legislators of the great State of New York have refused to control pooling, and, instead, by advisory intimation of the State commission and advisory intervention of the chambers of commerce and of boards of trade at manufacturing centers, as well as at the seaports, they have obtained a rate of transportation that at present meets with very little objection from all the interests in our State. But here in the national legislature the intervention of an authority peremptory, conclusive, and permanent is proposed.

Mr. President, everything is tending, as everything should tend in this country, to unification and equality in all the intercommunication, the passing of property, of exchange, of commerce in every direction, so that within the periphery of our now vast country there should be no line of discrimination known that the law tolerates, and certainly none that the law defends. We may talk about the mischiefs that have grown out of the exaggeration of wealth and the distribution of wealth under the railroad system; one person has been pinched here and one has been inflated there; but I put it to the scope of consideration of the Senate that, with all the infirmities, with all the burdens, by whatever phrases they may be described, which the system has caused, progress has gone on in the sense of dis-

persing population and bringing lands into our fertile and productive system, and the commerce *ab extra* has not been affected injuriously. It has grown and flourished without the aid of intervention, certainly without intervention to constrain. Who shall desire that without investigation we should attempt so vast a disturbance of this equality and these flattering commercial prospects?

Mr. President, to this fortunate land of ours we may apply the description *armis potens terra et ubere glebæ;*[1] and it is this railroad system, pushed on rashly, losing so much to its investment, which has conveyed to the homes of the consumers that which the land produces so abundantly.

And now this very question of ours is at the bottom of the political agitation of Europe: restrained by all sorts of legal impediments the landed aristocracy of Ireland have been brought to the necessity of yielding to the tenants; and in Germany the soldier can no longer prescribe the terms for holding lands, but these are fixed by their productiveness and that is determined by our competition. In view of the rivalry of these vast equals in freedom who shall say that the Congress of the United States desires to lay impediments on transfers between the States or burdens on their foreign commerce? No, Mr. President, whatever we can see in the future, whatever we can read in the past, the greatest and the most classic examples all warn us to beware of entering on the path now proposed to us.

The report was agreed to on January 14 by a vote of 37 to 12. The House, after an extensive debate, agreed to it on January 21 by a vote of 219 to 41. President Cleveland approved the bill on February 7, 1887.

In the debate on the bill in the House Robert M. La Follette [Wis.] made a significant prophecy concerning the greater regulation of railroads, and the acceptance of this by the corporations themselves.

Honest Railroads Aided by Government Regulation

Robert M. La Follette, M. C.

If we can judge the operation of this law from the experience of States in the administration of similar legislation af-

[1] "A land powerful in arms and in the fertility of the field."

that might occur, because the classification would be made in accordance with express law.

So if discriminations in favor of places are, as is claimed, necessary under existing conditions of competition, and if the provisions of this law, operating as they do upon all railways alike, relieve them from the pressure of that necessity, they will profit accordingly. If the publication of rates, the obligation to give notice of any advance in them, together with the restraint of the long and the short-haul clause, operate to make their business certain and stable, railways are as much the gainers as the public. While it may cut off a few sources of large profit, it acts as a preventive of great losses.

And so, sir, while it may be difficult for men of the present school of railway management to adapt themselves to the new conditions; while it may be impossible for them to understand how any other practices than those which have been long established can succeed, still I believe the time will come when even they will recognize the wisdom, from a business standpoint, of the principles of this law; when they will wonder how a management ever flourished which permitted such disproportional rates and acts of favoritism involving so many conflicting ideas.

And, sir, the time will come when it will be a marvel how such abuses ever arose and why they were so long tolerated; when all parties alike will wonder how the just and simple provisions of this initiatory measure ever created such bitter and uncompromising opposition.

It may take years of supplemental legislation to accomplish it, but I believe the time will surely come, and I hope it is not far off, when railways will be limited to their legitimate sphere as common carriers; when they will conduct their business upon the same principles of impartiality toward persons, places, and things as govern the United States mail service; when they will have but one standard of regulating rates, the cost of transportation; when they will seek but one object, perfect service to the public and fair profits upon the great capital actually invested.

fecting corporations, we must be prepared for some sharply contested litigation in the beginning. The railways will insist on their own construction of it; the people upon theirs. But the cool, determined administration of the law in a few test cases settling pivotal points will change the whole aspect of affairs, will bring order out of chaos. The railways will alter their management to conform to the decisions, and the benefits of the law will soon be secured without further strife or opposition. The judicial functions of the commission will cease to be arduous, and will become chiefly supervisory and executory.

Mr. Speaker, I know little of railway management, but I think it is no injustice to suppose that some of the fear and alarm expressed in railway circles concerning this bill is but the exaggerated apprehension with which conservative men always regard any radical change in the method of conducting their business. The prosperity of this country and of railways are interdependent. Any measure that would permanently injure railways, that would cripple their usefulness, would certainly be against public interests. But this legislation has been under consideration many years. All sides have had a hearing. It is no hasty expedient adopted to meet some sudden emergency or popular demand of the hour. It pursues no short-sighted, suicidal policy. And all railways that are sincerely anxious to put their business upon a firm and stable, an honest and enduring basis will share the benefits of this law equally with the public.

It is urged in vindication of these discriminations as to different kinds of traffic that they are the result of custom and that railways are not to blame for the practice. If railways maintain incongruous rates upon dry goods and groceries simply because dealers in the one insist upon a long-established low tariff while transporters of another submit to a relatively exorbitant rate because of long usage, if managers dare not make new classifications because of the responsibility that the consequent strife and contention and business disturbance would place upon them; if this is true—and it is the reasoning of men who ought to know—then in this instance the law will surely be a great benefaction to railways. They will secure the benefit of a reasonable and just standard of classification without being in any degree made answerable for any of the unfortunate consequences that may result from the change. If the enforcement of the provision that all rates must be just and reasonable should necessitate a readjustment of the charges on different kinds of traffic, surely no one could complain nor hold the railways answerable for any temporary business unsettlement

CHAPTER XI

Federal Control Over Railroads

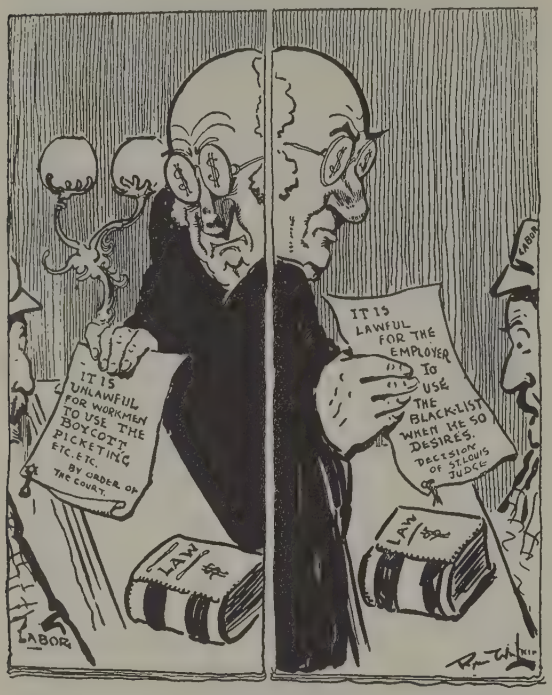
[THE CHICAGO STRIKE]

"Coxey's Army"—Coal Strike; Government Protects Railways—Pullman Strike; Government Troops Suppress It—William A. Peffer [Kan.] Introduces in the Senate a Resolution Endorsing Federal Control of Railways, Coal Mines, and Money—Debate: In Favor, Sen. Peffer; Opposed, Gen. Joseph R. Hawley [Ct.], Cushman K. Davis [Minn.], Gen. John B. Gordon [Ga.]—John W. Daniel [Va.] Offers Substitute for Sen. Peffer's Resolution; It Endorses the President's Actions in the Strike—Debate: Sen. Daniel, Joseph M. Carey [Wyo.], Joseph N. Dolph [Ore.], Orville H. Platt [Ct.]; Substitute Is Passed—James B. McCreary [Ky.] Introduces Resolution in the House Endorsing President Cleveland—Debate: Opposed, Lafe Pence [Col.], Richard P. Bland [Mo.], Thomas C. Catchings [Miss.]; It Is Passed.

DURING the winter of 1893-4, while Congress was in session, "armies of the unemployed" were organized in various parts of the country which proceeded to march toward the national capital, there to demand aid of the Government. Instead of gathering forces as they advanced, as was expected, the armies disintegrated on the way, and only one of them, that headed by "General" Jacob Coxey [O.], a well-to-do manufacturer who had espoused their cause, entered Washington, and this was reduced to 350 men. The only result of this demonstration was to afford Congressmen an illustration to enforce their opposing claims, the Democrats declaring that the poverty and lack of employment in the country were due to the McKinley tariff, and the Republicans replying that these were produced by manufacturers limiting production and even shutting down their factories in view of the passage of the Wilson bill.

In April, 1894, a general strike of the coal miners

occurred. In five of the States, extending from Pennsylvania to Illinois, the militia were called out to sup-


IT IS UNLAWFUL FOR WORKMEN TO USE THE BOYCOTT PICKETING ETC. ETC. BY ORDER OF THE COURT.
IT IS LAWFUL FOR THE EMPLOYER TO USE THE BLACKLIST WHEN HE SO DESIRES. DECISION OF ST LOUIS JUDGE
LAW
LAW
LABOR
LABOR

LAW AND LABOR

By Ryan Walker in "The Comrade"

press violence. The Government employed Federal marshals and troops to protect the railways, finding justification for such intervention in the claim that the Government's business of carrying the mails was inter-

fered with. In May the employees of the Pullman Company of Chicago struck against a reduction of wages, and in their support the American Railway Union, of which Eugene V. Debs was president, ordered a boycott of all Pullman cars (sleeping coaches). As these coaches were used generally by the railroad companies throughout the country the prospect was most alarming. The first effect of the boycott was to interfere seriously with the railway traffic between Chicago (the great point of departure from the East) and the Far West. In this interference rioting took place, occasioning destruction of railway property and even loss of life. Against the protest of John P. Altgeld [Dem.], Governor of Illinois, who declared the State troops were sufficient to restore and maintain order, President Cleveland, on the ground that the mails were interfered with, sent Federal troops to assist the militia, and proclaimed a state of insurrection, first in Illinois, and subsequently in railroad districts further west. By these energetic measures the strike was brought to an end on August 3.

The President's action was discussed in Congress, and endorsed by both chambers.

Federal Control of Railroads

Senate, July 10, 1894

On July 10 William A. Peffer [Kan.], a Populist, offered the following resolution in the Senate:

In view of existing social and business conditions and by way of suggesting subjects for remedial legislation—

Be it resolved by the Senate of the United States—

First. That all public functions ought to be exercised by and through public agencies.

Second. That all railroads employed in interstate commerce ought to be brought into one organization under control and supervision of public officers; that charges for transportation of persons and property ought to be uniform throughout the country; that wages of employees ought to be regulated by law and paid promptly in money.

Third. That all coal beds ought to be owned and worked

by the States or by the Federal Government, and the wages of all persons who work in the mines ought to be provided by law and paid in money when due.

Fourth. That all money used by the people ought to be supplied only by the Government of the United States; that the rate of interest ought to be uniform in all the States, not exceeding the net average increase of the permanent wealth of the people.

Fifth. That all revenues of the Government ought to be raised by taxes on great wealth, incomes, and real values.

Senator Peffer supported his resolution.

While the resolution is made up of four or five distinct parts, they all relate to one fundamental error that our country has fallen into, and I wish to direct the attention of Senators and of the people of the country at large of all classes to that fundamental error. We have permitted a few men here and a few men there, one man here and one man yonder, to usurp governmental functions. So the resolution begins with the proposition that all public functions ought to be exercised by public agencies.

In order that we may understand the situation which now confronts us, I want first to call the attention of the Senate to a statement of a man named Debs, of whom we have heard a good deal recently and may possibly hear more in the future. This man Debs, by reason of his being the official head of a great organization of railway employees, is the recognized mouthpiece of that body. On the 6th day of June Mr. Debs made a written statement of the condition from his standpoint.

Mr. Debs goes on to say that, in the first place, the American Railway Union had no connection whatever with the Pullman difficulty, as it is known. Then he describes what the Pullman difficulty was. Without going into all the details, I will state by way of preface that the Pullman Company established what most people in this world believed to be an ideal community, in which all the citizens should have equal rights, in which none should have special privileges. The object was to build a community where the best modern scientific principles of hygiene, drainage, sewerage, grading, lighting, watering, and every other convenience should abound.

But while the company was doing that, while the world was looking on applauding, the company, like every other corporation of which I have ever known anything, held all of the power,

all of the reins within its own grasp. That is to say, while there was sewerage, while there was light, while there was water, while there were parks, and all those desirable things, at the end of every month or of every week, as the case might be, when pay day came around, the charges that were set up against the residents of the town of Pullman for their lots and for their conveniences were deducted from their pay (just as the clothing of a soldier or extra rations or a lost gun were deducted from his pay) and the balance found to be due was paid to these people. Among these charges were rents and stated dues for the purchase of property.

After a while hard times began to pinch the company as it did everybody else, and it began to reduce the pay of the men. The men submitted patiently. Another reduction came and the men again submitted, only asking, however, that their rent charges should be reduced, that their taxes should be reduced to correspond to the amount of reduction in their wages.

Then it was found that these poor people were absolutely defenceless, absolutely powerless in the hands of a corporation that had no soul. They asked to have a reduction of their rent charges and of other charges; they asked for a little time to turn around.

All these things were denied them. Finally the Pullman citizens came to the conclusion that they might as well starve in defence of their rights as to starve while the proprietors of the town, the organizers and controllers of the corporation, were feasting on the fat things that these men had made for them. Now the trouble is on hand, and the leader of this great corporation [George M. Pullman] is off at the seashore, refusing to entertain even a newspaper man, except to say, "I have nothing to say; the company at Chicago will look after the company's interest there"—heartless, soulless, conscienceless, Mr. President, this tyrant of tyrants.

Mr. Debs then states to the public that the Railway Union took no hand in this matter until after the grievances of the Pullman men had been submitted to them. These grievances were submitted to the local assemblies, and a national assembly of the union was held in Chicago, and the local representatives came up instructed, many of them, and a resolution was adopted unanimously that the American Railway Union should make the cause of these Pullman men the cause of the American Railway Union.

After having done that, a committee was appointed to present their conclusions and their request to the Pullman Com-

pany. Their request was that these troubles between the employees and the Pullman Company might be submitted to an impartial arbitration. This was denied. The committee again went with the same request, and that was denied. Then came a very general dropping of tools, a dropping of employment, so that the men might go out of the traces and let the railway companies go ahead without them if they could do so. Their object was—and it was so stated to the railway managers—to boycott the Pullman cars.

At the close of his statement Mr. Debs said:

> If the corporations refuse to yield and stubbornly maintain that there is "nothing to arbitrate" the responsibility for what may ensue will be upon their heads and they cannot escape its penalties.

Then, after this conclusion had been reached upon the part of the American Railway Union, the general managers of the railways held a meeting at Chicago for the purpose of considering the situation. They came to a unanimous agreement likewise, and their agreement was published, and it was to the effect that they would stand by the Pullman Company, let the results be what they might; and we have seen in the newspaper dispatches several times important telegrams from New York City and from other points to the managers at Chicago, "Stand firm; to yield now is to lose everything"—substantially that.

GENERAL JOSEPH R. HAWLEY [Ct.].—I should like to have the Senator put all the facts in. Is he not quite aware that the railway companies have contracts with the Pullman Company under which they are absolutely bound to use their cars, and is not Pullman under a corresponding obligation to them?

SENATOR PEFFER.—The railway companies are under no greater obligation to Pullman than Pullman is to the men who make the cars. There is the sticking point in this controversy, I say to the Senator from Connecticut in all kindness and frankness. These men have nothing to do with the railway contracts with the Pullman Company, and the contract the railway has with that company has nothing to do with interstate commerce. That is merely a matter of personal convenience.

But I was surprised, almost startled, the other day by the venerable and distinguished Senator from Ohio [John Sherman] introducing a resolution that Congress should overhaul the Pullman car business—a private matter between the Pullman Company and the railway companies. However, I was

delighted as well as surprised to see the resolution coming from such a source at such a time, even if it do savor of paternalism.

But, Mr. President, we have no time to talk about the contract of the railroad companies and the Pullman Company, and it is strange in this presence that a Senator of the United States should bring this in between these men and the great question that confronts us, more especially from a Senator who is now and who has many times been the champion of American labor. Oh! from such friends, Mr. President, God save us.

GENERAL HAWLEY.—The Senator ought not to misrepresent me. He talks about the railroad companies declaring that they would stand by Mr. Pullman. I know nothing of the kind, and have never heard anything of the kind. I called the Senator's attention to the undeniable fact that there were certain things that they are bound under the law to do.

SENATOR PEFFER.—Let them go along then and do the things.

SENATOR HAWLEY.—I say with the Senator that the relation between Pullman and his men has nothing in God's world to do with the rioters and murderers in Chicago.

SENATOR PEFFER.—It has not only a great deal to do with it, but things that may yet come will grow out of this strike, unless employers will hear and unless legislators will hear.

I do not wonder sometimes that there is a growing feeling against the condition of things at Washington; I do not wonder sometimes that men write me and say, "Would to God that the Senate were abolished." I wrote to a friend the other day that I was ready for its abolition and would be willing to vote for it, and I would go still further and vote for the abolition of the House of Representatives, and I would favor that the personnel of the Government should be confined to a few men, not to exceed one from each State, and let them select a presiding officer from their own number. The fewer governors we have in this country the better, Mr. President, as it seems to me; at any rate a few men could do no worse than a few hundred men have done.

One of the grandest, and yet most dangerous, in one sense, of spectacles that could be presented to the human sight would be the stoppage of every workingman's arm for just ten days.

These things teach us, Mr. President, the brotherhood of men; they teach us the necessity of one man to another; they teach us the interdependence among people. The time has come for employers themselves to learn that the best way to handle these situations is by fair treatment of their men, and, if they

cannot do that, it is time for the people in their own sovereign capacity to interfere and say, "This thing has gone far enough; thus far and no farther."

This morning the dispatches brought us news of great importance. Citizens of Chicago met with the officers of that city and requested some official interference in the interest of peace, good order, and law. A committee was appointed. The committee visited the Pullman Company and asked that the matter be arbitrated. They were received by Vice-President Wickes, of the Pullman Company. Mr. Wickes said:

> "The Pullman Company has nothing to arbitrate."
>
> Then there was a painful silence. Finally Alderman McGillen said: "Am I to understand that the Pullman Company refuses this slight request, made at so grave an hour, and upon which so much depends?"
>
> "The Pullman Company has nothing to arbitrate," reiterated Mr. Wickes.
>
> Mr. McGillen said: "Mr. Wickes, your company demands the police protection of the Federal Government, the State of Illinois, the county of Cook, and the city of Chicago, and yet you utterly ignore a fair request made by the city—a request, the fundamental idea of which is the preservation of the peace. We have come to you as conservers of the peace, and you have assumed grave responsibility in thus refusing the request we make—a responsibility greater, perhaps, than even you are aware of."
>
> "There is a principle involved in this matter," replied Mr. Wickes, "which the Pullman Company will not surrender. It is that employers must be permitted to run their business in their own way, and without interference from their employees or from anybody else."

Not even from the city of Chicago, I will interject, nor from the State of Illinois, nor from the United States Government. Pullman, and Pullman alone, is king. Great is Pullman!

It is an axiom of the common law that when anything becomes a nuisance it may be abated, no matter what it is. Everywhere the hands of the law, and properly so, are about the people in order that the public good may be conserved.

On Sunday before the 4th of July this year some of Christ's ministers in this city undertook to discuss existing conditions. One of them [the Rev. Dr. Hamlin] used this language, so the reporter says:

> He said that there was a chance in this country for demagogism, and he thought that it was making headway in our State and national politics and now musters a formidable array of votes in both branches of Congress. "Populism," he said, "is simply an incipient, ignorant, and unorganized socialism. Its political capital is the arraying of the poor against the rich, the improvident against the thrifty, the idle against the industrious. Coxey is its typical product; the mob violence which is

> disgracing so many sections of our country its legitimate fruitage. An income tax which, it is estimated, will fall upon only one out of 800 of our citizens is its conception of equitable legislation.

I should like to know what that man's income will be when he goes up where coin of heaven is used. He proceeds:

> All this is the protoplasm of anarchy. It proceeds upon the assumption that political power can level moral distinctions; that government is bound to make everybody comfortable and happy. When these delusions are exposed it will be ready to lay violent hands upon government and upon the human lives that represent it.

If that preacher does not know anything more about the doctrines of Christ than he does about the doctrines of the Populist party, he, with a good many more of us, will have to pass through the eye of a needle before he gets into heaven.

Mr. President, the Populist idea is exactly the opposite of anarchism. The Populist is the antipodes of anarchy. The Populist believes in government. He believes in the government of the people. He believes in the doctrine taught in the Declaration of Independence, which is not a doctrine at all, but simply a terse statement of a fundamental truth, that all men are created equal, and that flowing out of that equality of birth there are certain rights of which even the individual himself cannot divest himself—the right to life, the right to liberty, and the right to pursue his own vocation in his own way, unmolested, so long as he does not interfere with the right of his fellow-men.

The Populist not only wants government, but the very highest form of government. The Populists are ready to take the great prototype of my excellent friend who sits in front of me [Roger Q. Mills] as their leader and their guide in political philosophy. I can now recall nothing that Thomas Jefferson ever said which does not find a warm, responsive heart-throb in the breast of every Populist.

Mr. President, the birth of the Populist party came about naturally. It came because of the conditions of which I have just been reading. Its Republican members believed what the Democrats said in their convention about the Republican party. Its Democratic members believed what was said by the Republicans against the Democratic party.

We had sense enough to know that things were out of joint and that some persons somewhere were responsible for it. We made up our minds that conditions must be changed; that

politics must be purified; that the old parties must be converted or they must be destroyed, and that the Government must be restored to the people for whose happiness and safety it was established. That is what the Populist party has set out to do. We have some isms—yes, we have some isms, and it would have been a good deal better for our political enemies if they had had some of those isms, ten, fifteen, twenty, or thirty years ago.

We would not to-day find ourselves in the condition we are in. The truth is that existing political machinery is corrupt, no matter who pronounces the arraignment. We have seen its effects in our own action here in the Senate within the last three months. We have seen the politics of the country corrupted by the use of money, by the patronage and influence of corporations. The Populists are trying to remedy the evil, faintly, feebly, it may be, but after a while we shall succeed, because we represent the people, and either we, under our present name or some greater popular movement under a broader and a better name, if a better one can be originated, will do the things we are aiming at. The American people have too much sense, too much patriotism, too much loyalty, to allow their Government to go down in anarchy.

I come back to this point: The Government is now managing nearly one-half of the railway mileage of the country through its courts. The Government, State and national, interfered when the coal strike was on six weeks or two months ago. The Government is now interfering and, for the first time in the history of the American Republic, the President has sent the army into one of the States without the request of either a State or a city officer. I am not criticising the action of the President. I am simply calling attention to the fact that we now have actual, active, earnest, and effective Federal interference in what many wise men are pleased to call State concerns.

A few mornings ago, when it was noticed first that the President had sent troops to Chicago, a distinguished citizen in public life was reported to have used language something like this: "If I were governor of the State of Illinois I should take the State troops and drive the Federal soldiers into the lake."

My view is this: Railroads are a matter of Federal concern. The busy people of the United States have no time to stop with a surveyor to point out where the State line is, that they may inquire what the laws of this new domain are upon which

the railway train, running at the speed of fifty miles an hour, has just entered.

The American people have grown too big for that, and State lines, except for purposes of local government, are of no manner of account in the polity of the Republic. When the time comes for the Government to interfere, whether it be in Chicago, or Boston, or New Orleans, or Galveston, the power of the Government will go there, and the people will say amen, provided always that the movement of the Government is in the interest of the people.

That brings to mind a thought. I think it was in yesterday evening's paper it was stated that some distinguished personage now in public life is asking that the army be increased. This is not a good time to increase the army. This is a time to decrease the army. This is a time for the weapons of peace; this is a time for reason; this is a time for cool, deliberate judgment, not passion, not prejudice, not bayonets, but consciences, tongues, and pens, and brains. There is a kind of military mania taking possession of the people. We now detail army officers to teach military tactics in agricultural colleges. What a splendid idea it is to teach the farmers' boys the military art in order to fight grasshoppers and chinch bugs, and crows and blackbirds. We find that in our private colleges there are classes studying military tactics, borrowing arms from the Government and from the State. The same is done even in our high schools, which are the acme of the country district school, the crowning glory, the ambition of the country boy and girl. They are having military science taught in some of the country schools, and in some of our public schools here in the capital of the American Republic I have seen the boys go out and drill on the public streets. More than that, even in our Sunday schools there is a military air.

It is time that this military idea, the idea of quelling every little disturbance by force, should cease, and that brings me to the vital point in this whole controversy. What are you going to do when disputes arise between employers and employees? Keep your hands off, Mr. President. That is my advice.

The parties in interest will settle the matter themselves, and they will do it without bloodshed. They will do it without using the torch; they will do it without getting angry; they will do it justly, safely, wisely, promptly. But the instant that you begin to call out the military arm in order to protect one side and send the other one to prison, just that

soon you arouse a spirit of animosity which cannot be quelled by force.

That was tried about two years ago, on the 6th day of this month. Pinkertonism died an inglorious death in its own blood on the battlefield of Homestead. Some day there will be a monument erected to those brave men who, standing upon the shores of the Monongahela, defended their right to work in that great structure which their hands had builded.

CUSHMAN K. DAVIS [Minn.].—At a time when in the second city of the United States, and the fourth or fifth city in the civilized world, order is suspended, law is powerless, violence is supreme, life is in danger, and property is in the very arms of destruction, I am appalled to hear the trumpet of sedition blown in this Chamber to marshal the hosts of misrule to further devastation.

Mr. President, this question does not now concern the issue between the Pullman Company and its employees. It has got beyond that. It does not concern the sympathetic strike of the American Railway Union. It has got beyond that. It does not concern any strike which may hereafter be ordered. It has gone far beyond that. A simple strike as to a local organization not directly connected with the transportation instrumentalities of this country grew into another strike of far more comprehensive proportions. That grew into a boycott. That boycott took the liberty of the American people by the throat, and then grew into a riot, and from thence into an insurrection which confronts this Government to-day with all the dormant and latent powers of revolution, and speaks here in the voice of its advocate, threatening and advising the dismemberment of the Government by the abolition of its executive and legislative departments.

The Senator from Kansas affects to speak for the people of this country. Who are they? For his present purposes it is the mob which has obtained control of a strategic point in this country, the city of Chicago, which has paralyzed the means of intercourse, and interrupted the sources of supply of food and traffic over several States of the Union.

The Senator from Kansas has not a single word of reproach for the blood that has been shed in Chicago in the last ten days, for the millions of property which have been destroyed. The red light of arson against the sky in that city has caused him no pang and elicited from him no word of disapprobation. He insists that we shall go back to the cause of the strike, as he alleges, the difficulty between Pullman and his men, and

arbitrate that, when everybody knows we have got far beyond that transaction for the present. It is as futile, it is as foolish, as if some one coming from the caves of the past when the battle lines were drawn at Gettysburg had insisted that the impending conflict should be delayed until Meade and Lee could have argued out between the lines the question of the rights of slavery in the Territories.

Mr. President, the people are interested in this controversy —and by "people" I mean the entire body of the American people. I do not mean that segment of the people who, acting under delusion, have sought by force to overthrow not only the functions of civilization and intercourse, but also the rights of all the other people and the very existence of government itself.

The Senator from Kansas says that these instrumentalities of commerce and government should be controlled by public officers, and in that I agree with him to a certain extent. Are they controlled by public officers in Chicago now? Can the United States marshals execute the process of the courts? Can that great function of interstate commerce, that great system of railroads upon which the people depend for commerce, for everything which beautifies and adorns and makes enduring our civilization, and upon which the messengers of commerce come and go like the angels whom Jacob saw upon the ladder of his dream—can that be carried on, and is it carried on now, with the best aid of the public officers of this country?

Not at all. They are impeded in Chicago, at Hammond, and surrounding places by riots which have grown into insurrection, disturbing the stability of the Government itself, and drawing from the lips of the Senator from Kansas the expression of the opinion that now is the time to annihilate the legislative and executive departments of this Government and to change its form into that of its prototype, the Committee of Public Safety during the Reign of Terror in the days of the first French Revolution.

This whole proceeding, which has grown to a movement which I have inadequately described, has come from the illusion that a fraction of society, useful in itself, of course, and indispensable, I admit, can by force dominate every other portion of the body politic.

Mr. President, what is society? It is all the members thereof taken together. The railroad employees of this country number some five or six hundred thousand men, perhaps, indispensable, useful, valuable citizens in ordinary times, when

not misled, but, compared with the great mass of the American people, how few they are in number! Why will they not learn, and why will not their self-appointed teachers teach them, the doctrine of community of interest and interdependence of all upon the whole?

Does anybody suppose that by burning cars, destroying property, disturbing security, wrecking credit, taking life their means of employment are to be increased hereafter? They are destroying everything from which they derive their employment; the very thing which they, so much to their credit, have helped to upbuild, it is true, an act of which they would have never thought unless it had been for the self-appointed dictators who have placed themselves at the head of their organizations.

People prate about liberty, and define that liberty as the liberty of the particular class they are speaking for. The only liberty worth having in this country is the equal liberty of all men alike. Liberty in its philosophical and common-sense definition consists in that right of each individual to exercise the greatest freedom of action up to, and not beyond, that point when it impinges upon the like exercise of freedom of action of every other man. Beyond that it is the destruction of the liberty of the weak by the strongest, a subversion of the very theory of a republic, and a return to primeval anarchy on the one hand, or, as an alternative, to despotism on the other.

Mr. President, this boycott business—not a little incidental boycott in some little community, which, while it works great local inconvenience, works no particular harm in general—but a universal boycott is spoken of as something perfectly feasible and perfectly justifiable, to be put in force in the operations which are now going on. All men may stop work, all men of a certain class may stop work, and the Senator from Kansas calmly depicts here without a word of censure or disapproval, without a single temperate admonition to the men who are looking to him for leadership, the terrible and disastrous consequences of that step.

But the people for whom he pretends to speak are repudiating the strike. Through every avenue of public communication and by private letter—by telegraph, in the public press, and through the pulpit—they are crying aloud in denunciation of this most wicked, monstrous, and cruel attack upon every function of our civilization.

Mr. President, who has conferred this authority upon Mr. Debs? Where is his patent of right to say to the city of Chicago

that it shall not be fed, to say to the people of the Northwest that they shall not leave their homes, or that they shall not be able to get to their homes if they are away? What signature is subscribed to that patent of popular right or of popular consent?

No, Mr. President, this Masaniello of a day,[1] drunk with power, has unloosed agencies which he can not chain, has set at work destructive forces which he cannot recall; his own disciplined men have gone beyond his control, and it is a notorious fact that their violent action has called from the caves and dens of Chicago the professed criminal, the idly vicious, the anarchist. Everybody who is conspiring to put down modern civilization is now moving under the mask of this strike and taking life and destroying property in its name.

Mr. President, the Senator from South Dakota [James H. Kyle] introduced into the Senate the other day a resolution, the substance of which is that no process, civil or criminal, shall issue from any court of the United States in regard to acts affecting interstate commerce by the obstruction of trains, unless such acts involve the delay of the mails, and that the detaching of Pullman cars from any train shall not constitute an offence. At the time that resolution was introduced interstate commerce was arrested at Hammond, Ind., it was in collapse at Chicago, and freight and common passenger cars and Pullman cars were being destroyed in that city. The meaning of that resolution is that, while these acts were flagrant and being committed, the United States was to be called upon to make itself an accessory to the crime while it was in the act of perpetration.

Mr. President, consider the importance of the relations of this Government to interstate commerce. A clause in the Constitution, contrived by the wise foresight of our forefathers, has become efficacious and widespread in its operations a hundred years after it was framed.

The railroads of this country, 176,000 miles in length, belting this land, and laid over it like a network of iron, an armor of defence, are the daily convenience and the indispensable necessity of every man, woman, and child in the United States, and this movement is aimed at this great instrumentality, this great necessity, this indispensable convenience of our civilization, necessary to support life, to move troops, to move supplies, to carry on the Government itself—this strike is thus aimed, that has grown from a strike to a boycott, and from a boycott to a

[1] See Masaniello in Index of Proper Names.

riot, and from a riot to an insurrection, and has suspended and paralyzed the powers of this Government in the second city of the Union.

And by what acts? Tearing up the tracks, derailing locomotives, overturning cars across the tracks, burning them, robbing trains of provisions, disarranging switches, all with the result of the loss of human life, and yet the resolution of the Senator from South Dakota proposes to take away from the United States courts the power to follow, repress, or punish these flagrant offences against everything which goes to make up civilization and security.

The effect of that resolution as to any Territory of the United States or as to the District of Columbia would be that if any such act there committed, where the United States has ample and plenary jurisdiction, should result in death, constituting murder at common law or under the statute, no warrant of the United States courts could issue, no indictment could be found, no judge or jury could try the criminal.

Mr. President, the sea, the Great Lakes, the rivers, everything within the admiralty jurisdiction of the United States, were once the main instrumentalities of commerce, and there is a stringent code of laws applicable to them and to the ship, as security for persons and passengers and the means of conveyance. I say here, without fear of successful or even attempted contradiction, that if any one of the acts which have been perpetrated in Chicago in the last ten days against persons and property of this great means and necessity of land communication had been perpetrated upon the waters within the admiralty and maritime jurisdiction of the United States those acts would have been piracy and punishable with death, under the statutes of the United States.

In the eye of reason, humanity, and common sense the acts which have been perpetrated at Chicago, involving the safety of a great city, not as on shipboard the safety of a single vessel or those who are in it, constitute a much more flagrant offence than any piracy which is defined by the statutes of this country or by the law of nations.

The authority of the United States can not be denied, Mr. President. Within the limitations of the Constitution it is supreme. The duty of the President of the United States is to see that the laws are faithfully executed; the duty of the courts is to declare those laws and their consequences, and to execute them through their process. Those limitations are plainly drawn and settled, not only in the original instrument, but by

comment after comment in recorded decisions. Why should the hand of the Government be kept off these insurgents under the circumstances? Is the interstate commerce of this country to be held in suspense and paralyzed, property destroyed, food cut off, conveniences taken away, necessity thwarted, until some remote disagreement as to wages between a private corporation and its employees can be adjusted? Is there any such reserved right as that to any of the citizens of the United States, or is it the mere usurpation of a mob, commencing in riot and tending toward anarchy?

Speaking of the people of the United States—a large, mouth-filling phrase that we have heard so often here—let us consider a moment that there are 5,000,000 farmers in the United States, with their families, constituting 45 per cent. of the population. I suppose, Mr. President, if anybody is entitled to be distinctively called "the people," the bone and sinew of this country, it is the farming population. They supply the great cities. They represent the land; without them the country would be nothing. They have been its invulnerable and loyal arm of defence in all times of peril.

How are they affected by this strike of that segment of the people in Chicago? Have the farmers of this country called out to have commerce stopped until the question of wages can be settled between a few employees and a company constructing cars? Has any Illinois, or Minnesota, or Wisconsin, or Iowa farmer cried aloud for this remedy and been ready to pledge his life, his fortune, and his sacred honor until the desired end can be brought about? Not one. How has it affected them? How does it affect the constituents of the Senator from South Dakota or the constituents of the Senator from Kansas? They cannot market their wheat if this thing continues; they cannot market their wheat to-day.

The early product of the farms of Illinois, the fruit, the early vegetables, have been rotting throughout the fields. The early fruitage of California has become a crop perfectly valueless under existing conditions. The beef of the country can not be marketed in New York or Washington. It is rotting in Chicago, and prices rise to the people. Mothers go from place to place in the city of Chicago seeking for milk for their children, and can scarcely find it.

I say, Mr. President, that no interest in this country is stricken such a deadly blow by this cruel, remorseless, unreasonable, merciless, and finally treasonable attack upon the liberty of the American people as the farming community of the United

States, and they will find it out some day by the stern logic of events teaching them the lessons which I have endeavored to impart. It will not be necessary for them even to learn that lesson by experience to array them, as they always have been arrayed, on the side of law and order and the perpetuity of this Government.

Do not people realize that the Constitution itself is upon trial and that the country itself is in danger? The military power, the last resort in a free government, has necessarily been called into action. The President of the United States, to whom is committed the commandership of the army and the navy in the execution of the laws, has declared the danger by a proclamation which every citizen is bound to respect. He says, "I have sent the troops there"; the Senator from Kansas says, "Take them away." What shield does the Senator propose to interpose between the innocent people of Chicago and their property and the men who to-day are only held in awe and suppressed by the presence of troops, if they are taken away? Can Debs recall the force that he has unloosed? He can no more do it than by word he can reconstruct the burned cars or give back life to those from whom it has been taken away as the result of his operations.

The Senator from Kansas cited the common law that a nuisance may be abated—abated by force. What is Mr. Debs? Does he fall within the definition of a nuisance, or is his office more comprehensive? Is the power of the State or of the individual greater against a mere nuisance than it is against an agency which threatens the very destruction of the Government?

Let us hear what Mr. Debs is reported in a morning paper to have said:

> President Debs, in speaking of the situation to-night, said: "The Pullman Company is certainly responsible for any blood that may flow from now on. If honest labor is not entitled to recognition, the worker cannot be blamed if he tries to commit some acts of violence against the man who spurned him."

Will the Senator from Kansas indorse that?

The Senator from Kansas took occasion to bring into this debate the ministers of the Christian religion here in Washington who have preached the gospel of law, order, and peace, and to teach them their duty from a loftier plane than he conceives them to occupy. He wishes to introduce into the church a

Christianity from without, to revive its spirituality and restore it to its pristine apostolic purity.

Mr. President, the Senator from South Dakota is also a minister of the Prince of Peace on earth and good will toward men. He is here as a Senator, and before the public he is an evangelist of the meek and lowly Nazarene. He is the author of the resolution to which I have adverted, making lawlessness lawful and murder unpunishable under certain circumstances in any court where the United States has jurisdiction.

I would adjure him to withdraw it from the consideration of the Senate in the interests of humanity and good government. I would ask him to take that bomb from the Clerk's desk whereon he has laid it, but if through pride of opinion, or mistaken sentiment, or incapacity to see the right, he should refuse, I say to him that he has attempted to inflict upon the body of the Commonwealth a wound as deadly as that given by the dagger of Santo.

Mr. President, these are troublous times. The time will come in the new order of events when these matters will be satisfactorily arranged, for this Republic has always been adequate to every emergency, and these disturbing questions between capital and labor—and they exist with strong equities in them, I admit—will be settled. I think that time is now upon us. But they will not be settled as the result of any such proceedings as those against which I speak to-day. Something more than capital, for which I care nothing; something more than the wages of the laboring man, for whom I care much; something more than a railway corporation, for whom I care nothing, is at stake here. National existence is at stake.

It is the very condition of the existence of republics that they are subject to continual attacks from within and require continual assistance from their citizens to perpetuate themselves. That is the meaning of the maxim that "Eternal vigilance is the price of liberty." Kings, like Saturn, devour their children. The children of republics devour their parent. That attack is nearly always from within. France is subject to it to-day; the short-lived Republic of Spain succumbed to it; the Republic of Mexico fell, and only rose again when it shed the blood of an immolated monarch upon its plains.

The same dangers and difficulties environ this Republic, and they are upon us now. It is not a mere question of disagreement or dissension. The ship of State, which two weeks ago was floating securely and proudly through untroubled waters,

is now buffeted by contrary winds and is driven headlong over the waves of an exasperated sea.

I have not said a word about parties in this discussion. I shall expect the Democrats, the Populists, and the Republicans to join hands in this emergency, which Mr. Debs and those who are acting with him proclaim to be of supreme and perilous exigency to the Republic, and which the Senator from Kansas asserts demands the dissolution of the most important functions of this Government, to the end that a secure and peaceful rest to our troubles may be attained at last, to accomplish which the best efforts of the legislative department of this Government, and of all the departments, will be bent to bring about the only solution of these difficulties which possibly can be attained.

General John B. Gordon [Ga.].—Sir, what matters it to any lover of his country—of his whole country—at such an hour whether this or that party be in power; what matters it on which side we stood in the mighty and bloody conflict of the past? If we would save our country from anarchy we must stand now shoulder to shoulder for the enforcement of its laws, for the preservation of its peace, the support of its dignity, and the perpetuity of its freedom.

Our system is to govern through representatives chosen by the people, who make the laws which are declared and enforced through the orderly processes of courts of justice, and whenever the people fail to support the law the Government fails. We have no government except that recognized and upheld by the free will of the people.

Our Government was ordained by the people to protect property, public and private; to protect popular rights, among which is the right of the laborer to sell his labor at such price and in such employments as he pleases, and whenever that right is invaded it is a blow at personal liberty, and not only threatens the principles which lie at the foundation of our institutions, but is an inauguration of a system of slavery never known in the past history of the country.

There was a time when the Southern master had the right to order his slave to desist from labor, but that day has passed. The institution to which that right attached was recognized in the fundamental law of the land, and the master ordered the slave according to law. That institution has gone down in revolution. Liberty and the rights of organizations involve no such power or privilege as that now assumed to force others to desist who wish to labor. Such a claim is so utterly abhorrent

to our American ideas that it is impossible to treat it with any patience.

Standing in this law-making body and considering the law-breaking mobs at Chicago, I recall, with some misgivings I confess, that woeful prophecy of Lord Macaulay, that in some great public upheaval, like that which confronts us, this free Republic would either lose its civilization through mob law or in putting it down by the strong arm of power would lose its liberty. Sir, I do not believe that prophecy, but, if such doctrines as we have heard on this floor this morning are to become popular among us, well may we pause and consider whether Macaulay's prophecy may not yet be realized.

I prefer to agree, however, and I do agree with the great Gambetta of France, that at such times the liberty-loving people of this country, without distinction of party, would unite and save the Government, however they might differ about its policies. These lawbreakers will so find it, Mr. President. The day is not distant, it is upon us now, when they will realize this truth. There will be no divisions among us when the constituted authorities call upon the people. Their response will ring through the land as a warning to those who defy the laws. The men who wore the gray from 1861 to 1865, under strong convictions, will be found side by side with the men who wore the blue, following the same flag, in upholding the dignity of the Republic over which it floats, and in enforcing every law upon its statute books. [Applause on the floor and in the galleries.]

Endorsement of the President

Senate, July 10-11, 1894

John W. Daniel [Va.] offered the following substitute for Senator Peffer's resolution:

> *Resolved*, That the Senate indorses the prompt and vigorous measures adopted by the President of the United States and the members of his Administration to repulse and repress by military force the interference of lawless men with the due process of the laws of the United States, and with the transportation of the mails of the United States and with commerce among the States.
>
> It is within the plain constitutional authority of the Congress of the United States "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes"; "to establish post-offices and post-roads"; and to ordain and establish inferior courts; and the judicial power extends to all cases in law and equity arising under the Constitution and laws of the United States.

It is the duty of the President under the Constitution to "take care that the laws be faithfully executed," and to this end it is provided that he shall be "commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States."

It is treason against the United States for a citizen to levy war against them, or to adhere to their enemies, giving them aid and comfort.

Those who combine to use force to assail or resist the constituted authorities of the United States, civil or military, should be warned of the magnitude of their offence; and those who earn honest bread by honest toil can do nothing more detrimental to their interests than to show them any sort of countenance in their lawless course.

The action of the President and his Administration has the full sympathy and support of the law-abiding masses of the people of the United States, and he will be supported by all departments of the Government and by the power and resources of the entire nation.

Mr. Daniel.—I am a State rights Democrat, who would not like to see the muniments of local self-government overridden. But I am also a national Democrat, who would not like to see the muniments of national authority and national safety destroyed.

Anarchy is no remedy for anything. It intensifies every evil that exists. It impedes every remedial process. It should be stamped out wherever it shows itself.

The President is commander-in-chief of the army and navy. He has the plain right, and it is his plain duty, to employ them whenever and wherever the Constitution and laws of the Federal Government are forcibly resisted by combinations of men.

The establishment of post-offices and post-roads and the transportation of the mails through and by them is a Federal matter. Commerce among the States—interstate commerce, as distinguished from local intrastate commerce—is a Federal matter.

The due process of law in the Federal courts is a Federal matter. And in all three of these matters the President, having imposed upon him the constitutional obligation to "take care that the laws be faithfully executed," has the right and duty to use the army and navy to that end, and to oppose force by force.

I am the friend, and have often been the champion, of those who work for their daily bread. My sympathy is with them. But they can have no lot or share with anarchists, the destroyers of property, the destroyers of life, the breakers of law, the enemies of peace, order, and civilized existence. They have no place in the ranks of incendiaries, and they have no enemy

who can be so fatal to their every interest as those who seek to fire them into defiance of law.

The President is right in dealing promptly with lawbreakers. He ought to be upheld and cordially and unstintedly supported here, as he will be throughout this land, by upright and law-abiding citizens.

Sections and parties disappear in the face of society imperiled. We should know only the country, the Constitution, and the laws, and, as the President says, in such an emergency discussion may be well postponed. Peace, order, and obedience to law are the conditions precedent to discussion; with them assured, grievances will be heard, rights protected, and wrongs redressed.

On July 11 Senator Daniel added another resolution to his substitute.

2. *Resolved*, That while the Senate thus explicitly declares its determination to support the Executive in the enforcement of the laws and in maintaining the supremacy of the Constitution, it deems it proper also to declare its adhesion to the principle of the arbitration of differences or controversies between the employers of labor and their employees, as recognized in the laws of the United States; and to express its condemnation of the refusal of any party to such controversies or differences connected with the late disturbances in the city of Chicago and its vicinity to submit such differences or controversies to fair and impartial arbitration. And the Senate also expresses its determination to use, in promotion of the arbitration of such differences or controversies, whatever constitutional power it may possess.

Joseph M. Carey [Wyo.].—As I understand the resolutions which were introduced yesterday by the Senator from Virginia [Mr. Daniel] they were for the purpose of upholding the hands of the President of the United States in the enforcement of the laws and maintaining the Constitution of the United States in Chicago. Now, the purpose, it appears to me, of the resolution of to-day is to lessen the effect of the resolutions of yesterday.

The Senate has nothing whatever to do with the settlement of difficulties between employers and employees. The Senate is now making resolves with reference to the disorder that exists in the city of Chicago and elsewhere in the United States.

Senator Daniel.—Briefly, let me say to the Senator who has just spoken that by an act approved October 1, 1888, the Congress of the United States and the President gave their sanction and approbation to the principle of arbitration and provided machinery for a peaceful settlement of such controversies

as we now have to deal with, and the settlement of peace ought to be commended and put before all, in order that force may not be resorted to any further than may be absolutely indispensable. That is as much a part of the law and Constitution of the country as any of the laws which provide for the use of the military force, and it should receive equal consideration and be equally impressed upon the attention of the people.

Senator Carey.—So far as the law is concerned, to which the Senator from Virginia refers, it has been inoperative; it was passed, as many things are passed by Congress, to please somebody or other, but it has no effect whatever. It can not be enforced, and never has been enforced.

Joseph N. Dolph [Ore.].—I am not quite pleased with the statement contained in the third clause of the resolution introduced by the Senator from Virginia, as follows:

It is the duty of the President under the Constitution to "take care that the laws be faithfully executed," and to this end it is provided that he shall be "commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States."

If that means in case of insurrection and a proper case made for the interference of Federal troops it is the duty of the President as commander-in-chief of the army and navy to interfere for the protection of life and property, I have no objection to the statement. It is correct.

But if it means that the President is made commander-in-chief of the army and of the navy for the purpose of enforcing the ordinary execution of the laws or enforcing the law by process of the courts, I do not believe that that authority is conferred upon the President of the United States. It is his duty, in the first place, to see that the laws are enforced through the ordinary means of courts of justice and officers of the courts of justice. The law has provided how the process of a court of justice may be served and enforced, and it is only when there is an insurrection, as I have said, when there is organized treason against the Government, State or national, that the President is authorized to put into motion and to exercise the power conferred upon him as commander-in-chief of the army and of the navy.

Heretofore it has been supposed that in case of insurrection in a State it was not the duty of the President to act, if the legislature was in session, until the legislature had called for the interference of Federal troops or, if the legislature was

not in session, until the governor of the State had called for them. We have taken a new departure I think. I am not prepared to say that it is not right. I stand here and commend it, and say that what has been done by the Executive would be done by me under the same emergency if I had the authority, and I stand here to commend the President for his action and to say that it was fortunate for the country that there was a chief magistrate who had the backbone to do what he has done.

But I repeat that heretofore it has been supposed that the President could only use Federal troops in a State to suppress an insurrection or riot when the legislature, if in session, called upon him or, if the legislature was not in session, when the governor called upon him for Federal troops.

But, as I understand the present condition of affairs, the Administration started out to protect railroads which were in the hands of receivers, and now the protection is extended, without the request of the governor of Illinois at least, or the legislature of Illinois, to railroads engaged in carrying the mails and railroads engaged in interstate commerce. I am not entirely certain and I have not examined the question critically enough to know whether the declarations contained in the resolution as to the legal aspects of this question are correct.

It looks as if the Senator from Virginia had this morning become afraid of the resolution he introduced yesterday, and, having introduced a resolution yesterday sustaining the Administration in what it has done and commending it for what it has done, he proposes to add another clause to the resolution and throw a sop to those who are engaged in defying the laws, in destroying property, and in committing murder.

If I read the amendment aright it is a covert condemnation of the Pullman Company for its refusal to arbitrate. I want to know more about the facts of that matter before I undertake to give an expression as to the merits or demerits of the case. If I am going to make any declaration upon the subject, I want to do it squarely; I do not want to do it by implication; I do not want to do it by a resolution which has any double meaning. I hope that the Senator from Virginia will withdraw the amendment or stop with the declaration that the Senate still adheres to the principle of arbitration.

Senator Daniel.—I think we all seek a common purpose in the right spirit. I propose to drop all of my resolution except the first clause, which goes at once to the root of this matter, and the last clause, which is to the same effect.

This proposition met with approval from a number of Senators and with dissent from none, and was agreed to.

Orville H. Platt [Conn.] then said:

Mr. President, we are confronted with one supreme question, and that is who is President of the United States and whether we have any United States? The question is whether the person whom we elected to be our Chief Executive is the Chief Executive of the United States or whether a man who calls himself President Debs is the President and Chief Executive of the United States?

Any other question injected into this discussion seems to me entirely out of place. The Senate should express its approval of what its lawfully elected President has done; and our views about arbitration and all those matters can be discussed hereafter. They are in the form of law. I object to anything except the straight, square, manly indorsement of what President Cleveland has done, and I shall vote against anything else.

The amended resolution was then passed.

Endorsement of the President

House of Representatives, July 16, 1894

On July 16 James B. McCreary [Ky.] introduced in the House the following resolution:

Resolved, That the House of Representatives indorses the prompt and vigorous efforts of the President and his Administration to suppress lawlessness, restore order, and prevent improper interference with the enforcement of the laws of the United States, and with the transportation of the mails of the United States and interstate commerce, and pledges the President hearty support, and deems the success that has already attended his efforts cause for public and general congratulation.

Lafe Pence [Col.], a Populist, opposed the resolution.

Mr. Speaker, the citizens of this country, and certainly the member of this House who would withhold from the Administration proper praise in a time of great emergency would be a public enemy. But this resolution, in my judgment, is broader

than this House, if guided by its conscience and its better judgment, is willing to adopt. It goes certainly further than the old line State-rights Democrats of the House will want to record themselves. It certainly goes further than the Republican side of this House can want to go, because the framer of the resolution rests the indorsement not only upon the orders made by the President himself, but in terms it is drawn so as to indorse the efforts of the President "and his Administration."

Mr. Speaker, there may be proper times in this country, in case of dispute between striking laboring men and the corporations which employ them, for calling out the strongest arm of the Government. We all admit that. It may be proper to issue injunctions of the Federal courts. It may be proper to demand indictments by Federal grand juries. It may be proper to call out the military, but, Mr. Speaker, in my humble judgment, the American people will never believe that the Attorney-General who orders the indictments, who orders the injunctions, who orders the military, should be either the attorney of one of those corporations, a stockholder in any one of them, or a member of the board of directors of any one of them. It may be that emergencies may arise where all that the President has done in this case would be proper and right.

Do the Democrats of this House stand ready to indorse the course of the Attorney-General[1]? Is there a Democrat here who believes that it was the right, decent, meet, and proper thing, when the Attorney-General came to name and designate a special deputy to take charge in Chicago, that he should designate the attorney of railroad companies there? I think not.

Is there a Democrat upon this floor who stands ready, of record, to say that it was the meet and proper and decent thing, calling for our praise and our congratulation, that a gentleman who has been an attorney of trusts, who was one when he was appointed, who has continued so to be for a year, and is so to-day, according to the charges made in the New York *World* and other leading Democratic papers, should be the leader, in the Administration which they now seek to praise, in calling into force the strong arm of the Federal judiciary, the strong arm of the military?

Richard P. Bland [Mo.] opposed the resolution.

I believe every member of this House, no matter to what political party he belongs, will indorse the State government

[1] Richard Olney.

and the Federal Government in all legitimate efforts to preserve our institutions, to put down riots, and preserve the majesty of the laws of this country. I have no sympathy, Mr. Speaker, with any man who raises his arm in violence to destroy property to enforce what he may consider his rights of work, and try to prevent others from working. No principle of that kind can find indorsement on the part of anyone who has a proper conception of the rights of the people of this country to liberty.

But, sir, in these great disturbing times, such as we have passed through, it often occurs that acts are done under an assumption of authority that we may be called upon to indorse by a sweeping resolution of this character. I am, as a Democrat, to-day where I have always been, and that is for the rights and the dignity of the people of the States. I believe in local State government, and that the whole arm of the State authority should be used in suppressing violence before the Federal Government should interfere, except to protect its own property and to protect its mails.

I am aware, Mr. Speaker, that throughout this country, even in States where there was no violence, and where if violence occurred at all, the State authorities were ready and able to deal with it without any instructions sent out by the Attorney-General, the whole country was flooded with deputy marshals; sheriffs were arrested, State authority was overthrown, and the strong arm of the Federal Government took possession of matters properly belonging to the States. Against that, sir, I protest. I protest against these blanket Federal injunctions. I protest against the omnibus injunction. I object to sending deputy marshals all over the country to take the place of State authority; and that in a measure like that resolution, in the excitement of the times, we are as a party, as a Democratic party, liable to do violence to every Democratic principle and to surrender here, in these halls, as representatives of the people of our States, the essential Democratic principle of local self-government. If this Union is to be maintained, it is to be maintained by maintaining and respecting the rights and the authority of the people of the States.

If we are to have imperialism, let it not come with the assent of the representatives of the people in this House.

Thomas C. Catchings [Miss.].—Mr. Speaker, there is no question of State rights involved in the proposition embodied in this resolution. No man believes more sincerely than I do that it is necessary for the future prosperity and greatness of this country that due observance shall be given to those

limitations in the Constitution which define the rights of the States on the one hand and of the general Government on the other. But, Mr. Speaker, it must not be forgotten that it is written in the Constitution that it and the laws made in pursuance thereof constitute the supreme law of this land, and, when it comes to executing the Federal authority, let it always be remembered that the shadow of the national flag obscures and obliterates all State lines. There is not a nook or corner or crevice in all this broad land of ours where the power of the Federal Government may not lawfully go when proper occasion arises.

Mr. Speaker, no man who has spoken here, and no one who will speak, will undertake to point out a single thing that has been done by the President and those who have acted with him that has not been for the purpose of maintaining the Constitution and the laws that have been enacted in pursuance thereof. So far as the matters are concerned which the gentleman from Colorado has commented upon as against the Attorney-General, I wish to say here, speaking not only as a Representative, but as a member of the legal profession, that in my judgment the course of the Attorney-General has been such as to command the admiration and inspire the confidence of every good citizen. He is an able lawyer, a brilliant and distinguished member of his profession, and he could not have done less than he has done and at the same time have discharged his duty to the country.

Mr. Speaker, it is not to be tolerated that any class of citizens in this country shall take the law into their own hands. It can not be permitted that commerce between the States shall be paralyzed and that loss shall be inflicted by the millions of dollars upon the people of this country simply because a dispute has arisen between one class of our citizens and another. I say that the President has commended himself to the favorable judgment and the kindly and thoughtful consideration of the people of this country by the lofty, the determined, the courageous attitude which he has assumed in this dreadful controversy, and I hope it will have taught a lesson to men like Debs and others who choose to organize within the body of our citizenship a special class which claims the right to lay its heavy hand upon the business of the country and disturb and paralyze it.

The resolution was adopted without division, at least two-thirds of the Representatives voting for it.

CHAPTER XII

Regulation of Railroad Rates

[the hepburn bill]

The Elkins Interstate Commerce Act—President Roosevelt on "Rebates"—William P. Hepburn [Ia.] Introduces in the House a Bill to Regulate Railroad Rates—Debate: Varying Views by Charles E. Townsend [Mich.], Robert L. Henry [Tex.], Charles E. Littlefield, Joseph C. Sibley [Pa.], Henry A. Cooper [Wis.], Ollie M. James [Ky.], Augustus O. Stanley [Ky.], Theodore E. Burton [O.], Charles H. Burke [S. D.], Samuel W. McCall [Mass.], James R. Mann [Ill.], William C. Adamson [Ga.], Gordon Russell [Tex.], John J. Esch [Wis.], Oscar W. Underwood [Ala.], William Sulzer [N. Y.], W. Bourke Cockran [N. Y.], John Sharp Williams [Miss.], Mr. Hepburn; Bill Passed by the House—Speech in the Senate on "Physical Valuation of Railroads" by Robert M. La Follette [Wis.]; Senate Amends Bill—Compromise Bill: Speech on It in the House by James S. Sherman [N. Y.]; Bill Is Enacted.

ON February 25, 1903, a supplementary act to the act of February 4, 1887 (which had created the Interstate Commerce Commission), and the Sherman Anti-Trust Act of July 2, 1890 [see Volume XI, chapter 1], was approved by President Roosevelt. It was known as the Elkins' Act, from the mover, Senator Stephen B. Elkins [W. Va.]. Its character will transpire in the following debate.

In his annual message of December 6, 1904, President Roosevelt made the following observations and recommendations upon the subject of rebates:

Rebates

President Roosevelt

Above all else, we must strive to keep the highways of commerce open to all on equal terms, and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or

the railroad is to blame makes no difference; the rebate must be stopped, the abuses of the private car and private terminal track and side track systems must be stopped, and the legislation of the Fifty-eighth Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall by any device whatever be transported at a less rate than that named in the tariffs published by the carrier must be enforced. For some time after the enactment of the Act to Regulate Commerce it remained a mooted question whether that act conferred upon the Interstate Commerce Commission the power, after it had found a challenged rate to be unreasonable, to declare what thereafter should, *prima facie*, be the reasonable maximum rate for the transportation in dispute. The supreme court finally resolved that question in the negative, so that as the law now stands the commission simply possess the bare power to denounce a particular rate as unreasonable. While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce, and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

In the following annual message (December 5, 1905) President Roosevelt returned to the subject, making more specific recommendations, which were largely incorporated in a bill introduced during the session. He closed by saying:

Let me most earnestly say that these recommendations are not made in any spirit of hostility to the railroads. On ethical grounds such hostility would be intolerable, and on grounds of mere national self-interest we must remember that such hostility would tell against the welfare not merely of some few rich men, but of a multitude of small investors, a multitude of railway employees, wage-workers, and most severely against the interest of the public as a whole. I believe that on the whole our railroads have done well and not ill, but the railroad men who wish to do well should not be exposed to competition with those who have no such desire, and the only way to secure this end is to give to some Government tribunal the power to see that justice is done by the unwilling exactly as it is gladly done by the willing. Moreover, if increased power is given to some Government body the effect will be to furnish authoritative answer on behalf of the railroad whenever irrational clamor against it is raised, or whenever charges made against it are disproved. I ask this legislation not only in the interest of the public, but in the interest of the honest railroad man and the honest shipper alike, for it is they who are chiefly jeoparded by the practices of their dishonest competitors.

This legislation should be enacted in a spirit as remote as possible from hysteria and rancor. If we of the American body politic are true to the traditions we have inherited we shall always scorn any effort to make us hate any man because he is rich, just as much as we should scorn any effort to make us look down upon or treat contemptuously any man because he is poor. We judge a man by his conduct—that is, by his character—and not by his wealth or intellect. If he makes his fortune honestly, there is no just cause of quarrel with him. Indeed, we have nothing but the kindliest feelings of admiration for the successful business man who behaves decently, whether he has made his success by building or managing a railroad or by shipping goods over that railroad. The big railroad men and big shippers are simply Americans of the ordinary type who have developed to an extraordinary degree certain great business qualities. They are neither better nor worse than their fellow-citizens of smaller means. They are merely more able in certain lines and therefore exposed to certain peculiarly strong temptations. These temptations have not sprung newly into being; the exceptionally successful among mankind have always been exposed to them, but they have grown amazingly in power as a result of the extraordinary development of industrialism along new lines; and under these

new conditions, which the lawmakers of old could not foresee and therefore could not provide against, they have become so serious and menacing as to demand entirely new remedies. It is in the interest of the best type of railroad man and the best type of shipper no less than of the public that there should be governmental supervision and regulation of these great business operations, for the same reason that it is in the interest of the corporation which wishes to treat its employees aright that there should be an effective employers' liability act, or an effective system of factory laws to prevent the abuse of women and children.

All such legislation frees the corporation that wishes to do well from being driven into doing ill, in order to compete with its rival, which prefers to do ill.

We desire to set up a moral standard. There can be no delusion more fatal to the nation than the delusion that the standard of profits, of business prosperity, is sufficient in judging any business or political question—from rate legislation to municipal government. Business success, whether for the individual or for the nation, is a good thing only so far as it is accompanied by and develops a high standard of conduct—honor, integrity, civic courage. The kind of business prosperity that blunts the standard of honor, that puts an inordinate value on mere wealth, that makes a man ruthless and conscienceless in trade and weak and cowardly in citizenship, is not a good thing at all, but a very bad thing for the nation. This Government stands for manhood first and for business only as an adjunct of manhood.

The question of transportation lies at the root of all industrial success, and the revolution in transportation which has taken place during the last half century has been the most important factor in the growth of the new industrial conditions. In the old days the highway of commerce, whether by water or by a road on land, was open to all; it belonged to the public and the traffic along it was free. At present the railway is this highway, and we must do our best to see that it is kept open to all on equal terms. Unlike the old highway it is a very difficult and complex thing to manage, and it is far better than it should be managed by private individuals than by the Government. But it can only be so managed on condition that justice is done the public. It is because, in my judgment, public ownership of railroads is highly undesirable and would probably in this country entail far-reaching disaster, that I wish to see such supervision and regulation of them in

the interest of the public as will make it evident that there is no need for public ownership.

The opponents of Government regulation dwell upon the difficulties to be encountered and the intricate and involved nature of the problem. Their contention is true. It is a complicated and delicate problem, and all kinds of difficulties are sure to arise in connection with any plan of solution, while no plan will bring all the benefits hoped for by its more optimistic adherents. Moreover, under any healthy plan, the benefits will develop gradually and not rapidly. But, while I fully admit the difficulties in the way, I do not for a moment admit that these difficulties warrant us in stopping in our effort to secure a wise and just system. They should have no other effect than to spur us on to the exercise of the resolution, the even-handed justice, and the fertility of resource, which we like to think of as typically American, and which will in the end achieve good results in this as in other fields of activity. What we need to do is to develop an orderly system, and such a system can only come through the gradually increased exercise of the right of efficient Government control.

On January 24, 1906, William P. Hepburn [Ia.] introduced in the House a bill along the lines of the President's recommendations amending the act of February 4, 1887. It was referred to the Committee on Interstate and Foreign Commerce, of which Mr. Hepburn was chairman. He reported it back on January 27 as unanimously approved by the twelve Republicans and six Democrats on the committee.

Regulation of Railroad Rates

House of Representatives, January 30-June 29, 1906

Charles E. Townsend [Mich.], of the committee, explained and supported the bill.

Like the Esch-Townsend bill of the preceding Congress, he said, the present bill was in response to the public demand for a larger and more satisfactory regulation of interstate carriers.

The bill passed by the House in the Fifty-eighth Congress sought to do two things—first, to invest the Interstate Commerce Commission with the power to fix a reasonable and just

rate or regulation, after complaint and hearing, in place of one found to be unjust and unreasonable; in fact, to confer by law the power which the commission actually exercised for the first two years of its existence, and until the supreme court declared such power had not been conferred by the law of 1887, and, second, to speed the orders of the commission to a final determination. It was a simple bill, and its friends did not claim that it remedied all existing evils, but they did claim that it would bring great relief to the people, and that it was wise at that time to take one step and from that vantage ground view the situation before taking another. The advocates of that measure felt that delay would simply increase the demand for more radical railroad legislation.

The bill passed the House almost unanimously and was presented to the Senate, whose committee took it in charge and proceeded to have hearings upon it. President Roosevelt remained firm in his advocacy of the principles of the measure and suggested that he would call the Fifty-ninth Congress in extra session in case the Senate failed to pass a reasonable bill on the subject, but it continued its hearings until the Fifty-eighth Congress expired and then on into the summer.

A year has passed since the prophecy was uttered, and yet business has not been disturbed; railroading has extended its operations, increased its mileage, and improved its facilities and equipments in an almost unprecedented manner, thus furnishing conclusive answer to the carriers' own arguments. To-day we offer a new bill, and I present it to you now, as I did the one of last year, with the statement that it is probably the least the people will accept. It confers wider powers than its predecessor, for the reason that the demand is for a greater exercise of the Government's control over public carriers. It may not remedy every defect in existing laws to which every complainant has called the commission's attention, but it is believed that it will be sufficient to cure every defect against which any considerable objection is made.

The committee, or at least a majority of it, believes that this bill is not only within the constitutional powers of Congress, but that it is clearly an expression of the duty of Congress to the American people.

When the Fathers established the Government of the United States and adopted the Constitution as its bill of rights they wisely delegated to Congress control over all commerce among the States. As a legal basis of procedure in the exercise of government the common law was adopted, and that law treated

common carriers as public servants and subject to governmental control, and provided that all rates and regulations charged or imposed by them should be just and reasonable.

At first the Government, recognizing the need of common carriers, entered into the business of carrying products for the benefit of the people; highways were built, boat lines established, and canals dug. These were operated either without charge to the people or by imposing a charge upon the user of the means of transportation. Then the railroad was born, and regions remote from navigable waters were opened up to settlement. The luxuries of yesterday have become necessities of to-day. Inventive genius has revolutionized past ideals and ancient methods; ignorance, superstition, and religious fanaticism and bigotry, which once blocked the way of progress and blinded the eyes of genius, have been ruthlessly crushed to death beneath advancing civilization, which has strengthened with contest and grown wise and audacious with experience, until to-day nothing is sacred but eternal right and nothing impossible to him who wills. [Applause.]

Under such conditions the most progressive government in the world is required at this time to deal justly and fairly with the transportation problem, justly and fairly to the people and to the carriers—to the people, because the Government exists for them; to the carriers, because, being necessary for the general welfare, they are included in it and an injury to them would be an injury to the people.

When population was scattered and business small, strict regulation was not so imperative. When carrier actually competed with carrier for traffic, the shipper did not suffer so much, but when the country became settled and business increased to vast proportions; when individuals, trusts, and combinations grew to such power that the railroads were in a measure at their mercy; when in looking for business the traffic manager was actuated by the sole desire of obtaining every cent the traffic would stand and would prefer, and therefore favor, one shipper who could give 100 cars of freight rather than 100 shippers who could provide only one car each; when carriers combined to eliminate competition and manipulate schedules in ways past all finding out; when at a time when business commissioned every car of every carrier; when railroad facilities had become so improved that a dollar's worth of labor or coal would earn more money for the railroads than ever before [applause]; when traffic sought the railroad instead of being solicited; when under such conditions hundreds of

articles of commerce were subjected to an advance in freight rates; when these public servants were demanding tolls from the people to pay dividends on fictitious capital representing nothing but graft; when the railroads were assuming to say how the country was to be developed, what men should prosper, and who should fail, which cities should grow and which should not, then the people affected by such conditions—and who were not?—insisted that the servant should not be the master and that the Congress should pass a law to enforce their rights under the contract between the carriers and the public; the right to impartial treatment and to just and reasonable rates and regulations, for "it is so nominated in the bond." [Applause.]

In response to this demand the present bill has been prepared and presented to Congress.

The bill attempts to place under the supervision of the commission every form of interstate and foreign commerce, all instrumentalities of commerce and transportation. We have declared that cars, vehicles, and instrumentalities of shipment or carriage, irrespective of ownership of any contract, express or implied, and all services in connection with traffic, such as elevation, ventilation, refrigeration, or icing, shall be considered as being furnished by the carrier, and therefore under the supervision of the Interstate Commerce Commission. We have also stipulated that terminal, icing, and other similar charges shall be published as separate items, so that the shipper may understand just what he is paying for each particular service, and then we have said that all such charges shall be just and reasonable, that any other is unlawful.

Some of the most serious complaints have been those against these special services. Private car companies have been organized to do the people's work; the railroads have loaned their tracks to these companies, and while they have presented the charge to the shipper these private companies have really imposed them, and it is claimed that they were outside the jurisdiction of the Interstate Commerce Commission. It is not necessary for me to detail to the House or the country the gross injustice which has been done the people through these instrumentalities. We believe the bill effects a complete remedy for these evils. Hereafter any car hauled for an interstate carrier and any charge imposed upon a shipper, whether by a carrier or any direct or indirect agent of the carrier, must be just and reasonable, and in case it is not the commission has power to make it so.

The same argument applies to elevator and terminal charges. We believe it will no longer be possible for a great manufacturing corporation to build a spur or siding up to its factory and then use it as a basis for obtaining rebates prejudicial to its competitor. The bill also aims to prevent the custom so common and so detrimental to honest competitive business followed by many large shippers, *viz.*, of notifying the carrier that such shippers are on a certain date to have a large amount of traffic for shipment and at the same time demanding that the published rate shall be reduced on that date, so as to give them the advantage over other shippers.

This evil is known as the "midnight-rate" evil, and is one of the most effective means of violating the law against rebates known in the commercial world. We have attempted to cure this by enlarging the time in which a rate can be changed. If the bill is enacted into law, any change made in the schedule of rates hereafter must be published at least thirty days. It is thought this will give all shippers sufficient notice of a change to prepare to meet it.

ROBERT L. HENRY [Tex.].—If that thirty days' clause is violated by the common carrier, what specific penalty is provided in the act for a violation of the kind, and how is the penalty to be enforced?

MR. TOWNSEND.—The penalty provided in this bill is in case of a violation of an order. For instance, if an order of the commission is made in the first place it is $5,000 for each violation, and each day of the continuance of that subjects the road to an extra penalty of $5,000. It is also subject to the law we have now for enforcing orders—the right to compel by mandamus or other summary writs the observance of this rate, and the road would have no right under the law to carry any freight or indulge in traffic unless it had complied with the provisions of the bill.

MR. HENRY.—And then, under the present law, there would only be a fine and there would be no imprisonment of any official who violated that provision of the statute?

MR. TOWNSEND.—The law makes no provision for penalties of imprisonment except in cases of making false reports or in violating the publication feature of the bill.

The main feature of the bill, the one about which the greatest controversy has been had, and the one, I believe, which lies at the foundation of the whole matter, is that which gives the commission power, upon complaint and after full hearing, to substitute a reasonable maximum rate in place of one found

to be unjust or unreasonable. Heretofore the commission has had power to declare a rate unjust and unreasonable and to order its discontinuance, but it had no power, under the decision of the supreme court, to substitute a just rate in its place. This has resulted in making the law absolutely nugatory, so far as positive relief to the people is concerned. It is known that ten or twelve railroad men can and do get together and arbitrarily, overnight, as it were, change hundreds and hundreds of rates, and the remedial power of the commission should be as large as the evil to be remedied. [Applause.]

CHARLES E. LITTLEFIELD [Me.].—I would like to make this inquiry: Whether the gentleman's understanding of the bill as it reads confers upon the Interstate Commerce Commission the power to eliminate or correct or affect what is known as the preferential or differential rate—that is, the differential between the long haul and the relatively short haul?

MR. TOWNSEND.—I am sorry to say that it does not. I stand practically alone with one or two other gentlemen of the committee on this matter. I had hoped that we might give the commission powers to fix the differential.

MR. LITTLEFIELD.—I have an apprehension that it does produce practically that result indirectly. Does not this bill authorize the commission to fix a maximum rate upon the short haul, and thus eliminate in that way the differential, and indirectly accomplish what they might otherwise be authorized to do directly?

MR. TOWNSEND.—I do not think it does. The commission has no power to raise the rate, so that is eliminated, and it has no right to reduce a rate unless that rate in itself is unjust and unreasonable.

MR. LITTLEFIELD.—Yes, but that is the whole question before the commission.

MR. TOWNSEND.—If it is unjust and unreasonable it should be reduced, but it does not have anything to do with the relation of rates.

MR. LITTLEFIELD.—But my point is, does not this bill indirectly confer upon the Interstate Commerce Commission the power to control or eliminate the preferential or differential? Of course the assumption is that they would act properly, and would not change any condition unless there was an undue or unjust rate, but do they not get the power?

MR. TOWNSEND.—They do not unless, in the case you assume, one of the rates is too high in itself. If there is simply a difference in rates, and the higher rate is reasonable and the

lower rate is unreasonable because it is too little, the commission can give no remedy in that case.

This power to fix a contested rate is not a new principle, nor is the exercise of the power without precedent. For years many of the States in the Union have had commissions created by legislative authority of the States and invested with full power, not only to adjust and establish rates about which complaint has been made, but in some instances to fixe entire schedules for the carriers. The Interstate Commerce Commission during the first years of its existence assumed it had power to fix maximum rates in contested cases, and it exercised that power, and with most of its orders the carriers complied, and not until the decision of the Supreme Court in the maximum rate case did it discontinue the exercise of that power, and during all of that time the railroads were uninjured and the business of the country undisturbed. It was also claimed by the opposition that Congress had no authority to confer upon the commission the power to declare a reasonable rate in place of one found otherwise, for the reason that it was a delegation of legislative power, and this claim has been made notwithstanding the fact that the Supreme Court of the United States has held, where the question was squarely before it, that the legislature of a State—and therefore that the Congress of the United States—had power to appoint an administrative board and confer upon it full authority to fix rates as proposed in this bill. [The Stone case, in 116 United States.] In the Reagan case, from Texas, the Supreme Court of the United States held the same thing. The reasoning in these decisions is this: The legislature having passed a law declaring that all rates must be just and reasonable, it has authority to create a board to execute that law, otherwise the legislature would be absolutely futile to regulate rates effectively in the State or among the States.

But this is not the only constitutional objection which has been urged against the exercise of this power. It was insisted, more formerly than now, that, if a commission fix upon a contested rate from any interior point to a seaport, such action would be a violation of the so-called non-preference clause of the Constitution, which provides that the ports of one State shall not be preferred to those of another. This question was squarely raised in the Wheeling and Belmont bridge case. That was a case where the Government had allowed the construction of a bridge across the Ohio River, and it was authorized to be constructed so low that large vessels which had been engaged

in commerce with Pittsburg were unable to pass under, and thus Pittsburg had no trouble in showing that she had been injured, but the court held that Congress had not violated the Constitution in exercising power of regulating commerce by the construction of the bridge, as it had exercised a conceded power, and the injury to Pittsburg was incidental and not a violation of the fundamental law of the land.

The opponents of regulation have also urged that the enactment of this provision would result in an injury to widows and orphans dependent on income from railroad investments. Taking the two classes together, we have this argument: Railroad earnings will be reduced, the expenses of the road must stand the loss, hence the widows and employees must suffer.

A double-barreled argument—one used to kill stockholders, another to destroy the laborer. But what are the facts in the matter? During all the period in which rate legislation has been exercised by the States these direful predictions have not been realized. When the Interstate Commerce Commission exercised the power, securities remained undisturbed and labor was happy. The history of railroading during the last year is interesting reading in connection with this subject. When the Esch-Townsend bill passed the last Congress almost unanimously, one holding the views of these calamity prophets would naturally believe that some disturbance would occur in the railroad world, and especially when it was known that the President of the United States [Theodore Roosevelt] was insisting that the measure should become a law and had said that in case it failed to pass the Senate an extraordinary session of Congress would be called. But, instead of railroad stocks declining, they continued to rise in value. Furthermore, railroad managers throughout the United States proceeded to build 7,200 miles of new railroad, and up to June, 1905, they had placed orders for more than $200,000,000 worth of new railroad equipment.

It is simply begging the question to say that the establishment of just rates will injure the railroads. One of the most serious wrongs at present is the custom which the roads have of reducing rates to certain individuals and places below what would be a fair rate, or one that would produce a dividend and then imposing an unjust and unreasonable charge upon other individuals and places to offset the apparent loss. The country demands that all the people shall be treated alike, and that only just and reasonable rates shall be imposed. If that is done, the carrier will not necessarily be injured or its reve-

nues reduced; the burden will be equally distributed. Frequently the establishment of a just rate, even if it is lower than the one theretofore existing, produces more revenue. This was clearly demonstrated in what is known as the "Michigan Central charter case."

The State legislature exercised its power under the railroad charter to reduce the fare from 3 to 2 cents per mile.

Immediately after the reduction of the fare the passenger receipts increased enormously, so that it is doubtful now if the roads would go back to the 3-cent fare if they had the opportunity. We should also understand that, while in some cases railroad labor has had its wage increased during the last few years, the carrier's ability to earn has also been increased by the substitution of the mogul engines for the old ones, of the large cars for the smaller ones, by the reduction of grades and the straightening of tracks. Railroad operations have been materially economized.

There is absolutely no danger to labor, and I conclude, if the gentleman who used these arguments had not so repeatedly declared that they were honest, patriotic, and high-minded citizens, the charge of demagogue and agitator which they make against us would react upon themselves.

There is still another phase of this question which should not be overlooked. Originally railroad securities were not eagerly sought as investments; to-day such investments are most attractive, and the disposition of promoters and managers has been to increase the capital out of proportion to the real assets of the companies, and now when gentlemen are asking that dividends shall be maintained they do not simply mean dividends on bona fide capital, but upon inflated capital, and I submit it is a proper question for Congress or its duly authorized commission, when determining the question of just and reasonable rates, to inquire into the capitalization of these carriers. I know it is claimed that these stocks have been issued in many instances and placed in innocent hands and that if anything were done—and I do not consider that it will be—to injure the value of these stocks such bona fide holders would suffer. I simply answer this argument by saying that we legislate for the whole people. It is our duty to so regulate interstate and foreign commerce as to deal justly with all of our people, and if it should be demonstrated that some few holders of fictitious capital should fail to get an exorbitant return on their holdings the law should in justice be enacted, for we have no business to "rob Peter to pay Paul." [Applause.]

The bill also provides for the widest publicity of railroad affairs. This, I believe, is one of the most potent influences for good. The carrier being a public servant, its methods should be subject to scrutiny; therefore we provide the method by which its accounts shall be kept. We provide for publicity of the contracts and agreements, written or otherwise. We provide that government experts shall have the right, not simply the permission, to inspect all railroad accounts and business methods at all times, and we impose heavy penalties for violation of any provisions of the law. False reports or a refusal to make full disclosure subjects the carrier and its agents not only to a heavy fine, but imprisonment. We also provide in the bill for the speedy determination of matters submitted to the commission. After an order has been made that order shall go into effect within thirty days from the time the same has been served upon the affected carrier. If at any time during the thirty days the carrier is dissatisfied with the order, he can institute proceedings in the district court of the United States wherein the complaint was made, and thereupon it becomes the duty of the Attorney-General to serve notice on that court that the case is of great public importance, entitling it to consideration by the expedition court. Such notice is served upon three circuit judges of that district, if there are three; if not, upon two circuit judges, and those two shall select a district judge from the district, and the three shall proceed at once to the determination of the lawfulness of the commission's order.

This, I believe, has the following advantages over the old law: It permits three judges to pass upon a question instead of one, and their judgment will have more weight than would the opinion of a single judge and more cases will end with a decision of the expedition court. In case, however, either party objects to the decision of that court an appeal can be taken to the Supreme Court of the United States, which under the law is obliged to consider it in preference to any other case pending before it, except criminal cases. The expedition court will simply pass upon the lawfulness of the order, and under the decision of the Supreme Court that means whether such order is confiscatory or whether it imposes a rate which does not yield a fair return upon the carrier's investment. In deciding interstate commerce cases the Supreme Court has passed through several stages of opinion.

Originally it held that there was no relief from the commission's order except by an appeal to the voters. Later it decided, and I believe wisely, that even the legislature could not

impose a rate which was confiscatory, and still later, in the Nebraska case, it suggested that a rate which was not fairly remunerative to the carrier was unlawful.

It seems to me that a commission of seven men familiar with railroad matters, knowing all of the complexities which enter into rate making, are better able to determine what is a fairly remunerative rate than any court which only occasionally passes upon the subject, and I would prefer to leave it with the commission. But I bow always in proper submission to the decrees of the Supreme Court, and when it announces a decision I yield it obedience until at least it has had time to study public opinion sufficiently to reverse itself.

MR. LITTLEFIELD.—Do I understand the gentleman's position to be, as a matter of law, that the Supreme Court could interfere by injunction to restrain the carrying into effect of an order of the commission whenever they were of the opinion that the rate was unreasonably low, or is it based upon the confiscatory proposition?

MR. TOWNSEND.—My judgment until I had read the Nebraska case [Smythe *vs.* Ames] was that it would simply be on the confiscatory proposition. In this case the court undoubtedly is trying to stretch the doctrine of confiscation to cover "reasonable return." It is easy to imagine a relation between the two. The court can be trusted to include in the word "lawful" all that ought to be included. I have no doubt the Nebraska case will be used as a precedent in support of the doctrine that unless the returns are sufficiently reasonable the carrier must go out of business, therefore the rate imposed will be considered confiscatory.

For myself, I am satisfied that the proposed legislation will not harm honest carriers engaged in lawful business; all others will be and should be in imminent danger. I readily admit that there is an honest difference of opinion as to the policy of the measure. Some believe that the carriers will solve the problem if let alone, but it seems to me that such have not taken sufficient time to read and understand the history of railroading during the last few years. Gradually, but surely, rates have been raised, and during a period when there was no possible excuse for such a course except the desire to satisfy greed. Business has increased, and the net results of operation have shown that expenses have not increased in proportion to the enlargement of traffic. Railroad consolidation has been so complete that a few men, about six, control the great bulk of the railroads, and more and more the people are being placed at the

mercy of these great corporations. Complaints have come up to Congress from all over the country against the growing and insolent power of great consolidations of capital, and it is not sufficient to say, as some have said, that the complainants are demagogues and agitators, for already members have discovered among the number their most patriotic and intelligent constituents.

From the millions of farms between the oceans, whereon the bone and sinew of the Republic produce its true and substantial wealth; from the million factories which transform beneath the magic hand of enterprise and genius those farm products into myriad forms of beauty and usefulness; from the millions of tradesmen who disseminate the output of factory and loom among the people; from the professions which minister to the wants of others; from forest and mine comes up the demand that the servant shall not be above the master.

This question is not and ought not to be a political one; but as a partisan I could hail with delight the disposition of my party to take it up, for it is everlastingly right, and the people, having recognized it as such, will not be much longer put off. They demand real, positive remedial legislation, and ill will fare the legislator who offers a serpent instead of a fish.

Some say that this legislation is born of a prejudice against corporations, and with such an ancestor must be an instrument of oppression and wrong. I reply that the great mass of the people are fair and honest and acknowledge that the railroad honestly managed under the law is a great necessary blessing. They know it was chartered to serve them, and, desiring its service, they will not knowingly weaken it or lessen its ability to serve.

That the people have become suspicious of some of these great corporations there is no doubt, but there is a great excuse for it. As a rule, these organizations have resisted every effort to regulate and control them even when it was known that such regulations would be beneficial; lobbies, rich and powerful, have been maintained at the capitals of State and nation, and many seemingly unwarranted interferences with the people's rights have been experienced. They have entered the domain of politics, and in many instances seemed to have dictated the nomination and election of legislators. They have assumed that they were too strong to obey and the people too weak to enforce the law. [Applause.]

Temporizing will bring nothing but disaster. Already we hear the rumbling of discontent, and socialism smiles in satis-

faction with every delay. Regulation of a public servant is not a departure from the principles of popular government; but disregard of a righteous law and indifference to legal restrictions imposed to protect the people's rights are more than socialism—they are anarchy—and were I a railroad agent instead of a people's Representative I would hail the proposed legislation as a salvation to my master from the fate which an indignant people is sure to visit upon the corporations who, believing that they are above and beyond the law, seek to become a law unto themselves.

Let the bill pass, and let the railroads heed its provisions, and, instead of retarding its execution, aid in its operation, and then, instead of being the objects of suspicion and hatred, they will be recognized as the instruments of progress and prosperity. Rate legislation will enter into history, and its entry will not be marked by any business disturbance, but rather it will indicate the beginning of an era of better feeling between the railroads and the people—an era of equal rights and opportunities under a just and impartial law. [Prolonged applause.]

On February 1 Joseph C. Sibley [Pa.] opposed the bill.

He declared that if the Esch-Townsend bill were now before the House only the men who had given title to it would vote for it.

If one year is sufficient to show you the absolute incorrectness of your position on the other measure, why may we not with confidence hope and believe that if you will take one more year for the consideration of this measure there will not be two found in the House who would vote for this one?

Two years ago, I think, I might probably have doubted that there could be found upon this side of the chamber ten men who would have voted for a proposition to take from the business interests of this country the power to fix the price of transportation and confer it upon a body appointed by political power. This year, with this measure pending, the Republican side seem to have surrendered everything. They gave away, and gave away in order to get a unanimous report from the committee and get for its support the unanimous Democratic side of this chamber, and so I think our Democratic friends are entitled to a great share of the credit which they claim in bringing this resolution into the House. [Applause.]

Two years ago, or following the strike in the anthracite coal

region, William Randolph Hearst, a distinguished member of this House, declared for the immediate government ownership and control of all coal mines. David Bennett Hill, another distinguished gentleman, who wore a feather on his hat always labeled correctly,[1] declared for the same measure; and no less a distinguished character than the chairman of the Judiciary Committee of the House of Representatives, the gentleman from Wisconsin [John J. Jenkins], introduced a bill into this House, drafted by himself, for the immediate ownership and control of all coal mines and the railroads leading therefrom and appertaining thereto. That measure at that time could not have commanded the support of this side of this body, but we have progressed rapidly. We have got to a joint pretty nearly where we are ready to declare for municipal ownership and municipal control of everything and everybody, and that vision which came to Jack Cade in the old days may yet be realized, when he declared that upon his accession to power "then should seven half loaves be sold at the cost of a penny, and every three-hooped pot should have ten hoops, and in all England it should be felony to drink small beer." [Applause.]

We are coming by rapid steps of progression to government ownership. Government control has not exhibited in that portion which has heretofore come under our observation such marvelous performances as to commend it to us. Here in Washington we have presented the best examples afforded of it. We have the Government Printing Office, and there is not a gentleman here who does not know that he could have a speech printed—and I could have this one printed if I wanted to—very much cheaper in a private printing office, probably at a third less than at the Government Printing Office. I am not going to have it printed though at any price. [Applause.]

In our Government Gun Factory here in Washington testimony has shown over and over again that 70 per cent. of the work upon those guns is done by contract and 30 per cent. of the work is performed by the Government, and yet 70 per cent. of the cost is represented by the 30 per cent. of the work done in the department here in the navy yard.

While there have been abuses under the present system of railway control and management, I believe that for twenty-five years they have been steadily diminishing. Since the passage of the interstate commerce act, supplemented by the Elkins Act, any man who has given a secret rebate or a rate to one man

[1] The caricaturists always pictured Governor Hill with a feather in his cap labeled: "I am a Democrat."

which was not open to another is a criminal, and if his punishment has not followed it has not been because of the lack of the law, but the lack of courage or the inattention and dereliction of the man whose sworn duty it was to punish and to correct that evil.

For the system of rebate no man can offer a defence. It is indefensible in business, it is indefensible in good morals, because, if the right be granted to give one man or corporation a rate that is not accorded to every other man or corporation, it is granting to that man or corporation that power to destroy that which never should be granted or permitted to rest in their keeping. That there have been abuses to be corrected I will grant you. If the law has been derelict, how shall those whose sworn duty it was to obey the mandate of the law be held under this measure to stricter accountability than they are to-day?

Mr. Chairman, in this measure now under consideration it seems to me we are invading the realm of socialism. This bill should be properly termed "A bill to fix rates by political agencies," and, in the language of another, "To establish the business of transportation by lawsuit." You have got to commence with a legal decision at the beginning, and you have got to take it at every point along to the very end of the chapter. If I construe it rightly that is the effect of it. If you yield to the sentiment that is coming up to-day—and we have had the warnings that worse is to follow—if you yield to-day to Mr. Hearst and Mr. Bryan, who declare that they support this measure, not as a panacea, not as a cure for all evils, but that they have indorsed it as a step in the right direction toward government ownership—if you yield to this sentiment, you must realize in what direction you are going.

This current of socialism has become so rampant in this country that within the past week Mr. Jack London, whose books we have all read with interest, is reported as having said from a public platform in the city of New York that the time had come for the division of all property and the use of so much force and the shedding of so much blood as should be necessary thereto. I am not to be stampeded by the desires of men who are looking at it merely from the standpoint of State socialism. And without any disrespect to my friends who favor this bill, because I guess you all do [laughter], I want to paraphrase the language of Horace Greeley.

"Not all men supporting this bill are socialists and anarchists, but every socialist and every anarchist in this nation does indorse this bill, the product of your creation."

HENRY A. COOPER [Wis.].—The gentleman is using the term "socialism" quite frequently. I should like to ask him this question: In the case of the street-car system of the city of Washington, does the gentleman believe that Congress ought to say what that street-car system shall be allowed to charge for fares; that it ought by statute to say that the street-car company shall give transfers at certain points; that they shall give commutation rates—that is, if you buy six tickets you shall only pay a quarter for them? Do you think that the use of the epithet "socialism" and the application of it to the men who vote for that sort of thing ought to deter them from voting for it? And if it is right in the case of a street-car system, which is essentially monopolistic in so far as the municipality is concerned, wherein does that sort of legislation differ in principle from the Government regulating interstate commerce over railroads, which are in themselves monopolistic of that traffic?

MR. SIBLEY.—I believe Congress is really the town council of the city of Washington, and in that capacity the regulation of street-car fares within the District of Columbia has been committed to it, and I presume that it is within the province of this House and its right to establish whatever conditions it sees fit to impose that are legal and constitutional.

OLLIE M. JAMES [Ky.].—The gentleman has told us that this measure tends to socialism and that Bryan is its leader. It is also said that his party is quite near unanimous in the support of this measure, and therefore he stands almost single and alone. I wish to ask him to enlighten this House as to the means employed whereby the whole Republican party has right about faced and is following William J. Bryan—the one you hailed as an anarchist, seeking to destroy. [Applause on the Democratic side.]

MR. SIBLEY.—Will my friend excuse me for putting the responsibility of answering onto broader and abler shoulders than my own among my colleagues? [Laughter.] I will say to the gentleman from Kentucky that he need not shake his gory locks at me. [Laughter.]

MR. JAMES.—I want to say to the gentleman that my locks are nearly as absent as his. [Laughter.] I might suggest to the gentleman that if he wants the burden taken off his shoulders perhaps the Republicans have had their ears to the ground on this great railroad question and heard from the people.

MR. SIBLEY.—Mr. Chairman, it would seem that all representatives of the highest ideals of development of our civil life who represent the civic virtues could be guided by these monu-

ments, these beacon lights which human history and experience have erected all along the shores of time. It seems unfortunate, but nevertheless it is a fact, that never yet was the child born on all this earth that would ever believe the fire was hot until it stuck its fingers into it.

Mr. Sibley then recounted the socialistic experiments of New Zealand, such as government ownership of railroads, government employment of the otherwise unemployed, government loans to the poor, old age and indigent pensions, government establishment of local industries, such as creameries, etc., and declared that they led to waste of public moneys, corruption of the civil service, etc.

And when there came to the prime minister the people protesting that under their progressive land tax and their progressive income tax they were being denuded of all their possessions, the prime minister, Mr. Seddon, said, in answer to them, these words: "That is the object of this legislation—that there shall remain in all New Zealand neither a rich man nor a poor man."

So the forces have swept on until they are in the throes of state socialism, and they are going to make a glorious success of it just as long as there remains in pockets of thrift and industry one dollar to be wrung out in the form of taxation. Then there comes, as the sequence to the socialistic state, the state of anarchy, and then the reign of terror, and then the swing of the pendulum to the other side, and the strong man on horseback. In all human history that has been the experience, and society has been forced to rebuild its shattered superstructure upon those foundations which guarantee the rights of persons and of property.

Let us look at Germany—Germany, the most highly educated nation perhaps upon the globe, having a bright people, a progressive people, and an industrious and sober people. In 1878 Bismarck declared that it was necessary that the Government should take over the ownership of the German railways in order that through control of rates it might be possible to decentralize and unify the German Empire. Under the operation of that law communities have been built up and cities have been destroyed. Bremen, once a prosperous port, has seen her wharves rotting or idle and her freight and commerce transferred to Hamburg.

Von Miquel, one of the greatest ministers of finance Germany has ever had, said:

> Summing up the situation, it would appear impossible to retain state ownership of the railways unless it should be made practicable to make rates in accordance with hard and fast rules such as those made upon the cost of service.

This was supplemented by a report of the commission appointed by the ministers to investigate railroad affairs, where they say in the report:

> Any system which takes into account anything but the cost of service will precipitate a measureless conflict of interest and put the whole system into the domain of politics and array section against section, farmer against trader, and trader against manufacturer.

So Germany, instead of being unified, has been divided and they have been building and developing their canal system. Last year they voted ten millions to build a canal from Berlin to Stettin, 100 miles distant, already connected by a railroad with abundant facilities for transportation; that railroad last year transported but 200,000 tons of freight, less than is sent by one concern from my home town in Pennsylvania.

What has been the experience in France? Practically the same. The French commission, in order to protect their canals and their waterways, by ministerial decree ordered that the railroads should not fix rates within 20 per cent. of the price of water tolls. They had to have a law to prevent the railways competing with the canals.

In Italy, where the control of rates is fixed, and the Government controls all of the railways and owns a majority of them, the Italian commissioner summed up the conditions in that country by saying:

> It is a mistake to expect lower rates or better facilities from government than from private companies. The actual results are just the reverse. The state is more apt to tax industry than to foster it, and when it attempts to tax industry it is even less responsible than a private company. Second. State management is more costly than private management, and a great deal of capital is thus wasted. Third. Political considerations are brought into a system of state management in a way which is disastrous to legitimate business and demoralizing to politics.

To-day, under the development of the American railway transportation system, a carload of wheat is shipped from the

Mississippi River and laid down on the docks at Liverpool cheaper than the English road charges for taking it from London to Liverpool, a distance of 210 miles. Under this development it has been said by no less an authority than Professor Hadley, of Yale, that the cost of transporting the wheat in a loaf of bread from Dakota to New York City is less than the cost to the baker delivering it from his shop four blocks distant to his morning customer.

This American railway system is not perfect, but it is working so far toward perfection that it is the admiration of all of the railway men of the world. This system, while it has not been responsible for all our growth and progress and development, is entitled to its fair share of credit as one of the chief factors incident thereto.

I know it is an unpopular thing to say, "We will charge what the traffic will bear," but that has been the foundation and keynote of our commercial and industrial development. The railroad has been ready to meet the producer more than halfway in finding an outlet for his products. Upon what principle has the Interstate Commerce Commission decided all of its cases? I want to quote the language exactly. Not once, but over and over again, this has been the exact verbiage of their opinions:

> Each locality or section is entitled of natural right to the advantages of trade or industry accruing to it by reason of its geographical position.

That is the Interstate Commerce Commission which is going to interpret and execute your law; to whose hands you are committing this tremendous power. They are to emphasize the experience of France and Italy and Germany and Australia and every country and people of the globe where a rate-making policy by government has been attempted.

I can see no justice in a system that does not take into consideration the cost of the service. Living, as I do, 500 miles from New York, is it just to me, when I ship to New York at the rate of 16 cents a hundred, that a man who lives three times as far away, on the Mississippi, or four times as far, on the Missouri, or six times as far, out in Dakota, should expect and get the same rate that I, through my proximity to market, receive?

I would complain at once to the Interstate Commerce Commission under this law that that was an unjust discrimination against me, living in Pennsylvania in close proximity to the market. The Interstate Commerce Commission would be bound to declare that it was unjust and discriminatory that a man living in the Dakotas or Mississippi Valley should have an equal

rate, and would order my freight to be reduced in proportion, say, to 4 cents a hundred. The Supreme Court would declare that confiscatory. But say they will establish it at 10 cents a hundred—for certainly that is not unreasonable, for grain has been shipped from the Mississippi at 14 cents a hundred—then what happens?

A struggle between rival sections of this country which will make the struggle between the North and the South over the slave question seem insignificant. Then we will have Senators from Pennsylvania contesting with Senators from New York for the power that they can exercise to control the commission. So with Louisiana and Texas; so with South Carolina and Georgia. The Senators that represent those different commonwealths will be found in competition with each other. If you commence to apply any rule, you have got to apply a rule that is absolutely just. What is the cost of service and what is the distance traversed? You cannot apply a rule and make the American people conform to a rule which is not based on absolute and equal justice to all.

AUGUSTUS O. STANLEY [Ky.].—Is it not a fact that this bill attempts to do that very thing, to give to some commission the right to review the action of a railroad company when it makes a ruling and makes a rate that is not dependent upon the distance and the cost, but upon some other consideration?

MR. SIBLEY.—Mr. Chairman, in my judgment the inexorable laws of trade and of competition will establish at last either a *modus vivendi* or it may be a *status quo;* I do not know the exact term, but your lawyers and diplomats can figure that out. But somewhere there comes an armed neutrality after the war and rate conflict and struggle for supremacy between rival corporations and rival communities; there comes a fixed price for charges established either by common consent or by common experience, and they have got to make the best of them.

Now, I profoundly and sincerely hope that I am mistaken and unduly alarmed about the consequence of this bill. I hope that it does not open the door of socialism; that it is not responsive to a clamor that is going up and down the nation and which has resulted in almost giving the political control of New York City to one who declares for municipal ownership [Mr. Hearst]. I hope that this is not a step in the development of the theories so magnificent and glorious as outlined by Mr. Jack London; but I fear that it is a step in that direction. And therefore I trust through the orderly processes of courts of law, commanding the respect and confidence of all men, there may be

the judicial determination of the reasonableness of a rate rather than by a body of men who have exercised such power in the past.

Theodore E. Burton [O.] spoke on February 2. While he supported the bill he nevertheless had a word to say in favor of the railroads.

There have been no organizations in this or any other land which have done more to increase wealth and build up a country's prosperity than the railways of the United States. They have made unoccupied areas to teem with population and abound in wealth, and by low charges on food products and raw materials they have made possible the capture of foreign markets and a phenomenal increase of manufactures. If I were to make any one criticism upon their management it would be that they have too eagerly observed the rule, "Get business." While they have shown liberal and broad-gauged ideas in measures adapted to develop the country, yet in the hurry and competition to get traffic they have oftentimes disregarded that which was best for great localities and paid too little respect to the rights of individuals. Perhaps almost anyone engaged in the business would pursue the same course. I especially deprecate the indiscriminate abuse of them. No profit can be gained by the violent declamation which in some places is indulged in against corporations. I hear speakers whose eyes are filled with visions of the octopus; a legion of monsters surrounds them intent upon taking the lifeblood of the people. Such talk as theirs will lead to no salutary reform. No glittering generalities will answer the purpose. We must descend to details and work out these problems with care and soberness, with an understanding of all their varied aspects which will enable us to act wisely and well. In saying this I would say not one word in extenuation of the discriminations and violations of the law which have characterized the fixing of freight rates. There have been many plans to discriminate and grant rebates, which have originated in that unexplored mysterious realm, the traffic managers' conscience—plans and schemes which would not bear the light of day; but if we compare the railway management with that of other great enterprises I think we may say without fear of contradiction that it has been characterized by a progressiveness, by a desire for the development of the country, and by a liberality unsurpassed.

And we should especially hold the shipper who holds a club

over the railway manager alike culpable with the railway manager himself. [Applause.] If necessary, impose upon him the same penalty by bringing him before the court and subjecting him to the same punishment.

As a remedy for ruinous competition Mr. Burton said:

Possibly it would be best to give to each railroad of this country an exclusive field of its own to work in. In France they have five or six railway systems, each supreme in its own sphere, which no other railway enters. Thirty years ago in America there was almost ruinous competition between the railways. Freight was occasionally carried at very much less than cost. This did not benefit anyone particularly. The large shipper gained the benefit of the low rates and the smaller shipper took his turn when they were restored to normal figures. Then there were "gentleman's agreements," made to be observed for a time and then broken; made to give out to each other as if they were to be maintained, but to be broken in secret. Now, we are coming to a time of combination. Not only are there several great railway combinations under one management, and these combinations include railways which are in competition with each other, but there is a general disposition all along the line to act in concert. I may remark, in passing, that this bill will diminish the influence of competition, because competition feeds upon rebates and discriminations, but if the force of these factors in reducing rates is done away with it is all the more necessary that some governmental agency should control charges and make them reasonable and fair to the people.

In explaining the misdeeds of the railroads and trust magnates, I would say that if we seek for the most responsible source of the evil we shall find it in the ideals of our people. As a people we have enthroned financial success. In these days a boy who is coming to manhood now is brought up to admire the great railway magnates and the managers of great corporations, and his pathway is pointed out in that direction rather than in the way of statecraft and of those thousand employments where a real benefit to the people is possible, though from an humbler station. It will be impossible to tear up the evil at the root, except by a long process of education by which it shall be shown that life has prizes infinitely more valuable than the gaining of a great fortune. But by legislation we can do much to bring about the desired result by providing for publicity in

the management of these great organizations; by checks and safeguards which shall remove temptation; by enforcing the law in such a manner that offences of colossal magnitude will be regarded as just as worthy of condign punishment as those which are small and mean. [Applause.]

The control of these corporations is a work that has hardly begun in the States of this country. In some they run riot at will. The national Government must correct the evil. It has set a good example in the national banking laws, which, while not perfect, are a great advance upon previous banking laws.

This is a great country of ours. We have gained a material development, in which the railroads have had much to do, beyond any other country on the globe. But is this all? Is it not well for us to consider whether a development less rapid, especially a development in which there shall be a greater degree of equality, would not be a better one? Is it not true that the benefits of wealth and increasing prosperity do not bring their best results unless they spread all over the land, bringing blessings to the humblest cottage, bringing plenty to the poor as well as to the rich and to the millionaire? [Applause.]

We should not lay all the blame upon those who have gained these great fortunes. They have been prompted in their course by the superabundant vitality of our industrial and commercial life and spurred on by the admiration of the people. But we can condemn and punish them for wrongdoing. We should labor to secure greater equality of opportunity. And along these lines, whatever defects there may be in this bill, however doubtful it may be whether it will work out as is hoped or not, it is, at any rate, a step in the right direction. It is a declaration of the principle that aggregate wealth must submit to the law. It enforces the idea that no combination can be so strong or so great but that the Government shall place its strong hand upon it to restrain and control its operations. [Applause.] And, I believe, there are none who will be more substantially benefited by this measure than the railways themselves, at least those roads in which the management is honest and straightforward.

Charles H. Burke [S. D.] supported the bill. Replying to the arguments of Mr. Sibley he began by good-naturedly referring to the repeated changes from party to party of the "distinguished gentleman from Pennsylvania."

It would seem, Mr. Chairman, that he of all members at this particular time ought to at least agree with one side of the House, but he states that he cannot agree with either, and therefore he is opposed to the bill. He says that the Townsend bill, which passed this House a year ago, if it was up for consideration at this time, would not receive two votes.

I desire, Mr. Chairman, to challenge that statement and to reiterate what I have already said, that if that bill was pending now, and it was the best thing that we could get on this subject, we would do substantially what we did in the last Congress, and that is to pass it practically unanimously. He says that if this bill had been up for consideration before this House two years ago it would not have received ten votes. Why, Mr. Chairman, this proposition was up for consideration in this House about thirty years ago. It was discussed in the House during a period of about ten years at intervals, particularly in the Forty-eighth and Forty-ninth Congresses, when, in 1887, was passed the present interstate commerce act, which it was believed contained the legislation that is proposed here, so far as conferring the limited rate-making power is concerned. So, if it is socialistic now to consider this legislation, it was socialistic twenty years ago. Why talk about socialism? Somebody might very properly ask what is anarchy. If it were not for the fact that the railroads have disobeyed the law we would not at this time be called upon to legislate compelling them to observe the law.

The gentleman from Pennsylvania assumed a false premise. He assumed that this was a proposition of government ownership. But I say, Mr. Chairman, that this bill does not propose government ownership. It is not a step toward government ownership. Indeed, it is a step away from government ownership, for just as sure as we do not get this legislation, or something very closely akin to it, then just as sure as anything can be it is only a matter of time when there may be legislation that will go to an extreme and go away beyond what any person would wish for or want to see happen.

The gentleman in the opening part of his speech took the position, substantially, that we did not have the right to enact this legislation, that it was an interference with private property rights. But, Mr. Chairman, I do not think that any person will seriously contend that dealing with the common carriers of the country and their regulation can be considered for a moment as dealing with private interests. Before the gentleman from Pennsylvania finished he practically indorsed every word in this

bill with the one exception of the power to clothe the commission with the right to make a rate after finding a rate complained of unreasonable. The gentleman said, on the subject of rebates, that if there were rebates being practiced now it was because some officer charged with a duty of seeing that the law was enforced was not discharging that duty. Mr. Chairman, the report of the commission, all of the evidence upon this subject of rebates, shows that rebates are being indulged in quite generally throughout the country without any violation of the Elkins Act whatever by means of practices or instrumentalities, such as refrigerator cars, icing charges, elevator charges, terminal and side-track facilities; that rebates are given that are in fact rebates just as if the Elkins law had never been enacted. This bill makes it impossible for those practices to be continued if it should become a law. Why, the gentleman said that he would make a fine, I think, of a hundred thousand dollars for a carrier to give or any person to receive a rebate. Why, apply his argument in the early part of his speech; he would not have any legislation at all governing or regulating the railroads of the country.

Mr. Chairman, I have heard it stated by some that they were for this bill because it was a step toward government ownership. I have heard others say that they were in favor of this legislation because it is a step away from government ownership. Mr. Chairman, speaking for myself, I want to say that I am for this bill because I believe it is honest, because I believe it is right, because I believe that Congress twenty years ago thought they had conveyed to the commission the power that is sought to be given by this bill. It not only gives that power, but it goes further, and regulates many abuses that are now being indulged in by the railroads, and will, I think, make, with existing laws, a law that will be all that is necessary for many years to come; a law that will be not only fair to the railroads but do justice to those who have to do business with railroads. [Applause.]

Samuel W. McCall [Mass.] opposed the bill.

Mr. Chairman, if the pending bill made an effective response to public opinion upon the railroad question, it would deal in the most comprehensive and the most particular terms with rebates or favored rates, whether given directly or in any of the indirect forms in which they have been extended. A secret rate lower than the rate which is published for all or valuable

concessions given shippers, under whatever subterfuge, are obnoxious to the law, which contemplates not merely a just and reasonable but an equal rate. What is demanded to meet the real evil, and what was demanded by public opinion until its attention was diverted to an utterly irrational and haphazard remedy, is legislation making clear beyond question the right of every man to equal treatment and giving him the amplest remedy for every violation of his right. The private car, refrigerator car, the industrial switch, receiving a part of the through rate as if it were an independent line, every instrument of favoritism and injustice, had justly received public condemnation. These evils were dealt with in general terms by the amendment known as the "Elkins Act." But that act needed to be broadened; it needed to be made more specific, so that it should prohibit unequal treatment under whatever guise, and then it needed to be enforced, not merely by a fine, but in clear cases of evasion by imprisonment both for the giver and the receiver of the secret rate. If a law had been passed upon these lines one year ago, every demand of what can justly be called "public sentiment" would have been satisfied. The Republican national convention in 1904 made no declaration whatever regarding railroads. The Democratic convention declared against rebates and discrimination. Rebates and discriminations in all their protean forms were the real evil. President Roosevelt in his annual message declared against them, but he promulgated as a remedy that authority be given the commission to fix railroad rates whenever a complaint should be made.

The leading authority upon railroad economics in the British Empire said, not long ago, of the bill passed by the House last winter in line with the President's recommendation, that it would have done no more to stop rebates than would the reenactment of Magna Charta. I endeavored to point out at that time upon this floor that there was no possible relation between the giving of rebates and the fixing of rates by a commission, and that a railroad could as easily give a criminal rebate from a rate fixed by a commission as from one fixed by itself. And the advocates of this legislation have refrained from penetrating the awful mystery and have discreetly permitted the relation between rebates and commission rate making to remain a secret until this day.

The issue of political rate making in the Congress of the United States is not the result of any evolution or of any expression of public opinion, but it is a mere fungus growth. It sprang up in a night. It grew out of the presidential *non*

sequitur, and I am very willing to concede that a *non sequitur* is something in which a busy man may sometimes indulge. If teachers of logic are looking for a perfect example of a *non sequitur* for their classes, I commend them to the statement of the evils and the statement of the remedy contained in the President's annual message to Congress in December, 1904.

And at once political rate fixing became a burning issue—I mean in Congress, but not before the people, for there has been no election since it was so suddenly and so illogically sprung upon the country. Mr. Bryan, the once idolized leader of his party, for a time dethroned, but summoned back again by the overwhelming exodus of Silver Democrats at the last election, Mr. Bryan, who might have brought action for infringement, generously hailed political rate making as a decisive step toward his cherished dogma, government ownership, and he fixed upon it the stamp of his emphatic approbation. He looked upon it as his own child, and not long ago, as he was starting around the globe, in almost the last words he uttered upon American soil, with a paternal solicitude he commended the bantling to the tender care of the President.

The Democratic party followed its leader and took up the cause of rate making with enthusiasm and unanimity. As for the Republicans, rate fixing had been made party policy by our just elected President, and, logic or no logic, we were expected to get in line. This is the genesis of the public opinion upon this point. If any political platform adopted prior to the President's message by either of the great parties suggested any form of rate making by the national Government as a remedy for discrimination or for any other purpose, I trust some gentleman will cite it.

So far as favoritism is concerned, in every one of its forms I am opposed to it. I would have you enact against it the most drastic law which ingenuity could devise. And I would have the right of every man to a just, reasonable, and equal rate taken to the courts at the expense of the Government, in the first instance, and ultimately of the railroads, if they were held to be in the wrong, under every effective species of remedy, taken to that forum where Anglo-Saxon freedom has won its noblest triumphs. For my part I prefer the natural and beneficent liberty of the courts to the cast-iron regulations of a commission. I would encourage proceedings such as that in Scotland, which, for a differential given in good faith, took from a railroad company in damages and costs about $700,000. But in this measure we are neglecting to follow the vital line

and paltering with the highest interests of the country. I am for every feature of your bill aimed at discrimination, and I would favor far more stringent features; but your rate fixing, which is the substantial part of your bill, is economically as vicious as it is illogical and I propose to submit to you some reasons why I cannot give my support to a measure which I fear you have already almost unanimously determined to enact.

And I shall at the outset dispose of two or three preliminary propositions. It is claimed that it was intended to confer the rate-making power when the interstate act was passed, and that the commission for ten years exercised it. The facts are that the framers of the act declared in the debate that it did not confer the rate-making power; the courts as early as 1890 decided that the power did not exist; there was no general belief that it had been conferred, and, although the commission assumed to pass on the relative reasonableness of rates in a few cases, when it attempted to exercise the power in a really important case, its authority was challenged, and the Supreme Court finally decided that the act did not confer the power of fixing a rate.

Of the same character as the misapprehension which I have referred to is the pretence that the rate-fixing power in this bill is altogether exceptional in its character—not for everyday use, but likely only to be exercised upon rare and great occasions. Gentlemen simply run away from their proposition, and it is little cause for wonder. Their bill confers the power to revise all the rates in the country and to substitute other rates for them upon the happening of a mere formality. In the maximum-rate case thousands of rates were involved, and there is the testimony of a high officer of one of the railroads concerned that the reduction ordered by the commission in that case would have cost the railroads $3,000,000 a year. It would have meant bankruptcy to some of the railroads.

It is clear that the present bill gives the commission, upon the mere formality of somebody's filing a complaint, power to set aside great groups of rates and to substitute other rates for them. The pretence that it contemplates only the challenging here and there of a single rate demonstrates clearly that the advocates of this measure do not understand it or that they do not dare avow its purpose. On the theory that a mere isolated rate is to be tried here and there your bill amounts to nothing from your own standpoint, for, as was said by a railroad president the other day, it would take hundreds of years for your court to sit in judgment upon each of the billion or more rates

in the country. Indeed, the new rates would increase faster than your commission could decide them. I shall therefore assume that this measure is a rate-fixing scheme of the most sweeping character.

The fundamental question, then, involved is, Do we want rate making by a Government board? The burden of proof rests upon the man who contends that such a system should be substituted for the system at present in force. It is upon the advocates of this bill to show that we should set aside the American system of fixing freight rates which has given us rates hardly half as high as are paid by the other great countries of the world, although our railroads pay their labor twice the wages paid in the other countries. The burden of proof, I say, rests heavily upon those who would radically substitute for our present system the foreign system of fixing rates by the Government. Magnificent platitudes about eminent domain and our duty to exercise the great commerce powers of the Constitution will not sustain the burden. Give us a reason why we should discard a system which has been a success for a system which has been a failure.

The experiment has been thoroughly tried. We have the result of the experience of other nations and of our own. You will find the experience of the great countries of the world admirably set forth in a book by Professor Meyer upon Government Regulation of Rates. If Professor Meyer is wrong in any of his important statements, I have not observed that those who differ with him have pointed out his errors. And my friend from Pennsylvania [Mr. Sibley], in his masterly speech yesterday, left little to be said upon this point.

In all of these countries we see a rigidity to the rates established by the Government, and we see, too, the lack of constant supervision of detail, due to the enormous task of revising the great mass of rates, and a lack of responsiveness to the temporary conditions of business which an army of traffic agents, scattered over the country at the sources of freight supply, would keep in touch with and fully recognize in the making of rates.

The experience of Australia, where the government controlled the railroads, said Mr. McCall, was a warning to those who, by the bill, would destroy "basing points"—centers of distribution receiving better rates than the communities surrounding them.

The Australian system adopts a mileage rate, as our commission would be compelled to do, and what is the result? A road is built, say from Melbourne 100 miles into the interior, and at its terminus a town springs up which becomes a center for supplying the still farther interior. But the road is afterward extended, and the manufacturer or the jobber in the once flourishing interior town is obviously at a disadvantage with his competitor at Melbourne, because he has two shipments to make. He must either retire from business or go to Melbourne, and the result is that the commercial and banking and great industrial business of Australia is done at the four or five ocean termini of the railroads.

The destruction of "basing points," so called, in the United States, would take away a great part of the business of Atlanta, Memphis, and Kansas City, and scores of other interior centers, and would transfer it to New York and Chicago and St. Louis. If you think our industry and trade should be centralized in a few great cities instead of being diffused throughout the States of the Union, then you will support this bill, because, if it permits the adjustment of relative rates, it is an admirable instrument to accomplish that purpose.

Now, what is the American system which, without any consideration worthy of a great economic subject and upon mere generalities, you are airily proposing in this bill to set aside for the policy which I have been describing? In this country the interstate rates have been made by the railroads with practically no check, so far as governmental interference is concerned. It has been the prime policy of the railroads to develop a vast continental traffic drawn at low rates and between the most remote sections of the country. It has been to make of America a common market. The "natural-right" theory has more than once been involved. The low long-distance rates brought the agricultural products of the West in competition with the farms of New York, New England, and Pennsylvania, in markets which, on the "natural-right" theory, belonged to the farmers of the last-named States. And while your lands have gone up enormously in value the farms of New England and the East have greatly decreased in value. Yet on the whole the East has benefited because it concentrated its energies upon manufactures and trade and the railroad took its products to the West at low rates in the cars which bore your produce East, and which would otherwise have returned empty.

If we had had since 1865 a railroad commission with the power in this bill to fix railroad rates it is a moral certainty

that many now civilized portions of the West would be unsettled regions, and as a necessary consequence your great cities would not be the magnificent affairs they are to-day. The Interstate Commerce Commission has more than once affirmed the "natural-right" theory, and if it is to pass upon the conflicting claims of sections it cannot escape from that theory. The elevator and dock owners and great merchants of New York protested against a rate from the West to New York on wheat destined for export lower than the rate to that city on wheat for internal consumption. The low rate for the export wheat was directly for the benefit of the farmer, but it took from the men of New York certain profits that they claimed the "natural right" to have, because their city was the gateway to the continent, and the Interstate Commerce Commission ordered that the rate on the wheat destined for export should be the same as that for New York. The question involved was of vital importance to the farmer, and it is significant that the railroads were fighting his battle, which the commission decided against him in effect upon the natural-right theory. The Supreme Court supported the railroads and overturned the decision of the commission.

The American railroad rates, in the mass, are not the arbitrary, fiat rates such as would be ground out by a governmental machine, but, in a sense, they are self-made rates, and result from the free play of commercial and industrial forces. Even such a differential as that established in favor of Baltimore and Philadelphia against New York and Boston, which would at first sight appear artificial, was the result of one of the fiercest and most expensive commercial wars ever waged upon this continent, and when a few months ago the Interstate Commission was called upon to arbitrate, under an agreement between the cities, as to this differential it reached the very conclusion that was the outcome of that war.

The rate making of our railroads is done by an army of tens of thousands of men, picketing every part of the country. Often cars have to be returned empty over a long route. A rate that would pay the difference between hauling a car loaded and hauling it empty in such a case would pay the railroad. The traffic agent will often discover a commodity of low value in one part of the country that can be used in another part, and which, unless carried at a very low freight charge, cannot be carried at all. The transportation will pay the owner of the commodity something; it will also pay the railroad, and the commodity will be used to advantage by a distant consumer.

That traffic would be at once set in motion. The nicest curve, the strain of a swift train upon a bridge, the building of tunnels, can present no more technical questions to the engineer than are often faced by the thousands of traffic men who, in their eager search for tonnage, must consider rival markets and the relative demands of localities.

The flexibility of this system, where rates are fixed by economic laws, is infinitely preferable to the wooden system established by this bill, where, after a rate has been determined, you walk off and leave it a fixed and immutable fact for three years, unless a decree can be obtained from an overworked commission changing its decision and establishing a new rate. And by the time the authority would be conferred the necessity for a change of rate would probably have passed away.

The editor of the London *Statist*, in writing recently of a typical report—that of the American Great Northern Railroad—said the results shown in that report would fill the shippers of Great Britain with envy, in which country he declares that, notwithstanding the density of traffic, the people under tariffs directed by government have had very little reduction in a quarter of a century.

I have not understood that a popular government was adapted to carrying on to advantage, even on its own account, a business ordinarily conducted by private enterprise. From the time when the Pilgrims saved themselves from starvation only by abandoning the practice of raising corn in common and permitting each family to raise its own corn to the time when Massachusetts built the Hoosac Tunnel for about thirty millions, which it afterward sold for ten millions, or when Illinois completely bankrupted itself in building railroads and canals and conducting the banking business, the experiments of government on this continent in running business enterprises have uniformly been attended with great waste, if not uniformly with failure. But what may not be expected when a governmental agency manages business for which private individuals pay the bills? The pending measure not merely confers upon a commission the power of establishing a rate, but it makes them in important particulars general managers of the railroads.

The commission may by an order destroy the prosperity of a section of the country and may, in effect, impose restrictions upon commerce between States which it was the prime purpose of the Constitution to prevent. With the Government fixing rates, constituencies would inevitably carry their grievances into politics. You will have the different parts of the country

knocking at the door of the national Government for favors, and intrigue and politics will rekindle the sectional jealousies that have now been happily allayed.

The railroads are not even permitted by this bill to give excursion rates between interstate points without first publishing a schedule thirty days in advance, or unless the commission makes a special dispensation or a general regulation permitting it. If that does not make a legislature of the commission, then the hitherto accepted notions of the function of legislation will need to be radically revised. The "Be it enacted by the Philippine Commission," which gives vitality to the laws of a people who are neither a citizen nor a foreign people, will be matched by the "Be it enacted by the Interstate Commerce Commission" in laws passed for the government of the people of the United States. If the making of railroad rates is a legislative function which can be delegated by calling it administrative, why may we not in a bill originating in the House confer upon a commission the power to fix tariff rates?

You propose to confer upon a mere human agency a practical task that would be superhuman. It is made their duty upon complaint to revise any and all the thousand millions or more freight rates in the country and an untold number of passenger rates. In addition to administrative functions, in defiance of the Constitution, you confer upon them, as I have said, judicial and legislative powers. They are to be vested with authority over a dozen billions of property and nearly a million and a half of employees. The enormous magnitude of the task is admitted, but there is to be an easy solution for it all.

We are to have a commission made up of prodigies and paid splendid salaries. The first Canal Commission were paid magnificent salaries, and yet they were unceremoniously deposed from office in scarcely a year after the President had appointed them. And the present Canal Commission, even with the aid of the $10,000 press agent, does not seem to command the admiring approval of the country. [Applause.] The President will be compelled to discover a new field if he finds the remarkable men that he undoubtedly desires to appoint. But, even if he should find them, he cannot endow them with immortality, and some day another President will appoint their successors, provided the board should not be abolished beforehand, and these successors may be made of common official clay.

But the difficulty will be not so much with the men as with the system. They will be unable to perform those impossible

duties, and then their work is near the political line, across which they will inevitably drift, and, as has been attempted already in some of the most enlightened States in the Union, some day, acting under pressure or under the spur of ambition or of a desire to "do things," some great schedule is liable to be broken into atoms, and the commerce and industry of one section may be arbitrarily transferred to another. I believe that it is vastly better for the interests of the country, so long as rates can be fixed under the operation of economic laws, to reject the artificial method proposed by this bill, which makes of a commission a sort of Providence with power to create one city and destroy another.

A railroad rate is a fluctuating thing in the cost of its production, and from an economic standpoint no law can fairly fix a future rate which does not fix those material elements upon which the rate depends. As was pertinently asked by Mr. Benton, an able lawyer of my own State, if the States fixes the price that railroads are to receive for transportation, would it fix also the prices that go into the making of the cost of that transportation?

Will it fix the price of coal and ties and iron, the wages of labor, and those other varying elements of the cost of service, all of which absorb by far the greater part of the rates they receive? What prudent man would care to conduct a business with the Government fixing the price at which he should sell his product and leave him subject to the laws of supply and demand for everything he was compelled to buy? A rate that is reasonable to-day may be unreasonable to-morrow simply from the standpoint of the cost of production, and, under the present law, what is a just rate can always be determined at any given time by a court and jury whenever an individual claims that an unreasonable rate has been exacted. The question of unreasonableness can be tested in the courts. The juries will not hesitate to do as they have done in England, and the public will be protected. Is that not far more rational than the method you propose in this bill?

I cannot find an economic authority worthy of the name who, prior to one year ago, supported the theory of government-made rates for this country. After the President had promulgated the notion of rate making as a cure for rebates and discriminations, there appeared a crop of economists whose names had previously escaped the attention of the country, each with a patent nostrum guaranteed to work a cure on the President's plan. It was the heyday of the economic quack. We

have even had it proposed, on high authority, that if it were discovered that one of many competing railroads, say, between Chicago and New York, had given low, secret rates, those rates should immediately be declared to be the reasonable rates although they would be forced upon the competing railroads, who were entirely innocent, and might be made bankrupt by them. That is a fair illustration of some of the economic theories that have been evolved upon this question.

It is said that the sentiment of the shippers is behind this rate-making proposition. With the exception of isolated individuals, whatever sentiment has been expressed in favor of this policy did not appear until it was proposed fourteen months ago and was authoritatively put forth as the remedy for the evils of discrimination and the giving of rebates. Even then, few complaints were made that the rates were too high, but that they were unequal. The great national convention of the boards of trade of the country, the most representative convention of business men that is held upon this continent, held in the city of Washington during the last month, adopted by a vote of ten to one a resolution with regard to rate fixing where the proceeding was to begin with the courts and end with them and was, in effect, a most emphatic condemnation of this policy.

And let me say to members on the other side of the House that this rate-fixing policy found no more uncompromising opponents in that convention than were found among the delegates from the great cities of the South. They saw its viciousness not merely from the traditional Democratic standpoint, but also from the position of self-interest. They saw the South standing exultant upon the threshold of a brilliant era of prosperity, just entering upon her career of industrial glory, and that the railroads will do for her what they have already done for the North and West unless the capital which would naturally be invested in them should be frightened away by this populistic hullabaloo in which you are joining.

It is contended that the policy of national rate making is necessary in order to avert governmental ownership. Either governmental ownership is an evil or it is not. If it is a wise policy, we should embark upon it, but, if it is an evil, the way to avert it is certainly not to take the first long step from economic rectitude that lies in its direction. Some very vicious policies have threatened our country and have been made dangerous by our taking the first step as a compromise. That is true with reference to inflation. It is emphatically true with reference to the coinage of silver, when the reason was given

for taking repeated steps in coining or buying that metal that they were necessary to avert free coinage, until finally we had thousands of tons of silver stored in the treasury, and it was only by an almost unexampled act of presidential heroism that we did not go to the silver standard by the mere force of gravitation.

You do not propose to have the Government take the railroads by this bill, but you propose to have it take away from the control of the owners their only beneficial interest, which is the rate. It is said by the advocates of the bill, for purposes of prejudice or extenuation, that the securities of our railroads are bountifully watered. If true, that would be a relevant matter, perhaps, for the courts to consider when a shipper claimed that an unreasonable rate had been exacted. Certainly it furnishes no argument for the passage of this bill. It must be considered as a matter of denunciation and indulged in for the purpose of exciting prejudice. But let us see what the fact is. There is no higher authority upon the subject of railroads in the United States than President Hadley, of Yale, who first won distinction as professor of railroad economics in that university.

Last year he made the statement in a letter published in the Boston *Transcript*—and the letter was by no means generally in favor of our railroads—that the railroads of the country could not be duplicated for $50,000 a mile. In other words, counting their franchises as of no value, the material and labor necessary to duplicate them would be in the aggregate not less than ten and a half or eleven billion dollars, which is substantially the amount of their outstanding capitalization. Probably it would cost the Government, if it undertook to duplicate the work, twice that amount, and that would not include the enormous sums that have been thrown away in reconstruction, where, in order to do away with curves and grades, much original construction has been abandoned. If you count the franchises as nothing—and your railroads cannot be duplicated to-day by private enterprise for less than substantially the amount of the capitalization—how can you say that there is any material amount of water in their securities? In the capitalization of some railroads the nominal capital is not equal to the amount actually paid in. In some cases the stock was sold by the railroad at a high premium and the premium went into its treasury. Undoubtedly there are cases where railroads were built over a new country at great risk, where business was not developed, and the men furnishing the capital received stock bonuses.

These bonuses were offered openly in order to attract capital necessary for the work. I fancy you will hardly deny that the investor was fairly entitled to a chance for extra profit to pay him for the risk he assumed. If the railroad should turn out to be unprofitable, he might lose his entire investment. The man who paid $2 an acre for his land saw it increase, in many cases, by the building of the railroad, by the jeopardy of the money of other men, to $100 an acre. Are we to call the $98 water? Gentlemen are not heard to advance that theory.

JAMES R. MANN [Ill.].—The total amount of stocks and bonds is something over thirteen billion dollars, with a railroad mileage of over two hundred thousand miles. In Great Britain, together with continental countries, the total amount of mileage is considerably less than two hundred thousand miles, with a total capitalization of over eighteen billion dollars, so that the amount of capital we have invested per mile in this country is far less than the amount of capital per mile invested in the roads owned by the European governments or by private ownership there, notwithstanding the prevalent opinion that everything here is watered and everything there is not watered.

MR. MCCALL.—Then it is said that money bonuses and land grants were given to encourage railroad building. That bonuses were given does not now impress me as of the greatest consequence, because the Government, or the people who gave them, did so from the standpoint of their own self-interest, and in many cases they profited richly by the building of the railroad; but I believe I am entirely within the truth when I say your bonuses and grants from national and local governments and individuals would not all combined pay 5 per cent. interest for a single year upon our railroad capitalization.

The great factor in the advancement of America has been the free play given for individual action. If at the outset we had tied up the energies of men by statutes and removed the spur of ambition from the inventor, the railroad builder, and the man of business, the progress of our country would have been far less marked than it has been during the last century. The American railroad managers, not through altruism or philanthropy, but by their individual genius, called into play by the beneficent influence of our free institutions, have been working out the destiny of the American people. They have helped powerfully to mold a vast and naturally diverse continent into one people. They have, in a double sense, bound together the most remote parts of the country by cords of steel. They have interwoven our interests and our hearts inextricably

with the meshes of the iron net. And, if they are to receive your denunciation instead of your gratitude, then there is no species of property in the country which may not be plundered by law. There is a prescription that will almost infallibly work in forcing through such legislation. Fiercely denounce some Wall street magnate by name and then add some lurid declamation about insurance, and you could successfully rob any business in the country except farming, and if farmers were not so numerous they, too, would not escape.

We often make a mistake, I venture to say, in thinking that there is a genuine public opinion. Quite too often here we think there is a raging popular sentiment when it is only that we have a tendency of blood to our heads. The people do not send us here to enact every popular noise into law. [Applause.]

The fundamental question here, stripped entirely of sentiment, is whether we shall continue the American system, where the rates have inevitably sprung from the action of economic forces, or whether we shall adopt the expensive foreign system of government-made rates and have the management of your railroads thrown into politics, as if there were not already enough in this country upon which the politician can lay his felonious paws. [Applause.]

The Government may, if it desires, provide and operate at its own cost highways over which its citizens may travel and move their property, but it has not been a commonly exercised function to require citizens, at their own cost, to carry the persons and property of other citizens. It certainly has been a no less common function of government to fix the price of bread and to establish public granaries for corn. And, if either of these functions must be exercised, it should be under the most careful safeguards or it will be attended with grave danger. Burke says that certain of the Pope's territories, being obliged to furnish Rome and the state granaries with corn, were utterly ruined. Burke's illustration applies to the pending bill. It is not the least weighty of the objections against the bill that it will tend to corrupt the American people. It implies no defamation, but only a slight knowledge of human nature to see that you are holding out to them a temptation dangerous to their morality and dangerous also to the rights of private property. Your railroad securities are held in a comparatively small portion of the country, and the great mass of people scattered over the rest of the country, with little interest of ownership, will be interested in cheaper transportation. Will not the pressure of the greater mass of what you call public

opinion have the same effect upon the national commission as it has had upon State commissions, against whose rates the courts have felt compelled to intervene? If so, you must remember that the constitutional safeguards against the national Government are fewer and less effective than against the State governments.

Can anyone justly say, in view of the history of our railroads and the splendid service they are rendering, that the time has arrived for our Government to embark upon so venturesome a policy? The great organizations of labor, with their admirable sense of self-preservation, clearly see the danger.

Your bill pretends to grant a judicial review of orders of the commission fixing rates, but it adopts the device of permitting this to the railroad on the peril of its life. If the railroad avails itself of your inestimable privilege of review and the courts decide in its favor, it costs the Government nothing and the railroad has the enjoyment of its former rate; but if, as has happened in two cases out of thirty-four, the court sustains the commission, the railroad, if it has not adopted the commission's rate, which may prove to be confiscatory, must pay a penalty to the Government of $5,000 per day, multiplying each day by the number of times the rate is enforced, a penalty that in some cases would mount into the millions. Do you call this a fair judicial review? Would there be any taint of a "square deal" in saying to a man whom a police justice had fined, "Yes; the justice may be wrong, as justices usually are, and you may appeal; but, if the higher court happens to sustain the justice, you shall lose your life?"

WILLIAM C. ADAMSON [Ga.].—Does not the gentleman think that the carriers can avoid all such risks by putting in force the rates fixed while they litigate to set them aside?

MR. MCCALL.—Certainly; and that illustrates the point. You are trying to coerce the carrier on penalty of his life.

There may be evidence of a sense of justice in all this, but, if so, it is the sense of justice not of man, but of the hyena and the bear. The philosophy of it is that you may run for your life, but you are eaten if you stand, and you will be eaten if you are caught. Compared with the scheme of this bill there is a certain nobility in the policy of government ownership, wrong as I believe that policy to be. You carve our magnificent railroad system not as a feast fit for the gods, but hew it as a carcass fit for hounds.

We pass laws here with an easy optimism and a profound faith that, so great are the American people, their prosperity

is proof even against vicious government. And so the two great parties, in playing the game of politics, sometimes vie with each other in pandering to the popular passion of the hour, and court the roar of the galleries rather than history's approving voice. Undoubtedly the splendid strength and youth of the American people are well-nigh unconquerable, but no state was ever yet so great that a persistence in evil courses could not lay it low. We may presume too far. If we are guilty of reckless and impulsive action here we may wreck the nation. If you will pardon an old fable: As the boy Phaëton, driving the horses of the sun, but lacking Apollo's darting glance and unerring touch of rein, did not follow the safe middle course, and thus wrought havoc to both the earth and sky; so by impulse and unsteadiness in driving this Washington chariot of ours, now steering too high and now too low, we may put our American constellations to flight, dry up the courses of our iron rivers, and make of our fertile prairies the sands of another Libya. [Applause.]

In some remarks which I submitted on this floor one year ago upon a similar measure I dwelt upon what I regard as much more important aspects of the proposed legislation than its economic features. I shall not repeat what I then said, but content myself with the barest reference. This bill makes an enormous contribution to what I regard as an evil of the times—the steady encroachment of the legislature upon liberty. Our boasted American freedom is being construed to mean the power to weld statutory fetters upon the individual—to impose upon our own selves a species of slavery. We sometimes say that we are restraining the individual in the interest of the other eighty millions, and we thus take away the rights of every individual man in the whole mass and sacrifice liberty to a mere abstraction. This is a condition abhorrent to the idea of the founders of the Republic, who knew that men had suffered as greatly from too much as from too little government; that they had thousands of times been punished by law for actions essentially virtuous, and so, taking care to safeguard that high kind of liberty which would protect the individual against the encroachments of the Government, they set our State upon the middle course that lies between anarchy and despotism. This tendency to too much government is not confined to one party, for I have observed that gentlemen who delight most in quoting the immortal Jefferson are sometimes the fondest of imposing those fetters upon the people. The aggregate achievement of individuals has made America. To my mind, American freedom is

individual freedom. Give men as much liberty as you can grant consistently with order, and under this stimulus of freedom and order, and the right to enjoy what they accomplish and what they gain, this nation will keep magnificently moving on.

And then there is centralization. At the rate we are now moving it will not be long before we regulate everything and everybody from Washington. You cannot govern the whole universe from a single point and have a shred of liberty survive.

Instead of chasing every will-o'-the-wisp that shows itself upon somebody's horizon, let us then guide ourselves by the great first principles of the American Government. And, to return to this bill, you will have, in my opinion, a better railroad system and a better people if you safeguard in the courts the fundamental right of every man to a reasonable and equal rate and permit those rates to respond, as they have hitherto, to economic forces. In the conditions existing to-day I believe the people would shrink from governmental ownership, because of the expense and danger incident to governmental management. But that expense and that danger would certainly not be less when you make our Interstate Commission general managers of railroads built and owned and operated at the risk of private capital. [Loud applause.]

Gordon Russell [Tex.] supported the bill. He presented typical instances of the producer paying the freight, and remarked in conclusion:

The producer always pays the freight wherever he cannot fix the price of his product in the market.

It is the producers of this country who are complaining of the situation of affairs that now prevails. The producer has been the most patient of all the classes in this country. He has stood aside while others have received relief and has rarely complained.

He generally quietly shoulders his burdens. It may be that these people have not complained because their lives have been too much filled with toil to leave them time to investigate. But they are complaining now. Wrought to a pitch of indignation by years of wrong they are now demanding relief. It is the producer who is demanding it—the cattlemen of the West, the farmers of the South and great Middle West, the fruit growers of California, of Florida, Georgia, and Texas. They

are the people who pride themselves upon our national power and grandeur.

The producer is entitled to our consideration. The agricultural producer is the man who converted this country from a borrower nation into a lender nation. It was of the producer that Mr. Secretary Wilson said that in the last sixteen years he had wiped out an adverse trade balance of $543,000,000 and had piled up five thousand million dollars to the international trade credits of the country. [Applause.] The producer does not believe that a fair share of this stupendous sum has remained in his hands. He knows he has labored, he knows he has made wealth, he knows he has economized, and now he comes to this body and asks us under the Constitution to exercise such efficient regulatory powers over the transportation companies as will protect him from rapacity and extortion. He has a right to ask it. He has stood aside while others had their day in court here. This House has protected labor in the cities from competition with the Chinese. This body has listened to the demands of labor for the eight-hour law, so far as Government works are concerned. This body has listened to the railway employees, and has given them the safety-appliance law. And now the producer claims his day in court. He has made out his case on the law and the facts, and, with malice toward none and charity for all, he relies upon the inexorable logic of the facts and appeals to the integrity of the people's representatives. [Prolonged applause.]

Robert L. Henry [Tex.] supported the bill.

Mr. Chairman, I would not do violence to property rights in this country by my vote or my voice. It is realized that these railway interests own and control property worth more than $12,000,000,000. At the same time they assess their property at less than $3,000,000,000. These great interests are given the right by law to tax the people on shipments of interstate traffic. Interstate traffic amounts to almost 80 per cent. of the freight shipped in America. These gigantic institutions are authorized to directly tax 80,000,000 people on these shipments. There is now no one standing between them and the shippers to control their avaricious greed. The people are being burdened by them without representation. Here in this bill we propose to pass a temperate law to control them, and to say that the people who are being thus assessed and oppressed are entitled to representation and hearing in some way. These great com-

panies are not private institutions. They are not private property in the commercial sense of the word. These corporations are creatures of the law, having the breath of life breathed into them by the representatives of the people. They have no right to rise above the power that made them. We, as representatives of our constituents, should stand between them and these artificial beings, and see that justice is done to both. [Applause.] Better expression of the nature of their public franchises cannot be found than to quote the strong language used by Justice Harlan in the Nebraska case:

> A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is under governmental control, though such control must be exercised with due regard to the constitutional guaranties for the protection of its property. It cannot be, therefore, admitted that a railroad corporation maintaining a public highway under the authority of the State may fix a rate with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to its stockholders.

We are willing to square our conduct here to-day in enacting this law by this temperate and just language of the Supreme Court. If we are anarchists, communists, and socialists, as the gentleman from Pennsylvania says [Mr. Sibley], so are the judges of the Supreme Court. [Applause.] Well may we be thankful that we live in a government where the representatives of the people can read the plain language of the Constitution and see that it confers upon their servants the power of authorizing a commission to stand between them and these creatures of the law that have grown so powerful that they defy the very mandates of the constituted authorities. And we can congratulate ourselves that those representatives are brave enough to do their duty in the face of criticism and slander. [Applause.] Neither in my individual nor representative capacity would I lay violent hands upon the railroads. Their benefits are too great, their services have been too useful. We realize what they have done for this country, and also we know what we have done for them. They have aided in building up the waste

places all over the Republic. In my own State, the great State of Texas, they have been joint pioneers with the hardy citizens who went to that empire when it was but a wilderness. Still, we have helped them there and given them millions of acres of land and hundreds of thousands of dollars as donations. We have never mistreated them in our State, but our people have undertaken to control them in Texas, and have succeeded as far as their domestic operations are concerned, and we have not injured them. We established a railroad commission and placed at its head the author and founder of the Interstate Commerce Commission idea, the old Roman, John H. Reagan, who has gone to his reward and left a name that is a household word not only in the State of Texas, but throughout the length and breadth of the land wherever patriotism is revered and purity of purpose appreciated. [Applause.]

Mr. Chairman, there were dire predictions made in my State when we established the commission, and it was said that we had retarded the building of railroads, that we were standing in the way of progress. But since our commission was established we have not laid violent hands upon the railroads of Texas. The records show that since our commission was created Texas has constructed more miles of railway than any other State in the Union, and they have prospered more than ever in all their previous history there, thus exhibiting the beneficent effect of such legislation. [Applause.] We did not confer upon the commission merely the simple power of establishing a reasonable rate where one was found to be unreasonable. We gave the commission the broad power to establish tariffs upon the whole body of railway rates in Texas. The railroads contested the law and said that Texas was confiscating their property. They took their cases to the Supreme Court of the United States. They litigated every point and contested every inch of the ground.

The Supreme Court of the United States, in deciding in favor of the Texas law, never once referred to the constitution of Texas, but announced its decision on the broad proposition that the State had the right to create a commission to perform an act purely administrative. Mr. Chairman, from the Granger cases, which were decided in 94 United States Reports, on down to the last commission case, it has been favorably decided, and in every instance all the appellate courts in the various States of the Union and the Supreme Court have marched right ahead, dismissing the proposition that such laws are confiscatory, anarchistic, socialistic, and have unhesitatingly decided that such

power resided in the State legislatures and the Congress of the United States and was as old as the governments exercising it. If it has come to pass in this country that these great combinations, owning more than $12,000,000,000 of the property of the nation, are above the Constitution and the Supreme Court of the land, it is high time that we were reforming our Government and adopting an amendment to the Constitution in order to protect ourselves from these gigantic corporate agencies. [Applause.]

Mr. Henry, indeed, thought the bill not sufficiently drastic.

We should amend this bill, restoring the penalties of the interstate commerce act which inflicted the punishment of imprisonment for its violation. We should so amend it as to make it possible to punish the great railway officials, corporation officers, and agents who wilfully and flagrantly violate the law and put them in the penitentiary, as well as the small clerk who happens to make a false entry in the books, perhaps at the dictation of his chief. Wide-open prison doors alone will deter them. Every man on the other side of this House says that rebates are criminal. If we believe what we say, why not enact a law that meets the demands of the people? Why do we hesitate to go as far as conservatism and justice demand? Are we afraid of the influences? If they have grown so powerful that the Representatives who breathe the breath of life into them cannot control them, it is high time that our system of government be reformed. With patriotic voice let us say that we are ready to do our duty. [Applause.]

John J. Esch [Wis.] supported the bill. He recounted the results which followed the establishment of the Interstate Commerce Commission:

Under the interstate commerce law of 1887, with the powers which that law gave to the commission, great good was done and many of the evils which had existed theretofore were in large part abated. Business became more stableized, because rates became more fixed and certain. The railroads themselves, conscious that the commission had the power, did not violate the law, but evinced a desire to obey it in spirit and letter.

In 1897 the commission lost its power to fix the rate for the future, but it did not on that account become a worthless body. It still had duties to perform, and still had the power of

investigation; it still could hear complaints as to rates and determine as to their reasonableness, but had no power to make its orders effective. Its investigations of the Joint Traffic Association, the Northern Securities merger, of the coal strike, of the beef trust, and numerous other unlawful combinations have resulted in focusing public attention upon them and securing the evidence for their successful prosecution. Although it suffered a loss of power, it has justified its cost to the Government. Even the decision in the maximum rate case did not result in a useless body. But, Mr. Chairman, it is true that the fact that the commission lost its power to fix the rate for the future and to enforce the execution thereof diminished the respect and wholesome fear which railroad companies had for the commission. They no longer put their entire case before the commission in the event of a complaint and a hearing. It has been said on this floor, and has been often repeated, that the Interstate Commerce Commission rarely if ever has hit the mark in cases of appeal to the Supreme Court.

Mr. Esch replied to the criticisms made by Mr. McCall of President Roosevelt's message on fixing railroad rates.

I wish to say that the President's declaration of a year ago asking Congress to confer "on the commission the power to revise rates and regulations, the revised rate to go into effect and stay in effect unless and until the court of review reverses it," was not a *non sequitur*. There were members of the Committee on Interstate and Foreign Commerce who for a year before that message had been urging upon that committee and upon Congress legislation to increase and enlarge the powers of the commission. In the Fifty-sixth Congress Senator Cullom introduced a bill giving to the commission enlarged powers practically along the line of the bill under discussion to-day. His bill was succeeded in the Fifty-seventh Congress by the Nelson-Corliss bill, upon which hearings were had. That, in turn, was succeeded by the Quarles-Cooper bill in the Fifty-eighth Congress, upon which hearings were had; to be in turn succeeded by the bill which my distinguished colleague from Michigan and myself had the honor to present at the last session. That, in turn, is now succeeded by the bill which we are now considering, presented by the able and distinguished chairman of our committee.

Does all this show a *non sequitur*? Was it a chance thought

of the President when he called the attention of the American people to the necessity of this legislation? No; this question had been agitating the minds of the people in various sections of the country for years. The President knew, and for some time must have known, the nature, extent, and volume of this agitation. He knew, as some people of the East do not even yet know, how, especially in the Middle West, the birthplace of national ideas, the birthplace of Republican policies, rate legislation was a burning question, and one which the people, through their legislatures, were settling in the form of law. [Loud applause.] Is it a *non sequitur* to say that the President "suddenly saw a great light" and therefore inserted this recommendation in his message of December, 1904, when all the papers of the land, when more than a thousand industrial, commercial, and shipping bodies throughout the land had sent petitions, and when more than twelve State legislatures had sent memorials to Congress asking for this identical legislation? No. The President well knew the sentiment of the American people and well knew the extent of the demand back of this legislation. The President of the United States is not narrow; his knowledge of the wants and wishes of his countrymen is not confined to the Atlantic seaboard. He is not "cribbed, cabined, and confined" in his ideas. He knows the United States; he knows every State in the Union as no other President ever has; he became conscious of the popular will, and so made that declaration in his message of 1904. [Loud applause.] And great good did the message do. It gave life to the whole subject of rate control; it gave hope and courage to the friends of this proposition. The first definite results came in the last Congress, when the House took favorable action. The President is with the people in the demand for this legislation, and this House is about to put, so far as it can, his recommendation in the form of a law. He will sign this bill if it reaches him.

On February 5 Charles E. Littlefield [Me.] opposed the power given in the bill to the commission to fix rates and compel the railroads to accept them.

Do I want to turn over to the tender mercies of a political commission of seven the existence of the cotton industries of New England? Within two weeks I have had it stated to me by distinguished gentlemen who believe in this legislation and are anxious to see it prevail, that they hope under its terms to destroy the preferential charges existing in favor of these New

England industries in order that the industries located near the raw material can have the benefit of what they call their natural proximity thereto. They conceded that by this indirect method they expect to transfer the cotton manufacturing industry from the North to the South. I do not propose by my vote to put in the hands of seven men the question as to whether there shall still be a Fall River, a Lawrence, a Lowell, a Manchester, a Biddeford, or a Lewiston.

Mr. Littlefield also called attention to other, and more autocratic, powers granted the commission, in the case of mining, agriculture, manufacture, or merchandising, where there was no appeal from the decision of the commission.

Only the railroad can interfere. Manufacturers, farmers, miners, and merchants do not exercise any public franchise. The Constitution does not guarantee them a reasonable return for the amount of money invested in their industries or ventures. They have to fight for their lives in the open market, and this commission is to sit on the valve that controls the circulation without which they cannot live. I submit to the candid consideration of this committee, Mr. Chairman, that all of these interests are vastly more vital and more potent than the mere interest of the transportation companies themselves. Our industries furnish the vital lifeblood. The railroads simply the veins and arteries through which it circulates. The railroads have an opportunity to go into the court and protect their rights and preserve their existence under the power of injunction, but these industries have not.

Mr. Littlefield criticised the bill as making the commission a political one, dependent wholly upon the President, removable by him at any time, without cause, and without review of his action.

Let me submit this proposition. Theodore Roosevelt may not always be President of the United States. According to his repeated declarations, he will be President for the balance of this term and no longer. And after that some other gentleman will be President of the United States. What is possible? I can imagine some man as President of the United States in whose hands I would not want to see vested the power to

control this commission of seven men, four to be members of one political party. How long would it take a President with a complacent Senate to remove enough to make four of his political party? And what if that political party happened to be the Populist party?

I have in my mind the name of a gentleman that I would not want to leave the Constitution of this tribunal in the hands of. It would be perfectly open to him to have four that represented his peculiar views and his extraordinary vagaries in connection with the Government of this great country. More than that, it would be open to him arbitrarily to remove the other three. But he would not need to do this. Three is a majority of a quorum, and your act is so constituted and the possibilities are such that it is open to have three men, viciously inclined, take the mining, manufacturing, and agricultural and mercantile interests of this country, and, through the medium of that vital transportation upon which they exist and without which they can not live, throttle them until they either waver and die or render the tribute to Cæsar which is necessary to enable Cæsar to control the political destinies of the Republic.

To-day we have agitation and excitement and prejudice arrayed against the great transportation interests of this country. Our friends of the West, inspired by their exasperation and out of just resentment, cry out, "Crucify him! Crucify him!" and the more extreme this legislation the greater the gratification.

I warn you that, if we weakly quail before this storm and turn over these vast interests bound hand and foot to this fallible political tribunal without recourse or appeal, when the disastrous results which are well-nigh sure to follow the exercise of this tremendous uncontrollable power shall be visited upon a helpless people, that same people will turn again and rend you because you have been false to your trust as representatives of the American people. Inspired by passion, prejudice, smarting under the sting of resentment, because there are wrongs that have not been redressed, they may now bless us, but then, with equal facility and vastly greater zeal, they will rise up and curse you. They now applaud. Then we shall be *anathema maranatha.* [Loud and long-continued applause.]

Oscar W. Underwood [Ala.] supported the bill. He opposed particularly the argument that it would result in the decrease of wages of railroad employees.

The wage per hour of the average workman in the United States since 1895 has increased about 19 per cent. The average of the increase in wages paid trainmen in that period has been less than 15 per cent. In 1895 the purchasing power in the retail price of food of the weekly wages of employees was 100.6 and in 1904 was 100.4, a decrease of 0.2 per cent, and, as railroad wages have not increased in that period as much as general wages, it is demonstrated beyond cavil that railroad employees are not receiving as great a wage, measured in the purchasing power of their money to buy food, as they did ten years ago, and yet within that time the railroads have experienced an era of prosperity never before known in the world.

Now, what I contend is this—that the railroad employees, so far as their wages are concerned, will not be affected in any way by this legislation; that the wages of railroad employees in this country are maintained solely by their safe and conservative labor organizations; that the only real interest that railroad men have in the pending legislation is that of the general public in its opposition to present conditions, which allow the great monopolistic corporations of this country special privileges in the way of rebates, private car rental, switch-track pooling, and other devices, through which they receive the benefit of discriminating freights, whereby they are enabled to drive their competitors from the country's markets and absolutely control the prices the public must pay for many of the necessities of life.

Mr. Chairman, I am not in favor of the Government interfering with the business of the country. I believe every man should be allowed freedom to work out his own destiny, but I do believe that the railroad highways of the country are as necessary to the life of commerce as the air we breathe is to the life of the human body. I believe the air should be free to all, and I believe the opportunities of commerce should be free to all. This can be only when every man has equal rights and equal opportunity to seek his markets along the public highways with every other man. That is not the case to-day. This bill seeks to abolish discrimination and injustice. It provides a fair tribunal to see that all men are given an equal chance, that only just and fair rates are charged. The bill is not all I want, but it goes in the right direction and I support it for that reason. It stands for fair play, it stands against monopoly, it stands for the right against the wrong, it stands for the people against the trusts. It means the dawning of

a new day in our commercial prosperity, when industry and thrift may march unshackled to the marts of trade. [Applause.]

On February 6 William Sulzer [N. Y.] proposed to organize a new department of government—that of transportation—with representation in the Cabinet, and empowered to investigate railroad conditions, fix rates, etc.

On February 7 W. Bourke Cockran [N. Y.] supported the bill.

Mr. Chairman, if gentlemen would only pause to realize the exact scope and purpose of this bill, they would see at once that many of the objections urged against it are both irrelevant and extravagant. The object of this measure is simply to compel companies engaged in railroad transportation between the different States to render the people whose franchises they operate efficient service—which means impartial service—at reasonable rates. To accomplish that result, any citizen who considers himself aggrieved by excessive charges is authorized by this measure to complain before a board empowered, after full inquiry, to decide whether the rate charged him is fair or unfair, and if unfair to substitute a rate which will be proper and just for the one found to have been onerous and oppressive. That is the entire scope and purpose of the measure which has been denounced with such brilliant rhetoric from the other side of this Chamber as a step toward the public operation of railroads, leading inevitably to socialism. Sir, this plain statement of the object and purpose of the proposal now before us must be enough to satisfy anyone not wholly captive to prejudice and passion that, far from this being a measure tending to establish public ownership of railways, it is the only means by which public ownership of them can be averted. [Applause.] Far from its being a socialist demonstration, it is an effective barrier against the rising tide of socialism which gentlemen seem to discern and to dread, because it takes from the socialist the most plausible argument that he can advance to impeach the existing order of society and to support his own theory of government. [Applause.] Far from its being an attempt to reduce the earnings of railroads, it is a measure to increase them, and at the same time provide that these steadily increasing revenues will reach owners of capital by which railways are operated, instead of being diverted largely

to the pockets of faithless managers, who plunder stockholders and people with cheerful but rigorous impartiality. [Laughter and applause.]

Mr. Chairman, the misapprehension of this bill which has so largely marked this discussion springs mainly, I think, from confusion of thought as to the precise relations between companies engaged in transportation and the State. Some gentlemen speak of railroads as if they were private enterprises. Other gentlemen seem to consider railways purely public enterprises, with which the State has plenary powers to deal as if they were public property. If either assumption were sound, the argument based upon it would be unanswerable.

Gentlemen who regard railways as public property are not wholly right; neither are those who consider them private property wholly wrong. Railroads are neither exclusively public nor exclusively private enterprises. They partake of both characters.

Under our industrial and political system there are two elements entering into a railway service. One is the right to operate it—the right sometimes to use public property; the right always to take private property for corporate purposes—what is known as the franchise. The other is the capital, in the form of lands, rails, locomotives, buildings, and other property by which the franchise is placed in operation. The franchise, the power to take anything I possess which may be necessary or useful to the operation of a great enterprise—the power to drive me from the house in which I was born, from the hearthstone near which I have lived, from the place where I had hoped to die—that power is an attribute to sovereignty. The right to control it must, therefore, always remain with the sovereign, that is to say, with the State—the Government. On the other hand, the capital by which the franchise is operated is the property of individuals who contribute it. It is private property dedicated to a public service. A railway, then, is a public function, the administration of which is intrusted to a private agency. But, whether it be administered by a private agency or by government directly through its own officers, a railway never ceases to be a public function. [Applause.]

Now, from this what follows? What are the reciprocal rights and duties of the capital by which railways are operated, and of the people whom the railways are chartered to serve—of the sovereign whose franchise is the basis of the enterprise and the individuals who own the property by which it is made

effective? Clearly, the railway, in return for the special opportunities of profit which it enjoys, owes to the sovereign efficient service, and the sovereign—that is to say, the people—are bound in return by every principle of justice, of prudence, of self-interest, to protect, preserve, and maintain in absolute security the capital—the private property—dedicated to this public service. Stated in the narrowest compass, the railway owes the people the most efficient service within the reach of human endeavor, consistent with the security of the capital—the private property—embarked in it.

Now, what is meant by security of property? What does it involve? What are its essential features? What rights does it embrace? While it appears to be conceded on all sides that a rate which compelled a railway company to do business at a loss would impair the value of the capital embarked in it and therefore would be a taking of property without due process of law, which the courts must condemn as confiscatory, some gentlemen opposite appear to think that a rate which did not entail actual loss in operation, but which nevertheless was so low as to prevent any possibility of earning profits on the capital by which the railway is operated would be within the constitutional powers of Congress (acting directly or through a commission) to impose, and therefore beyond the power of the courts to correct. A little reflection will show these gentlemen that they misconceive radically and underrate grievously the nature and extent of the security guaranteed by our Constitution to owners of property. Security of property means not merely the safety of its body—the right to hold its *corpus* intact—it means the right of the owner to employ it for a profit, or what he conceives to be a profit, provided the specific purpose be not in itself illegal. Unless property can be employed at a profit it won't be employed at all, and unless it can be employed it is not worth holding. A right of property which did not embrace the right to employ it for the profit of the owner would be a mere right of custody, utterly valueless, a burden rather than a benefit, a penalty rather than a privilege, a hollow mockery, a trap for the unwary, baited by delusive and misleading words. Such a conception of property is at utter variance with all our jurisprudence, and any law based on it that we might pass would most assuredly be set aside by judicial decree. [Applause.]

A rate which even though it did not entail a loss in operation—that is to say, an actual impairment of the property invested in railways—yet was so low as to prohibit profit, would

be confiscatory—confiscatory of an essential element—the most important element in the right of property. The idea that such a rate would be tolerated by the same courts which, uniformly and without exception, have set aside confiscatory rates is not a conclusion reached by logical processes, but a figment of the mind, a delusion of ardent imaginations, of fervent patriotism, and other excellent qualities stimulated to extravagance by improvident use of sonorous but misleading and sometimes nonsensical phrases. [Laughter and applause.]

A more serious criticism, Mr. Chairman, is that advanced by gentlemen who, conceding the right of the Government to exact from railways efficient service at reasonable rates, yet question the power—the intellectual capacity—of an administrative board or of any body not composed of railway experts to determine intelligently what constitutes a just and reasonable rate. This, of course, is equivalent to recognizing the existence of a right in government which it is powerless to assert and of a duty imposed on it which it is powerless to discharge. Mr. Chairman, I have never yet found myself compelled to admit incapacity or imbecility in government—at least, in this Government. [Applause.]

To ascertain and determine what is a just rate in every instance we have only to bear in mind the essential nature of the relations between these agencies and the public whom they serve—what the corporation owes to the people and what government owes to the corporation.

The rate which insures to every man the service for which he pays at the minimum cost consistent with safety of the property employed in rendering it—the rate which allows no man to enjoy any service at the expense of another—that is the rate which must ultimately be held the fair and the reasonable one. No other is consistent with justice, and therefore no other can be permanent in this country. [Applause.]

Mr. Chairman, in the light of these principles, I ask the committee to examine the actual operation of these corporations and measure the difference between the service to which the people are entitled and the service which they have actually received.

It is a matter of universal knowledge, not questioned here or elsewhere, that this service, which should be impartial, has been governed by favoritism and discrimination. I do not think there is a single locality in the country where rates have been excessive to everyone. Wherever charges for transportation have been unreasonably high to the general public, they have

always been unreasonably low to some favorite of the railway. And this, sir, is not to benefit the corporation, but to benefit some dishonest manager at the expense both of the railway and of the public. Between a railway honestly administered and the people there never can be a conflict of interest. A railway cannot prosper except as the country through which it passes prospers. Its revenues and earnings depend on the volume of business in the community that it serves. Anything that restricts the volume of business restricts the revenues of the company and impairs the value of its capital. But the interest of the company is not necessarily the interest of the manager, who often profits by betraying it, and at the same time oppressing the community. The means most usually employed for this plunder of the stockholders and the public is the fixing of high charges for transportation to the community and then secretly giving lower rates to favored individuals. The business of the favorite is increased enormously, but the whole volume of transportation is diminished. The railway would reap larger profits from serving a hundred men, each doing a business of $1,000 a week, than in serving one man doing a business of $50,000 a week. But if the rates are made high to the general public, and, at the same time, one man be afforded transportation under such favorable conditions that all his rivals will be crushed, his business will, of course, be multiplied several times in volume, but, at the same time, the general business of the road will necessarily be diminished. His profits would be swelled enormously, while the revenues of the company available for dividends would be reduced. The railway manager who shared the profits of the favorite would be enriched, while the railway would be injured, and the stockholders who trusted their property to him would be plundered. And this, sir, explains why this species of favoritism has been so widely prevalent. It is safe to say that no rebate has ever been enjoyed by one man at the expense of competitors where the fruits of the plunder have not been shared by the railway officials through whose corruption the favors have been obtained. [Applause.]

The men who control transportation facilities and abuse their authority have established a power greater than the Government. The favor of a railway manager is more important to a man engaged in commerce than the favor of the President, of both Houses of Congress, of the judiciary, of the army, of the navy, and of all combined. Government, exercising all the power of all its departments, can only protect

a man; a corrupt railway manager can enrich him. Larger fortunes have been established by illegitimate railway favors than by the highest ability in legitimate industry ever possessed by any man in the world. As all these favors are granted to favorites at the expense of victims, as they are tributes levied on the industry of many for the benefit of a few, this railway corruption has resulted in the demoralizing spectacle of plunder made more profitable than industry. Where discrimination has been grossest, corruption the most depraved, the most cynical, the most unblushing, there the profits of the criminal have been most extensive. And the courts have signally failed to prevent this corruption, while they have been singularly effective in protecting fortunes which have been the fruits of these crimes.

Rockefeller, at once the richest and the most despised of the whole population, has long been the chief beneficiary of this corruption, and his fortune is the chief monument of its extent. [Applause.] Unfortunately he stands not alone; he is but the type of a band growing ever more numerous and more dangerous. These men have established themselves as a privileged class. They are so far above and beyond the law that they plead the magnitude of their crimes as a reason for arresting the pursuit of justice. Have we not seen within a few days the adoption of a resolution by this very House propounding an inquiry concerning the relations between two great railway systems, which it was our duty to formulate, create a disturbance in the market which almost amounted to a panic? Do we not hear it urged as a reason against pressing the inquiry, which the law enjoins upon us, that to persist in it will uncover extensive violations of the law which can result only in a profitless scandal, since the community would prefer submission to these crimes rather than pay the frightful cost of redressing them? Is not this a cynical admission that this Government, organized to establish justice, cannot afford to do justice, even when injustice is palpable—that under the protection of laws intended to foster industry criminals have grown so powerful that instead of submitting to the law they can treat with the law—nay, defy and command it?

It is no exaggeration to say that in all those great States the debates and contentions which on the surface appear to be the competition of politicians for leadership are usually but screens behind which different financiers contend for the control of some political machine which they consider a useful instrument in the prosecution of their enterprises. No man can be

considered an eminent financier nowadays unless he counts the leader of a political machine among his followers, his clients, his retainers, his dependents. [Applause.]

Sir, do I exaggerate the influence, the powers which these men wield? Am I extravagant when I describe them as a privileged class enjoying immunities unknown to the law, exercising powers above the law and in spite of it? Must we submit to the domination of this class, or should we make an effort at least to bring it within subjection to the laws?

The gentleman from Maine [Mr. Littlefield] says the courts can afford redress for all these evils by simply enforcing existing law. If the courts had held uniformly that all men were entitled to service by railways on equal terms and if they had used their processes and all their powers to facilitate discovery so that any man who had reason to believe himself aggrieved could ascertain the terms on which all other men were served—the rates they were charged—these abuses would never have arisen and the demand for this legislation would never have been heard. But, as a matter of fact, the courts have not prevented these abuses. When have the courts undertaken to prevent, much less to punish, any financial exploit by which railway managers have enriched themselves enormously at the expense of the stockholders who intrusted them with their property and of the community who depended upon their capacity and fidelity? What feat of spoliation by syndicates or financiers has been interrupted by judicial process?

Doubtless the case of the Northern Securities Company occurs to some gentlemen. Doubtless they are asking themselves now if the judgment declaring the organization of that company to be a conspiracy did not constitute a judicial interference with the consummation of an illegal financial operation. Sir, there can be no stronger proof that a privileged class exists among us, no more striking illustration of the extent to which these privileges are tacitly recognized by the courts themselves, than this very case, so often quoted as an evidence that the law is still capable of regulating and governing the conduct of all citizens, even of men mighty in finance.

You will remember that the Northern Securities Company was organized avowedly for the purpose of placing control of several railroads in the hands of two groups of financiers. The Attorney-General of the United States, by direction of the President, instituted proceedings in the courts praying that this attempt to reduce control of several railways to such a narrow compass that it could be held by two groups of financiers

be adjudged a conspiracy in restraint of trade under the Sherman anti-trust law.

In rendering judgment on this suit the Supreme Court declared:

> In our judgment the evidence fully sustains the material allegations of the bill and shows a violation of the act of Congress, in so far as it declares illegal every combination or conspiracy in restraint of commerce among the several States and with foreign nations and forbids attempts to monopolize such commerce or any part of it.

Here, then, we find the organization of the Northern Securities Company declared a conspiracy by solemn judgment of the court, and the persons who promoted it were therefore conspirators—criminals—specifically denounced as such by the law. Yet, what was the actual outcome of this decision?

The court directed that the stock held by the Northern Securities Company be distributed, but the method of distribution was so ordered that when the judgment was put in actual force the Harriman group was found to have been eliminated and the Morgan group was left in supreme control. The attempt to reduce control of these companies to two groups was pronounced a conspiracy, and the actual result of the decision was to reduce the control of them to one group. The object of the conspiracy instead of being defeated was more effectually accomplished. And that was not all. The stock of the company, which was selling at about 100 when the suit began, sold at 160 when the adverse decision was rendered. Its capital stock was $400,000,000, and therefore, this decision, that is generally supposed to have destroyed the corporation, enriched its promoters by $240,000,000. Conspiracy was found by the court; the conspirators were identified by name in its decision, but the object of the conspiracy, instead of being defeated, is more completely effected by the decision itself, and the authors of the scheme, instead of being punished or even questioned, walked out of court, not weighed down by its fetters, nor staggering under its sentence, but joyfully bearing a golden burden of $240,000,000, perfectly satisfied that the court which pronounced their conduct to be a conspiracy would use all its powers to protect them in holding and enjoying the fruits of their crime. [Applause.]

Now contrast this enrichment of men found guilty under the Sherman law with the treatment of Eugene V. Debs, who was not even accused of transgressing a criminal statute. The violation of an injunction order was the head and front of

his offending. At most, he committed a civil offence. Although, when we contrast the penalty which followed it with the rewards heaped on these men whom the decision of the Supreme Court adjudged to be criminals, we must conclude that if his offence was civil his treatment was decidedly uncivil. [Laughter and applause.] There is no doubt about what happened to him. He was not punished by mere animadversion or judicial denunciation. He was committed to jail. His body was taken into custody. He was confined in a cell; the bolts were turned on him. He ate the prison fare. Prison wardens controlled his movements. He expiated to the last moment by confinement and discredit—so far as imprisonment can inflict discredit—the violation of an injunction order. Tell me that Debs stands equal before the law with Messrs. Morgan, Harriman, Hill, *et al.*, and you say that which mocks common experience and common sense. [Applause.]

Now, what objections have been offered to this bill aside from the suggestion that the courts can of themselves accomplish the object at which it aims without any further legislation?

The gentleman from Maine [Mr. Littlefield] tells us that he is opposed to this measure because the Interstate Commerce Commission might become dominated by populists, by socialists, by enemies of property, who, incapable of appreciating the rather delicately balanced rights of the community and the stockholders in railway enterprises, would pervert the powers conferred upon them to the oppression of all right and the injury of all property. But, surely, sir, if that objection have any weight, it is an argument against all government. Are we to abolish courts because judicial decisions have been sometimes bought and sold, and that by the most learned and accomplished judges? Are we to abolish the Presidency because its powers may be perverted by some incumbent to an ignoble purpose?

Why, sir, it is the argument of anarchy itself. It is based upon precisely the same premises and is marked by the same *non sequitur*. The anarchist argues that, because all governmental powers may be abused, therefore they will be abused—because government is a potential source, therefore it is an inevitable source of tyranny and demoralization. Sir, this argument of anarchy, as we have heard it here, is new in nothing except in the theater of its delivery. When we consider the place in which it has been put forth with such dialetical skill and rhetorical brilliancy, we cannot help feeling

that from this moment it must assume a new weight and force in the estimation of mankind. It has acquired the enormous advantage of having been delivered, not to a motley throng of long-haired enthusiasts by some nameless, hare-brained rhetorician in the back room of some obscure café, but by a conspicuous ornament of American citizenship on the floor of the American Congress to the sanest and most conservative legislative body in Christendom. [Applause.]

The gentleman from Massachusetts [Mr. McCall] tells us he will go as far as anyone in attempting to punish rebates. But, while his disposition and his capacity are inspiring, while he is willing of purpose, sound of mind, and vigorous of muscle, eager to go any distance in pursuit of this wrong, there is an insuperable difficulty in the way of utilizing for the public weal his eminent capacity and excellent disposition—we cannot get him to start. [Laughter.]

Sir, if his contentions were sound; if it be true that, under our present system of transportation, government is incapable of affording a remedy for oppressive exactions or unequal rates, then we must change the system. There is no other alternative. For the American people to remain helpless and submissive under injustice would be intolerable and inconceivable. [Applause.]

I know it has already occurred to some on this floor and to many throughout the country that public ownership, or rather public operation, of railways is the only adequate remedy against this form of oppression. And, here, sir, I deem it proper to say that I am not one of those who believe the operation of public utilities by government is always and necessarily socialism. I entreat gentlemen to mark that word "*necessarily.*" I say it is not *necessarily* socialism, because, while the direct operation by government of any enterprise essentially public is not necessarily socialistic, the grounds on which this policy is urged are nearly always distinctly socialistic. Bearing in mind that a railway is always a public function, whether it be administered by government through its own officers, or by a private agency empowered and employed by government for that purpose, it must be perfectly clear that, what government can empower an agent or corporation to do, government can do itself. Nay more, government would be bound to perform the public service itself if a private agency could not be found to perform it. The only ground on which the employment of a private agency to administer a function essentially public can be justified at all is that the private agency can administer it

better, that is to say, it can give better, cheaper, and more efficient service than the government through its own officers.

I am opposed to public operation of railways for the very simple reason that in the nature of things it is not possible for governments to administer them as efficiently as they are administered now by private agencies—even though the service actually rendered to the people is far below the standard of efficiency to which they are entitled. The reasons for this belief are, in my judgment, conclusive, but the time now at my disposal will not permit a full statement of them. At this moment I can do no more than point out that there is not on record a single instance in which a public utility administered by government has resulted in as good service as where it has been administered by private agencies. The post-office is often cited as a striking instance of efficient service by government. What improvement in transportation or business methods has ever been developed by a post-office through its own operations? Where has a single invention or discovery been added to the resources of civilization by the administration of a postal system?

In many countries the railways are a feature of the public service administered by public officers.

When has any important device for improvement in travel been developed in the administration of a railway by government?

All improvements in travel, in transportation, in the transmission of intelligence, have been developed by private agencies authorized to operate public franchises by some government—most of them by this Government. If the control of transportation were transferred now from private agencies to public officers, the effect would be to impair its efficiency, and at the same time increase the cost of it. If this were understood by the people, proposals for public operation of railways would be robbed of all popularity. Nobody would be found advocating a policy of poorer service at higher rates. Why, then, are these proposals popular, or supposed to be? Because they are always accompanied by a promise or suggestion—a covert hint—that if the railways of the country be operated by Government the rates charged for transportation will be reduced, no matter what the service may actually cost. Now, if anybody be given a service for less than it cost, as we have already seen, the deficiency must be made up by excessive charges in other directions. Some men must be compelled to contribute from the fruits of their industry to the expenses of others,

and that is socialistic, it is undemocratic, it is un-American, unjust, intolerable, among a people where equality is the universal aspiration and justice the universal passion. [Applause.] Thus it is that public ownership, while not essentially or necessarily socialistic, is always conveyed with a suggestion of socialism, and that suggestion is the sole source of its popularity. [Applause.]

If public operation of railways, far from redressing the evils of which we complain, would aggravate them, is there no remedy? Are we helpless before these wrongs—their perpetrators and beneficiaries? Must we submit to these discriminations and inequalities which have created a privileged class—which have corrupted our whole industrial system, so that finance, as I said here some weeks ago, has become synonymous with piracy in the minds of the people? [Applause.] No, Mr. Chairman, we are not helpless or even feeble. Redress—ample and complete redress—is within our power. This bill, in my judgment, affords an important measure of it. The gentleman from Massachusetts assigns as one of his reasons for opposing it that not one line of it specifically prohibits rebates. But, sir, a moment's reflection must satisfy the gentleman that, if no single line of it expressly prohibits rebates, every line of it tends to make rebates impossible. The most effective feature of the bill is the popular determination it embodies; the overwhelming—practically unanimous—popular determination that this evil shall stop, now that its magnitude is understood. [Applause.]

This bill, sir, aims at nothing but justice—to establish justice between a great public function and the people whom it is organized to serve. Its provisions can only become operative where injustice is attempted. It will remain a dead letter while justice is respected and obeyed. Those who are likely to be affected by its operation, and who doubt its policy, who distrust its provisions, who fear that the making of rates by any public body may lead to confusion—contention—and possibly to socialism, can obviate all the possibilities which they apprehend by simply doing justice. For my part I regard the practically unanimous passage of this bill as the most inspiring event since the war of secession, because it registers the inflexible determination of the American people that, whether by the voluntary action of the railroads or by the intervention of Government, justice shall be enthroned in our railway system and in our whole industrial system as it is supposed to be enthroned in our political system, for it is only by extending and maintaining

the dominion of justice wherever any function of government is exercised that peace can be permanent in this land and prosperity general among its people. [Prolonged applause.]

James R. Mann [Ill.] supported the bill. He summarized his position as follows:

The fixing of railroad tariffs is the most complex and delicate work now carried on in our country. The interests, the localities, the commodities, the persons interested are as diversified as our land, our productions, and our people. No one set of men ever have or ever can manipulate the delicate mechanism of railway tariffs for all parts of our country, for all commodities produced by us, and for all interests which may be destroyed or upbuilt.

But government must exercise some control. It is as necessary for government to be the judge in the last resort between shipper and carrier as to the rate to be charged as it is for government to determine the right to any other class of property.

The railroad officials fear that it is dangerous to confer, to any extent, rate-making power upon a governmental agency. Let us admit it. There is some danger. No one can tell how dangerous it might become if fully exercised. But no new legislation is ever enacted without some element of danger in its possibilities. The best guaranty is that the pending measure is conservative. It protects the interests of the shipping community and does not permit the confiscation of the railway properties. The present bill is a compromise measure. It probably does not meet the full views of anyone. But the subject is a great one. It is the most stupendous subject in its many ramifications which has ever come before this body. In a sense, we grope in the dark.

This measure is an advance in the complexity of our internal affairs and in the progress of Government paternalism. The necessities of the case require us to take this step. We cannot avoid it. If properly used in the future, it will be a great advantage to both shippers and railroads. If improperly used in the future, we must trust the people to correct its abuse as we must at all times trust the people to provide safe government and to observe the safeguards of government. [Great applause.]

John Sharp Williams [Miss.], the leader of the Democratic minority, spoke in favor of the bill.

I congratulate the Democratic party, because, although in the minority, by constant driving and constant reiteration, a very much cherished Democratic policy is about to triumph under a Republican Administration. [Applause on the Democratic side.]

I need not run over the bill introduced by the Democratic floor leader for the purpose of bringing about this result before any other bill was introduced; the utterance of the last Democratic platform; the utterances of the temporary chairman of the St. Louis convention, calling upon the Republican party to know whether they were going to stand pat or not upon the then impotent condition and the now impotent condition of the Interstate Commerce Commission, as the tribunal to which these questions have been relegated by Congress.

I congratulate the Republican party upon the all-familiar principle that, "as long as the lamp holds out to burn, the vilest sinner may return." [Applause and laughter on the Democratic side.]

I congratulate the President of the United States because although this is not his child in the sense of being blood of his blood and bone of his bone and sinew of his sinew, for all of its blood and bone and sinew are Democratic, it is, at least, his adopted child. [Laughter.] I congratulate the President, because having seen the light on his way to Damascus he has become sincerely and honestly converted.

Mr. Williams then addressed himself to answering objections to the bill.

The gentleman from Maine [Mr. Littlefield], a man of magnificent individuality and courage, who has more than once stood athwart the pathway of a public gust, more than once stood against his own party in the Chamber, made a speech the other day which was, like every speech he has ever made, powerful of its sort, but after you analyze it, Mr. Chairman, you find that it meant but two things:

First, an impassioned appeal to the Congress of the United States to regard as vested rights certain discriminations which, in his opinion, have built up certain New England cities. He based his argument altogether, almost, upon the fact that if these unjust discriminations, if these "preferentials," as he calls them, were done away with, a great many industries in New England would be injured.

Now, Mr. Chairman, the question comes—if such preferen-

tials exist, are they just, are they nondiscriminatory, are they fair? If they are such, then this bill will not interfere with them; if they are unreasonable, unjust, unfair, or discriminatory, will he stand up before the American people and tell them that he wants cities in New England made prosperous and kept prosperous by unjust, unfair, and unreasonable transportation regulations? [Applause.]

Mr. Chairman, there is no vested right in discriminations made by Government-chartered corporations in favor of one person against another, or in favor of one locality against another. There may be a vested wrong, and, if there be, it ought to be done away with just as soon as possible. Ah, Mr. Chairman, it is not without significance that the main opposition to this bill comes from the Northeast. The shareholders, directors, and presidents of the great railroad companies come thence, and they have so fixed so-called "preferentials" and other things—that they call by still more polite names, but the plain English of which is unjust discrimination—as to build up that part of the country in which they are interested at the expense of that part of the country in which they are not interested.

Mr. Chairman, if discriminations, rebates, and unjust preferentials went to the railroad treasury and through the railroad office to the shareholders as dividends, it would not be so bad, but they do not go that way. There are rings within rings in the management of a railroad company just as we have lately ascertained that there are rings within rings in the management of life insurance companies. When the traffic managers of great systems meet in a private room to arrange joint traffic rates, they are not so much guided by the interests of the railroads which they represent as they are guided by the interests of the ring within the ring where management is concentrated and in the places in which they have investments.

The gentleman from Massachusetts [Mr. McCall] talked about the dangerous power to be lodged in these seven men. Why, of course, the power is dangerous. All power is dangerous. The power lodged in twelve men to determine whether I shall be hanged or not is dangerous. [Laughter.]

But power has to be lodged somewhere, and in the ultimate analysis you have to determine where it is safest to lodge it.

To which would you rather give the "power to crush"—to a public tribunal exercising its functions in public, subject to be visited with public indignation, to be removed, or somebody

who is doing the crushing act when you do not know when they are doing it, where they are doing it, nor when done know who did it?

I know what a perfect natural-born conservative dread my friend from Massachusetts [Mr. McCall] has of the Government doing too much. I share it with him, but I can assure him that within five years from now he will not know that this legislation was ever passed, except that he will find out that whenever unfair and unreasonable preferentials or discriminations exist they have been terminated. He will find that the railroads will not have many lawsuits, because with this law on the statute books they will themselves correct culpable discriminations between persons or places for the purpose of avoiding being brought up before the Interstate Commerce Commission and being made subject to all this expense.

Now, Mr. Chairman, as to the Federal Government taking too much authority upon itself in the regulation of interstate commerce, I want to say this to Democrats: They seem to forget one side of what old Thomas Jefferson said years ago. He believed in preserving inviolate the reserved rights of the State as the sheet anchor of local self-government and individual liberty, but he added to it, "and the delegated powers of the Federal Government in their full integrity as the only safeguard of national independence."

Now there are two sorts of States rights. The States right to insist that its reserved rights shall not be usurped by the Federal Government, and generally that is all men think about when they think about States rights, but there is a coördinate and coequal States right which exists in this: the right of the State to insist that the Federal Government shall perform the duty delegated to it by the Federal Government for the protection of the State and of the people. [Applause.] That is the States right for which I stand here.

Mr. Chairman, we on this side of the Chamber have dreamed for years that some time we might get into power, and when we did one of the things we were going to do was to pass a bill like this. Now, I think I see this bill take its way out of this Chamber northward, and as it goes northward it shall go as a catapult, overcoming every possible obstruction in its pathway. Oh, it may receive a few stabs over there under the fifth rib in the shape of amendments coming from the enemy acting as nurses to the bill for the time being, while they pretend they are friends of it; a few little railroad jokers may be put in it, but when it comes back let us all, Democrats and Republicans,

make up our minds right here to stay here until the next session of Congress comes before we in conference cede one single essential principle in this bill or adopt as an amendment upon it one single thing that will devitalize it in the slightest degree or deprive the commission of that power which it ought to have. [Applause.]

What are we? The American House of Commons. Who are our allies? The man in the White House for one, and he is no contemptible ally either, and I am glad he is with us; the people of the United States, greater than he or we both put together and multiplied by ten. Let us find out who governs America—the President and the House of Commons and the people all added together, or somebody else somewhere else. As for my part, I would be willing to stay here and make it a condition *sine qua non* to the passage of ordinary appropriation bills that this bill should come back from whencesoever it may go—virtually as it now is, or at any rate not rendered impotent of operation by amendment.

Mr. Hepburn closed the debate.

Mr. Chairman, I regret somewhat that some gentlemen participating in this debate should have used the occasion for taking the credit to themselves and to organizations with which they are connected for the present state of legislation upon this great question. This is a matter that ought to rise higher than party. I do not choose to follow any of those who have spoken on these lines further than to suggest that the law that we have was written by Republican hands and pressed through Congress by the arguments and efforts of members of the Republican organization. I want to remind them that the amendments to that law adopted two years later were written by a distinguished Republican, and it was Republican zeal that secured them as part of the law of the land. I want to remind gentlemen that the act of 1890—the Sherman Act—was written by a distinguished Republican Senator; and, further, I want to remind gentlemen that the act of 1903—the Elkins Act—was the work of a distinguished Republican member of the Senate, and that, if there have been shortcomings in the way of declarations in national platforms upon the part of the Republican party, there has been no failure when work was to be done and things were to be accomplished. [Loud applause on the Republican side.]

Mr. Chairman, this is a great question. One-twelfth of all

the wealth in the United States is involved in greater or less degree in this bill. But even this does not mark fairly the importance of this subject to the American people. Think how dependent we are for our prosperity, for the comforts of life even, upon the common carriers of the land. Think of the infinitude of the transactions between the carriers and those they serve—millions and millions of transactions.

And yet, Mr. Chairman, the gentleman from Massachusetts [Mr. McCall] announced the astonishing doctrine that in all of these multiplied transactions there shall be no practical arbiter, no one to settle disputes except one of the parties in interest.

MR. MCCALL.—And the courts.

MR. HEPBURN.—And the courts! Ah, yes, the courts. But we have had the courts during all these years.

I am not like the gentleman from New York [Mr. Cockran], disposed to decry the power, or honor, or necessity for preserving respect for the courts. [Applause.] I recognize they are a necessary agency in the preservation of everything that is dear to the American citizen, and I reprobate, at least, the good taste of any gentleman who undertakes to disparage them in the minds of the people. [Applause.]

I tell you, Mr. Chairman, that whenever that evil day comes, should it ever come, when the people of the United States feel that in the courts they cannot hope for justice, that in the courts they cannot find an agency that will protect them in their rights and punish their offenders—whenever that day comes, and that other spirit "of righting oneself"—when that evil spirit takes possession of the public mind, there is an end to our institutions and to our boasted liberty. [Applause.]

The gentleman from Massachusetts says the remedies by courts are ample. Experience teaches that they are not. Not because of the fault of the courts, but because of the peculiar character of the transactions involved and because of the disparity in individual power of the contestants in the courts

MR. COCKRAN.—Mr. Chairman, I am sure the gentleman wants to be fair. I would like to know how the statement of the gentleman differs in the slightest degree from the statement that I made. I have not criticised the courts any more than has the gentleman from Iowa [Mr. Hepburn].

MR. HEPBURN.—The remarks of the gentleman from New York seemed to me, if not intended for the purpose, to have the result of inflaming one man's mind against the courts, because that man was taught that, being poor, he lacked the power and

could not have that efficient justice, that quick disposal of his business that another man with wealth behind him and station to aid him could have, and it was that spirit that I found in the gentleman's language that seemed to me ought not to pass unrebuked.

MR. COCKRAN.—Mr. Chairman, I would like to ask the gentleman how his statement now differs from mine. It is undisputed that the one person whose imprisonment I took occasion to mention—and I do not at all criticise the justice of that decision—was committed to jail for violation of an injunction, while others, although pronounced guilty of a crime by the decision of that same court, had not been actually incarcerated or even prosecuted.

MR. HEPBURN.—If I misunderstood the character and purpose of the gentleman's remarks, I am sorry.

MR. COCKRAN.—Well, I want to congratulate the committee on this contribution to the discussion, as I understand the gentleman now corroborates me by stating that, so far as the courts are concerned, they are inadequate, and therefore a more efficient agency to effect a remedy must be established.

MR. HEPBURN.—With that portion of the gentleman's remarks I am in entire accord.

It is the carrier that fixes the rate. He imposes upon the other party the necessity of accepting his rate. He may pay the charge and then the common law, says the gentleman from Maine [Mr. Littlefield], gives him a remedy and allows him to recover for the overcharge. Ah, how barren is that remedy! It is a known fact that, though the cases where such suits might be instituted are counted by millions, none is ever brought because of the expense, because of the delay, because of the inability to secure the proof whereby a judgment is within the limits of possibility. Therefore it is futile to talk about the courts as they are constituted furnishing that remedy that ought to be somewhere existent.

Now, what do we do by this bill? The gentlemen who oppose it have discussed it as though it conferred upon the railway commission the power to establish schedules and rates. They have, I think, sometimes purposely set up this bogy for the purpose of combating it. No one has proposed that. The jurisdiction of the commission is limited, as is its power limited, by this law. They cannot at pleasure establish a rate. Before their jurisdiction attaches it must be ascertained that a wrong has been done, an overcharge has been made, a wrong in an extravagant, unreasonable rate, because the law to-day and the

common law provide that the carrier's charge shall be just and reasonable. That is the limit to which he is permitted to go in fixing his tariff of schedules.

Now, under the operation of this bill, if it should become a law, it is necessary for some one to allege a violation of the statute—in other words—that a crime has been done. Investigation follows and, if it is ascertained that the carrier is in violation of the law, then the jurisdiction of the commission attaches, and it is permitted to do what? Fix a rate? Oh, no; oh, no. It is permitted to establish a just, reasonable, and fairly remunerative rate that shall be the maximum rate that the carrier shall charge. That is all. Can you think of any legislative effort in the direction of control more conservative than this? One gentleman complains of this bill because the words "unreasonable" or "reasonable" have no accurate judicial determination. There are some words, I think, that cannot be defined, and yet we use them every day, and the courts use them. Is it probable that any two of the critics of this bill would agree as to the legal definition of the word "fraud"? And yet the courts have been industriously at work upon that for centuries, trying to find out what constitutes fraud. There is no definition that would be satisfactory to any lawyer that ever read a law book. There are proximations, and yet you will find after the study of the most carefully prepared definitions that in your own experience you have had cases that do not come within that definition.

I could not define the word "reasonable" in a way satisfactory to myself. I doubt whether any gentleman could do that, but he could in a series of cases, exercising his best discretion, looking at all the facts that may be brought to bear upon a given case, arrive at a conclusion that will be in harmony with the demands of justice and will be right in all of its bearings upon all of the parties. It is a very difficult thing, a very difficult thing, to use words of our English language that are not susceptible of varying interpretations. The gentleman from Ohio [Mr. Grosvenor] was exercised the other day because there was not sufficient definiteness in the language used. I do not know that I see before me one individual whom I believe can write an English sentence of twenty words that I cannot give more than one meaning to. He has undoubtedly heard the story of the little Kentucky girl who at her prayers in the morning said, "Good-by, God; we are going to move to Missouri!" [Laughter.] Her wicked brother, who happened to overhear her, and who was jubilant at the idea of the journey,

used the very same sentence, but he said, "Good! By God, we are going to move to Missouri!" [Renewed laughter and applause.]

The gentleman from New York [Mr. Sulzer] told us that this bill did not provide dire and certain punishments behind the bars of the penitentiary for the criminal classes—those whom gentlemen here will agree are violating the provisions of this law or engaged in conduct now that if continued after the proposed law would become criminal—and that it was because of these two defects that the law was fundamentally and radically deficient. He told us with much elation that he had prepared a bill—No. 8414. Those figures impressed themselves upon my memory, and I never will forget them [applause] as the file number of a bill embodying all wisdom upon this subject.

But here is the provision of bill No. 8414 on the subject of punishments. The gentleman wanted Rockefeller and all those gentlemen he named behind the bars, so that he could enjoy the sight of them as prison convicts.

That any person, association, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor—

[Laughter.]

The penitentiary is "suspended." [Laughter and applause.]

And on conviction thereof shall be punished in the manner provided by the act approved February 19, 1903, entitled "An act to further regulate interstate commerce."

You may recollect, gentlemen, that the act of 1903 repealed the prison penalty of the interstate commerce act. [Laughter and applause.]

MR. SULZER.—If I made an error in regard to the extent of the punishment, why did not the gentleman from Iowa, as chairman of the committee, in the interest of the people, amend my bill and make the punishment fit the crime?

MR. HEPBURN.—There is no trouble about answering that question at all, sir. We had an act passed in 1887 that provided vigorous, severe prison penalties for the violation of many provisions of the interstate commerce act.

Up to 1903, sixteen years, no conviction had been had under that act. It was said here upon this floor and elsewhere that the reason was obvious—that the men who knew the facts by which convictions before juries could be made possible were

all of them railroad men. They were the men familiar with conditions, familiar with facts, the only ones whose testimony would be adequate to secure convictions, and that there was that *esprit du corps* among them that they would not testify where it meant going to prison on the part of their fellows and that if the punishment were by fine largely increased convictions could be had.

Mr. Hepburn concluded as follows:

I regard this as the most important single question which we now have to deal with. I do not believe that we will be able by this legislation or any other to prevent rebates in some instances being given, to prevent preferences being shown to some locality, to some person, or to some character of traffic, but it will aid toward minifying a number of wrongs; it will give greater contentment to all the people in the belief that they are not being made the puppet and the football of carriers. I would be glad if certain other enactments might have been a part of this bill, but I contented myself in omitting them with the hope that we could unite upon this measure in the committee with unanimity and secure its passage through this House without amendment, believing that in other places there might be a moral effect from that action that would aid in the completion of the legislation. I thank the members. [Prolonged applause.]

A number of amendments to the bill were offered and rejected. It was passed on February 8 by a vote of 346 to 7.

The Senate referred the bill to the Committee on Interstate Commerce, which reported it on February 26. It was debated at great length, the chief opponents being Joseph B. Foraker [O.], John T. Morgan [Ala.], and Edmund W. Pettus [Ala.], and, after amendment, was passed on May 18 by a vote of 71 to 3 (the Senators above mentioned).

Robert M. La Follette [Wis.] took a leading part in the discussion. In an exhaustive speech thrice continued, beginning on April 19 and ending on April 23, he advanced a number of propositions, which, on the day of the vote (May 18), he enumerated, closing with an appeal for the

Physical Valuation of Railroads

Senator La Follette

I offered several amendments to this bill. I offered no amendment upon which any political question ought to have been raised or any party vote cast. Every amendment which I offered would have strengthened its provisions and made it more just to the shippers, the consumers, and yet not one of those amendments was unfair to the carriers of this country.

I proposed the following amendments to this bill:

1. To restore the penalty of imprisonment for violations of the interstate commerce law.

This amendment was defeated by a vote of 49 nays to 27 ayes, forty-seven of the negative votes being those of Republican and two of Democratic Senators; of the votes for the amendment, twenty-six of the Senators voting were Democrats.

2. To strike out the two-year limitation, by the terms of which orders of the commission expire two years from the time when such orders go into effect.

This amendment was rejected without a roll call, the votes in opposition thereto coming from Republican Senators.

3. To provide that, when testimony is offered upon trial different from the testimony upon which the order of the commission is based, testimony shall be taken by the trial court, the action suspended for fifteen days, the evidence certified back to the commission, and the commission given an opportunity to modify or revoke its former order.

This amendment was defeated—ayes 26, nays 49. Twenty-five Democratic Senators voted for the amendment; forty-eight Republican Senators voted against the amendment.

4. Substitute to section 15 providing for—

(*a*) Authority for the commission to issue orders upon its own motion.

(*b*) To fix a maximum rate.

(*c*) To fix a differential, and to prescribe both a maximum and a minimum rate.

(*d*) To change the classification of any article.

(*e*) To determine what regulation or practice in respect to transportation is just and reasonable.

All Republican Senators who voted, excepting myself, voting against the amendment.

5. To forbid every Federal judge who owns shares of stock or bonds of a common carrier subject to the provisions of this

act, or who uses a free pass or procures for the use of others free passes over such railroads, from hearing or deciding any proceeding or presiding at any trial under the provisions of this act.

Laid upon the table by a vote of 40 to 27—forty Republican Senators voting in the affirmative, twenty-five Democratic Senators voting in the negative.

6. That upon the trial of any action brought to set aside or modify any order made by the commission a copy of the evidence introduced by the plaintiff shall, upon motion made on behalf of the commission, be transmitted to the commission, and the court shall stay further proceedings in such action for fifteen days from the date of such transmission that the commission upon receipt of such evidence may alter, modify, or amend the same. The amended order shall take the place of the original order, as though made by the commission in the first instance.

The amendment was laid upon the table without debate—ayes 41, nays 30. Forty Republican Senators voted to lay the motion on the table. All Senators voting in the negative were Democrats except four.

7. That the commission shall estimate and ascertain the fair value of the property of every railroad engaged in interstate commerce, as defined in this act, and used by it for the convenience of the public.

Motion to lay on the table rejected by a *viva voce* vote. Motion later renewed, and amendment laid on the table—ayes 40, nays 27. Thirty-nine Republican Senators voted to lay the amendment on the table. All votes against laying the amendment on the table were recorded by Democratic Senators except six.

8. To adopt the block system, insuring greater safety to the traveling public. Amendment rejected without roll call. All votes against the amendment came from the Republican side of the Chamber.

9. For the railway employers' liability amendment for the relief of railway employees.

Defeated—ayes 28, nays 45. Those who voted in the affirmative were all Democrats except four. Of those voting against the amendment all were Republicans except three.

There cannot be offered here or before the country any satisfactory argument or reason against the amendments which I proposed. No arguments have been made or reasons offered against their adoption. My Republican colleagues, under the

leadership of a few New England Senators, lined up to vote down those amendments in nearly every instance without explanation or justification.

This bill, when it becomes a law, will not put this question at rest. It cannot. When Congress merely clothes the commission with power to ascertain whether rates are relatively equal and withholds from it all authority and all means of determining whether those rates are just and reasonable, it cannot be expected that such inadequate legislation will solve this great problem and satisfy the public demand for not only equal, but also just and reasonable rates.

The question which this bill should settle, but does not settle, will be a live issue in the next campaign for the election of men to both branches of Congress who will stand for a full measure of relief from oppressive transportation abuses.

So long as the legislation relative to the common carriers of this country permits these corporations to increase their capital stock without limit, increase it without adding anything of value to their properties, and increase it solely with the purpose of fixing rates upon that inflated capitalization, in order to pay profits and dividends to those holding the stocks and bonds, in which they have no real investment, just so long this question will be a vital issue before the American people.

There is to-day in the stock and bond valuation of the railroads of this country upward of seven billions of water. If the American people are expected to continue to pay transportation charges that will make a return upon that valuation, the temper of the people of this country is not understood here. Until there is invested in this commission or some other authoritative body the power to determine the real, true valuation of the railroads of this country and the authority to fix rates so that they shall bear only a fair return upon that fair value, Senators may as well understand now that you will have this question constantly before you. It will not be possible to suppress it or keep it within the closed doors of committees for nine years to come. At every session, until an adequate measure is adopted, while I remain a member of this body the demand will be made here for legislation that will insure to the people of every State fair treatment at the hands of the common carriers of the country.

On May 25 the House disagreed to the Senate amendments, and the bill went to conference. This was

abortive, and a second conference was ordered which also ended in disagreement. The third conference was successful. It reported a compromise bill on June 28. The compromise provisions were thus explained by James S. Sherman [N. Y.] of the committee:

The new bill incorporated generally the Senate amendment forbidding passes except to certain classes of passengers such as railroad employees, charity agents and objects of charity, inmates of soldiers' homes, etc.;

It ordered the installation of switch connections where the commission thought advisable;

It receded from the Senate amendment forbidding discrimination between passengers (*e. g.*, as against negroes, thus permitting "Jim Crow" cars);

It forbade "rebating" in the fullest and most explicit fashion;

It changed the House provision requiring that the order of the commission shall take effect thirty days after notice to the carrier to the Senate amendment that, except in the case of money payment, the order shall take effect "within a reasonable time—not less than thirty days";

It provided for appeals from orders to the Supreme Court;

It made the "original carrier," *i. e.*, the railroad taking the shipment, responsible for the same.

The bill was passed on June 29, and signed by President Roosevelt on June 30, 1906.